

New York City Police Department

# Disciplinary System Penalty Guidelines

DRAFT FOR PUBLIC COMMENT

The NYPD is committed to a fair and transparent discipline process.

Starting today, a draft discipline penalty matrix will be posted on the Department's website for 30 calendar days. Members of the public are invited to review the document and provide feedback on its contents. The document has been over a year in the making and gives an overview of the goals of internal discipline, defines the presumptive penalties for specific acts of substantiated misconduct by officers and outlines potential aggravating and mitigating factors that may be considered when assessing a disciplinary penalty. Discipline matrices are utilized by a number of police departments around the country and can provide benefits to officers and the public by increasing transparency, accountability, and efficiency in the disciplinary process. At the end of the 30-day period, the feedback will be evaluated and recommendations for revising the draft document will be collected. In accordance with local law, the final document will be published publicly by January 15, 2021 with a summary of changes made in response to the comments.

In 2018, the NYPD asked an independent panel of experts to conduct a top to bottom review of the Department's disciplinary system. While the panel determined that, overall, the system is robust and fair, it also found that transparency into the process, both for the public and members of the department, was lacking and that the process sometimes took an unreasonably long amount of time from incident to final adjudication. The panel made thirteen recommendations all of which were all accepted by the Department. One of these recommendations was for the Department to consider adopting a non-binding disciplinary matrix. The panel found that even the perception of favoritism or bias can undermine the legitimacy of the system and that by publishing a matrix, the NYPD can increase legitimacy in the process and detect trends of bias or inconsistency. Other benefits noted include: reinforcing the Police Commissioner's accountability without limiting the Commissioner's discretion, providing transparency into what penalty results from incidents of specific misconduct, and increasing efficiency in the system by giving the NYPD Department Advocate and Civilian Complaint Review Board (CCRB) attorneys a framework from which to negotiate settlements which can expedite the process.

The process to develop the matrix has been comprehensive. Subject matter experts within the Department evaluated disciplinary guidelines from other municipalities, experts reviewed NYPD disciplinary cases decided over the last five years to develop a penalty baseline and also consulted with external oversight organizations.

Importantly, the Department incorporated input from the community before publishing this matrix. Specifically, as part of the federal monitorship, the NYPD participated in a community-input process, the Joint Remedial Process (JRP) from 2015 through 2017. During this process, the NYPD engaged with various different stakeholders, including advocacy groups, community organizations, New York City government officials, members of Congress, the District Attorneys, the Borough Presidents, the Speaker of the City Council, member of the City Council, CCRB, and religious leaders, and heard from the community that the Department should increase transparency around police disciplinary processes while ensuring that those processes are fair. Additionally, input and comments from CCRB, Commission to Combat Police Corruption (CCPC), Department of Investigations, and the federal monitor were solicited before this publication.

The resulting draft reflects appropriate presumptive penalties to be imposed for specific offenses, with potential aggravating and mitigating factors that may be considered when assessing a disciplinary penalty, in order to meet the goals of the disciplinary system. It is subject to further revision and may be amended in the future to meet the needs of the Department and the public. Furthermore, these penalties are presumptive however final imposition of disciplinary penalties, under the law, remains the Police Commissioner's discretion. Every case is fact-specific and evaluated on its own merits with a number of potential mitigating and or aggravating factors taken into consideration.

The Department encourages the public to review the matrix and share comments, concerns, or other feedback during this period.

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## Introduction

Police officers hold a unique position in our government. They are responsible for the safety and security of all of those who work, live and visit in the city. Whether responding to a call of a crime in progress or offering assistance in a medical or other type of emergency, they are the component of government that citizens most frequently interact with and rely upon for help. At the same time, they are given enormous discretion in how exactly to perform their work. They are given the power to seize property, restrict the freedom of individuals, and, under appropriate circumstances, to use force in the course of their duties. With this vast discretion comes a vast responsibility to perform their duties and exercise their discretion within the bounds of the law and New York City Police Department (“NYPD”) policy.

Both the public and our officers must understand and, indeed expect, that when the bounds of the law or Department policy are exceeded, fair and equitable discipline will result. Similarly, it should be the expectation of all that any discipline imposed will be consistent and based upon reasonable standards. Fairness within a disciplinary system begins with taking the time and making the effort to objectively review the totality of the circumstances surrounding any alleged misconduct. Proportionality of discipline requires that each instance of misconduct is punished in line with the seriousness of that misconduct, including any aggravating and mitigating circumstances. Lastly, equity within a discipline system means that every officer is held accountable for unacceptable behavior, without regard to rank, title, demographic identity, assignment, or membership in any protected class. It is with these tenets in mind that these Penalty Guidelines (“Guidelines”) have been assembled and published.

## NYPD Values

The NYPD values provide the underpinnings for the Department’s discipline system. The Department has pledged that, in partnership with the community, it will:

- Protect the lives and property of our fellow citizens and impartially enforce the law.
- Fight crime, both by preventing it and aggressively pursuing violators of the law.
- Maintain a higher standard of integrity than is generally expected of others because so much is expected of us.
- Value human life, respect the dignity of each individual, and render our services with courtesy and civility.

Given these values, the standards for professional and personal conduct are necessarily high.

## Neighborhood Policing and the Discipline System

Neighborhood Policing is the cornerstone of the NYPD. It is a comprehensive strategy, built on improved communication and collaboration between police officers and community residents. Neighborhood Policing works to accomplish three core goals: to continue reducing crime; to promote trust and respect; and to solve problems collaboratively, both within the Department and with neighborhood residents.

As an integral part of this philosophy, The Department’s disciplinary system sets standards of performance and conduct and establishes fair consequences for failing to adhere to these standards. The penalty guidelines contained herein, coupled with the annual “Discipline in the NYPD” report<sup>1</sup>, promote trust and respect by providing greater transparency and insight into the system. At the same time, it also, promote greater confidence in the process on the part of officers who will be able to see the system as fair, proportional, and equitable.

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<sup>1</sup> The annual reports are published on the NYPD website and are available at <https://www1.nyc.gov/site/nypd/stats/reports-analysis/discipline.page>.

## The Discipline System

### Goals of the Discipline System

As noted, a discipline system must be fair and equitable to be effective. Discipline must be fairly administered, reasonably consistent, designed to achieve a desired result and premised upon standards that are generally understood Department-wide. The goals of the disciplinary system include:

- Correcting or modifying inappropriate behavior
- Educating personnel and the community regarding agency standards
- Providing reasonable notice of the standards by which conduct will be judged and the likely consequences of the failure to adhere to Department rules and policies
- Retraining personnel who exhibit a lack of understanding of Department policies and procedures
- Addressing the harm, or risk of harm, arising from misconduct and the effects of misconduct both inside and outside the Department
- Deterring future misconduct
- Imposing appropriate penalties
- Ensuring the good order and efficiency of the Department
- Establishing a culture of accountability and individual responsibility

The purposes to be achieved by the imposition of discipline in a particular case are properly dependent on all the facts and circumstances of each case. Those purposes may vary based upon a consideration of numerous factors including, but not limited to, the nature and seriousness of the misconduct, the circumstances under which the misconduct was committed, the harm or prejudice arising from the misconduct, and the existence of any relevant mitigating or aggravating circumstances.

### The Investigative Process

The Department receives complaints against members of the service regarding a wide variety of employee behaviors, and then conducts thorough investigations to ascertain the veracity of these complaints. Complaints are received from the public, as well as from Department personnel who have an obligation to report corruption or other misconduct of which they become aware.

They may also result from media or social media exposure and proactive investigations by various investigative entities within the Department itself. Complaints can range from simple violations of Department policies and procedures, to more serious allegations of misconduct. The most serious investigations involve allegations of unlawful behavior or criminal conduct. The Department investigates allegations of criminal conduct in conjunction with the appropriate prosecutor's office. In these cases, administrative charges can also be levied because the criminal offenses encompass corresponding violations of Department policies and procedures.

The Internal Affairs Bureau ("IAB") conducts comprehensive investigations of corruption and misconduct complaints, including criminal conduct, as well as other matters at the direction of the Police Commissioner. IAB uses all available investigative tools, including pattern analysis, surveillance, integrity tests, drug testing, confidential informants, and undercover officers to investigate incoming complaints and to conduct pro-active investigations.

The Equal Employment Opportunity Division, within the Department's Office of Equity and Inclusion, investigates allegations of employment discrimination and harassment, as well as proactively training and advising Department employees on issues of equality and fairness in the workplace.

Civilian complaints against police officers regarding excessive Force, Abuse of Authority, Discourtesy, and Offensive Language (known collectively as “FADO” complaints) are investigated by the Civilian Complaint Review Board (“CCRB”). The CCRB is an independent city agency<sup>2</sup> authorized under the New York City Charter<sup>3</sup> to investigate FADO complaints with the cooperation of the NYPD. The CCRB submits its findings regarding each allegation of misconduct, as well as its disciplinary recommendations for substantiated complaints, to the Department. Under the terms of a Memorandum of Understanding<sup>4</sup> between the NYPD and the CCRB, prosecutions for the most serious violations within these categories result in the filing of formal disciplinary charges, known as “Charges and Specifications,” and are handled and prosecuted by CCRB attorneys assigned to CCRB’s Administrative Prosecution Unit.

To the extent any conduct by Department employees is criminal in nature, New York City’s District Attorneys, the local prosecutor with jurisdiction over an event occurring outside the city, the United States Attorneys’ Offices and or the New York State Attorney General may also conduct investigations. Once it is ascertained that a member of the service has engaged in possible criminal behavior, the Department works closely with the relevant prosecutorial agencies to coordinate investigative efforts. This may result in both a criminal prosecution and an internal disciplinary proceeding, regardless of the outcome of the criminal matter.

**The Department’s administrative discipline process is not a substitute for the criminal or civil justice systems. When a member of the service is arrested and charged with a crime, he or she is still subject to criminal responsibility in accordance with applicable Federal, state, or local law. The member may also be subject to liability in a civil proceeding.**

When a member of the service is charged with a crime, the Department also files internal disciplinary charges against the member because criminal conduct always includes a corresponding violation of the Department’s internal rules. Under appropriate circumstances, the Department’s internal disciplinary case may proceed on a parallel track to the criminal case. However, in some cases, the disciplinary case may be deferred until after the criminal prosecution has been fully resolved. The determination to move ahead with a disciplinary proceeding is fact-specific and will be undertaken if the disciplinary proceeding can be accomplished without compromising the criminal prosecution. In making the decision, the Department will always consult with, but not necessarily defer to, the appropriate prosecutorial authority and will consider any issues or concerns presented.

When an allegation(s) of misconduct against a member of the service is investigated and evidence is found to show that the event did occur, that the member in question engaged in the action, and that the act itself was a violation of Department guidelines, the allegation is deemed by the investigator to be “substantiated.” Substantiated allegations of misconduct result in remedial action along a disciplinary continuum.

The Department will launch an investigation immediately upon becoming aware of misconduct or an allegation of misconduct. Members of the service may be suspended during the course of a Department investigation prior to a hearing and final determination of the charges.<sup>5</sup> A ranking officer may suspend a member of the service or place a uniformed member of the service on modified assignment (which entails the removal of firearms and assignment to a non-enforcement function) when he or she deems it necessary given the nature of the misconduct alleged and

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<sup>2</sup> The Conflicts of Interest Board is another independent City agency that refers alleged violations of the City’s conflicts of interest laws to the Department of Investigation for further review. Numerous outside entities also examine policies and procedures of the Department regarding misconduct and discipline. The Commission to Combat Police Corruption performs audits, studies, and analyses of the Department’s corruption controls and disciplinary cases. The Inspector General for the New York City Police Department investigates and makes recommendations regarding the operations, policies, programs, and practices of the Department.

<sup>3</sup> See New York City Charter Ch. 18-A § 440.

<sup>4</sup> Available at: [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/apu\\_mou.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf)

<sup>5</sup> See New York Civil Service Law § 75(3). A member of the service “may be suspended without pay for a period not exceeding thirty days.” See also, New York City Administrative Code § 14-123.

because disciplinary action is being taken or contemplated.<sup>6</sup> The ranking officer in charge will make an initial determination as to the member's duty status upon completion of the preliminary investigation which typically occurs within 24 hours of the Department becoming aware of the incident. Given the complexity of some investigations, a duty status determination may be deferred until such time as sufficient evidence is gathered supporting the conclusion to suspend or modify the member concerned.

The statute of limitations ("SOL") applicable to NYPD disciplinary proceedings is described in section 75 of the New York Civil Service Law. Disciplinary action must be commenced (e.g. service of charges and specifications, adjudication of a command discipline, etc.) within eighteen (18) months of the date of occurrence of the misconduct. The SOL does not apply if the misconduct would, if proved in a court of appropriate jurisdiction, constitute a crime.<sup>7</sup>

Discipline in the NYPD is imposed in a variety of ways, largely determined by the seriousness of the substantiated misconduct allegation. The least serious procedural violations result in an "instruction," a method of re-training through which a commanding officer instructs a member of the service on proper procedures, or a "reprimand," where members of the service are admonished for low-level violations. Other technical violations of Department procedures can also be addressed through discipline imposed at the command level, called "Command Discipline." Command Disciplines allow commanding officers to manage their commands and impose discipline without resorting to filing formal disciplinary charges. The CCRB may also recommend adjudication of some substantiated FADO allegations, based upon their severity, through Command Discipline.

The types of violations subject to punishment by Command Discipline are outlined in Patrol Guide procedure 206-03, and include behavior such as improper uniform, reporting late for duty, and loss of Department property. Depending on the severity of the violation, commanding officers may impose penalties that range from a verbal reprimand and instruction to revoking up to ten vacation days.<sup>8</sup>

The Department may require members of the service to participate in training, including training to address deficiencies, at any time.

Substantiated allegations of serious misconduct are handled by the Department Advocate's Office ("DAO"). Staffed by civilian attorneys, and augmented by a complement of uniformed and civilian personnel, the DAO evaluates substantiated allegations of serious misconduct, files formal "Charges and Specifications" against members of the service, recommends appropriate disciplinary penalties, and prosecutes disciplinary matters. Members of the service who face disciplinary charges and specifications may elect to resolve the matter by entering into a settlement agreement. They also have the right to decline a settlement agreement and to have the case heard at a Department trial. Both settlement agreements and trial decisions are subject to the Police Commissioner's approval.

## Resolution of Disciplinary Charges

The Police Commissioner, by law, has the sole discretion to determine the final discipline disposition and penalty imposed.<sup>9</sup> Faced with disciplinary charges and specifications for substantiated allegations of misconduct or violations of Department rules, members of the service may agree to take responsibility for the charged misconduct and accept a penalty by entering into a settlement agreement negotiated with the Department. Cases falling under the jurisdiction of the CCRB may be resolved by a similar settlement process. The agreed-upon penalty is subject to the Police Commissioner's approval.

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<sup>6</sup> See Patrol Guide procedure 206-07, *Cause for Suspension or Modified Assignment*.

<sup>7</sup> See New York Civil Service Law § 75(4).

<sup>8</sup> There is also a provision that allows for a Command Discipline to be resolved with a penalty of up to the loss of twenty vacation days, however that procedure involves a formal disciplinary review of the matter and the Command Discipline may only be issued by the Department Advocate's Office.

<sup>9</sup> See New York City Charter § 434 and New York City Administrative Code § 14-115.

If a member of the service contests the charges, or does not agree to the proposed penalty, he or she has the legal right to a full *de novo* administrative hearing<sup>10</sup> known as a Department Trial, a process overseen by the Deputy Commissioner of Trials. All members of the service are entitled to be represented by counsel, and the trial proceedings are open to the public. At trial, the DAO, or where applicable, the CCRB Administrative Prosecution Unit, has the burden of proving the charges by a preponderance of the evidence and is required to present evidence against the member. The member of the service is entitled to cross-examine prosecution witnesses, present a defense to the charges, and/or present evidence in mitigation of the proposed penalty.<sup>11</sup> Each month, the trial calendar for the upcoming month is published on the Department's website.<sup>12</sup>

The Office of the Deputy Commissioner of Trials conducts Department trials in a fair and impartial manner, consistent with the rules and regulations governing administrative hearings, as well as the due process rights of the Department's members. At the conclusion of a trial, the Trial Commissioner issues a report that includes an analysis of the evidence presented, a determination on witness credibility and a recommendation as to findings on each charge. Where there is a finding of guilt, the Trial Commissioner recommends an appropriate penalty. All parties review the Trial Commissioner's report and are given an opportunity to submit written comments.<sup>13</sup> The Trial Commissioner's report, and the written comments of the parties, are then submitted to the Police Commissioner for his review.

Regardless of the manner in which a Department disciplinary case is resolved, whether by settlement agreement or Department trial, the Police Commissioner, by law, makes the final disciplinary determination and penalty finding.

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<sup>10</sup> See New York Civil Service Law § 75(1).

<sup>11</sup> Sections 75 and 76 of the New York Civil Service Law mandate that permanent, competitive-class employees, including police officers, are entitled to certain rights prior to the imposition of any disciplinary action. These rights include notice of the charges, an opportunity to answer the charges (at a hearing or otherwise), representation at official interviews or disciplinary hearings, and the right to summon witnesses on the accused officer's behalf. See also, Title 38, Chapter 15 of the Rules of the City of New York and Section 14-115 of the Administrative Code of the City of New York.

<sup>12</sup> See <https://www1.nyc.gov/site/nypd/bureaus/administrative/trials.page>

<sup>13</sup> See *Fogel v. Board of Education*, 48 A.D.2d 925 (1975).

## Penalty Guidelines

### The Penalty Guidelines Explained

The guidelines are published and may be periodically updated in order to better inform members of the service as to the expectations placed upon them and to provide greater transparency regarding the Department's disciplinary process. Awareness of the likely consequences associated with violations of Department policy promotes greater efficiency, and facilitates the consistent application of penalties and the administration of behavioral standards. The guidelines are designed to provide notice of the standards upon which disciplinary outcomes are based and to establish expectations for all involved. The guidelines are separated into eleven (11) different categories: Improper Use of Force; Abuse of Authority/Discourtesy/Offensive Language; False Statements; Domestic Violence; Driving While Impaired/Intoxicated; Firearm-Related Incidents; Controlled Substance/Marihuana/Banned Substance Use; Department Rule Violations; Off-duty Conduct; Criminal Conduct; and Employment Discrimination Penalties. These categories are not mutually exclusive, and proscribed conduct may fall into more than one category.

### Presumptive Penalties

The guidelines set forth presumptive penalties for acts of misconduct and violations of Department policy. A presumptive penalty is the assumed penalty generally deemed appropriate for the first instance of a specific proscribed act. The presumptive penalty serves as the starting point for analysis during the penalty phase of a case, which must include consideration of the totality of the circumstances and any aggravating and or mitigating factors that may be relevant. The Police Commissioner, who is statutorily empowered to adjudicate discipline, makes the final determination and may deviate from the presumptive penalties<sup>14</sup>. The penalty determination and the bases for deviations are memorialized as part of the final adjudication of the case.

Given the complexity of some events and significant permutations across fact patterns, it is not possible to predetermine the outcome or the relative weights of potential aggravating and mitigating factors for every disciplinary matter. In select areas of misconduct, presumptive penalties for common aggravating factors are delineated, but even in these cases, there may be additional aggravating factors or mitigating factors that bear upon the ultimate penalty recommendation.

Similarly, the weight of the evidence must be assessed and the availability of witnesses must be considered when contemplating the appropriate penalty in a case. Factors that are likely to impact the ability to sustain a violation on the merits of the case during an administrative trial may be considered when evaluating the presumptive penalty and any potential departures from that penalty. These factors may likewise influence the ultimate resolution in a negotiated settlement of the matter.

All disciplinary matters must be evaluated on a case-by-case basis, considering all relevant factors and using this rubric as a guide. As a general rule, Department policies, including these guidelines, should not be interpreted or applied in a manner that leads to an unjust or unreasonable result, or is otherwise contrary to the goals of the disciplinary system outlined above.

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<sup>14</sup> The Police Commissioner likewise does not need to adhere to the finding of "substantiated." See New York City Administrative Code § 14-115(a). See also, New York City Charter § 434.

## Potential Mitigating Factors

It would be impossible to pre-determine all the mitigating and aggravating circumstances in particular cases. However, as a general rule and considering the totality of the circumstances, potential mitigating factors may include, but are not limited to, the following:

- The knowledge, training and experience of the respondent involved
- The nature of the event was such that it was unpredictable, volatile or unfolded rapidly not allowing time for deliberate reflection
- The area of law or policy implicated in the matter is novel or complex
- The mental state of the respondent, including the absence of intent to cause harm
- The primary motivation for the action is premised upon emergency response or service
- The veracity of the respondent and the respondent's level of cooperation with the investigation
- The acceptance of responsibility and any mitigating or remedial actions taken by the respondent
- Any positive employment history including any notable accomplishments
- The nature and extent of the consequences or harm caused by the violation
- The impact of the violation upon the Department and its mission
- The lack of low-level of prior disciplinary history
- Any extraordinary circumstances or hardships that may be relevant
- The potential for rehabilitation

## Potential Aggravating Factors

In considering the totality of the circumstances, potential aggravating factors may include, but are not limited to, the following:

- The knowledge, training and experience of the respondent involved
- The nature of the event is such that it allowed time for deliberate reflection or action
- The culpable mental state of the respondent, particularly if the actions evince an intent to engage in proscribed conduct, circumvent a policy, or exhibit a reckless disregard of an individual's wellbeing, demonstrate bias or prejudice, or constitute harassment or retaliatory conduct
- Any prejudicial or biased conduct
- The veracity of the respondent and level of cooperation with the investigation
- The nature and extent of injury or endangerment to a member of the service or civilian
- The nature and extent of any property damage
- The impact upon the Department with regard to its mission, reputation, credibility and relationship with the community and the impact on public trust
- Any actual or demonstrable financial risk or cost
- The result of a criminal or administrative proceeding related to the underlying conduct
- Any negative employment history including prior discipline
- The role or status of the respondent in the particular event
- Any failure to turn on body-worn camera or failure to prepare a required report or otherwise document an incident, in an effort to obfuscate misconduct

## Supervisors

An individual respondent's rank and their particular role in an event are factors to be considered when assessing an appropriate disciplinary penalty. An individual respondent's status as a supervisor will generally be viewed as an aggravating factor, particularly for on-duty misconduct, which may warrant a penalty higher than the presumptive

penalty for the particular violation. Supervisors are expected to lead by example and they are responsible for holding their subordinates accountable. The Department has higher expectations for supervisors, including their ability to exercise sound judgment and to be more deliberate in their actions than subordinate members. Potential mitigating factors described above should be considered as well.

Consistent with this philosophy, the presence or participation of a supervisor in an event may be a mitigating factor when evaluating the culpability of a subordinate. A downward departure from a presumptive penalty may be warranted when a subordinate is acting under the close supervision or direction of a superior.

## Prior Disciplinary History

An individual respondent's prior disciplinary history is considered when assessing an appropriate penalty. A lack of, or minimal, history may be a mitigating factor. Prior misconduct may increase the disciplinary penalty for a current violation. Factors to be considered when determining the relevance of prior discipline and the impact upon the penalty include:

- The number of prior disciplinary events
- The nature and seriousness of the prior event(s)
- The same misconduct was repeated
- Any similarities between prior and current acts of misconduct
- Any disciplinary history indicative of a pattern of behavior demonstrating an inability or unwillingness to conform to the Department's expectations for the position
- The time elapsed between prior event(s) and current misconduct
  - Disciplinary matters that included the imposition of 20 or more penalty days and or dismissal probation shall generally not be considered an aggravating factor if adjudicated more than 10 years in the past
  - Disciplinary matters that included the imposition of less than 20 penalty days shall generally not be considered an aggravating factor if adjudicated more than 5 years in the past

Discipline is progressive. Penalties are increased for subsequent violations of the same/similar misconduct or when a pattern of misconduct is demonstrated. If a significant amount of time has elapsed between prior and present misconduct and the prior misconduct was minor, the prior misconduct will generally not be considered as an aggravating factor, except if the prior misconduct, even if remote/minor, evidences a pattern of misconduct.

## Application of Aggravating and Mitigating Factors

Any relevant aggravating or mitigating factors are considered with regard to one another and within the context of the misconduct in question. The presence of one or more mitigating circumstances, along with one or more aggravating circumstances, may or may not offset or result in imposition of the presumptive penalty. In addition to the universal factors listed, there may be some factors that are unique to a particular category or act of misconduct. Such factors will be identified in the sections dealing with each particular category of misconduct.

For some categories of misconduct, there are additional presumptive penalties for enumerated aggravating factors. In other categories of misconduct, penalty ranges for aggravation or mitigation are provided. The Police Commissioner ultimately determines whether the factors are sufficiently significant to justify a decrease or increase in the presumptive penalty/penalty range.

The guidelines facilitate penalties designed to ensure consistency among similarly situated respondents, while allowing for varying degrees of mitigation and aggravation. In the event that the guidelines fail to appropriately address the conduct of a particular respondent, the penalty imposed may be greater or lesser than contemplated

by the enumerated penalties, based upon the totality of facts and circumstances of the case. The application of aggravating factors may increase the penalty up to and including termination.

## Consequences of Disciplinary Action

Members of the service should be aware that the imposition of disciplinary sanctions may also have an impact on their future status, including but not limited to, assignments and promotions, which may result in a diminution in compensation. The imposition of discipline may have ancillary consequences that are not regarded as part of the disciplinary system or calculated within the context of these guidelines as included in any disciplinary sanction. The potential future impact of a disciplinary penalty will generally not be considered in determining what the appropriate penalty should be at the time of imposition.

The New York State Division of Criminal Justice Services maintains a “Police Officer and Peace Officer” registry. The registry includes information regarding police officers who were terminated by the Department as well as those who separated from the Department as a result of a disciplinary proceeding or with a disciplinary matter pending.<sup>15</sup>

## Calculation of Penalties

Separate presumptive penalties, adjusted for relevant aggravating and mitigating factors, are applied for each substantiated act of misconduct. Such penalties are calculated to adequately address each distinct act of misconduct. However, if the same underlying act(s) of misconduct apply to multiple specifications of proscribed conduct or support alternative theories of a prosecution, then a single penalty will be applied based upon the underlying act of misconduct. In such situations, penalties are deemed to run concurrently. For example, a member of the service who has been determined to have operated a motor vehicle while intoxicated was necessarily unfit for duty. Because these separate charges result from the same underlying course of conduct, a single penalty will be applied.

Penalties imposed prior to final adjudication (e.g. days lost to post-incident suspension) may be applied to any final penalty determination.

In the event that the total number of penalty days is calculated at greater than ninety (90) days, the presumed penalty shall be termination or forced separation.

## Probationary Status

There are different types of probationary status that may affect disciplinary penalties:

**Entry Level Probation** – When hired, police officers are on entry-level probation for a two-year period. The member must complete two (2) years of full-duty status in order to complete this probationary period. Members on entry level probation who are the subjects of disciplinary matters can be terminated, and the Department may summarily dismiss the member of the service without a formal hearing. If termination is the presumptive penalty, then members on entry-level probation will be dismissed. Members on entry level probation may also be terminated for offenses that would not generally result in termination for a tenured employee. A recommendation relative to termination or retention of title and service of charges and specifications under these circumstances will be made to the Police Commissioner by the Risk Management Bureau.

**Promotion Probation** – Uniformed members of the service who achieve a civil service promotion in rank will be on promotion probation. A member promoted to the rank of Detective is on promotion probation for a three-year period regardless of duty status. Members promoted to the rank of Sergeant, Lieutenant, or Captain are on promotion probation for a one-year period. A member must complete one year of full-duty status in order to

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<sup>15</sup> See New York Executive Law § 845.

complete this probationary period. Should a member while on promotion probation be the subject of a disciplinary matter, they are subject to demotion to their former Civil Service rank at the discretion of the Police Commissioner prior to final adjudication of the matter. A recommendation relative to demotion or retention of rank under these circumstances will be made to the Police Commissioner by the Risk Management Bureau.

**Dismissal Probation** – When a member is placed on dismissal probation as part of a disciplinary penalty, the member of the service is dismissed from the Police Department, and he or she acknowledges the dismissal in writing. The Department delays the imposition of the dismissal for a one-year period, during which the member must complete one year of full-duty status in order to complete the probationary period. If there is further misconduct during the probationary period, the Department may summarily dismiss the member of the service without a formal hearing, including for offenses that would not result in termination for a member not on dismissal probation.

**Extension of probation** - Members of the service on Entry-level or Promotion probation may receive a six-month extension of their probation if they are the subject of a disciplinary matter or for poor performance during such probation period.<sup>16</sup> A member must complete this extension at full-duty status in order to successfully complete this probationary period.

Misconduct resulting in termination – member on entry-level or dismissal probation

PROBATIONARY STATUS: TERMINATION MISCONDUCT
Criminal Association
Criminal Mischief
Domestic Incident with Aggravating Factors (e.g. injury, stalking, harassment, etc.)
Driving While Intoxicated
Failed Drug Screening Test
False Statements
Impeding an Official Department Investigation
Insubordination
Misconduct Resulting in a Penal Law Charge for a Crime
Misleading Statements
Petit Larceny
Poor Performance
Refusal to Answer Questions During an Official Department Interview

<sup>16</sup> Members in the rank of Detective cannot have their promotion probationary period extended.

Any misconduct for which separation or a minimum of 30 penalty days plus Dismissal Probation is the presumed penalty for a tenured member of the service
Any misconduct deemed appropriate by the Police Commissioner

Misconduct resulting in demotion – member on promotion probation

<b>PROBATIONARY STATUS: DEMOTION MISCONDUCT</b>
Criminal Association
Criminal Mischief
Domestic Incident with Aggravating Factors (e.g. injury, stalking, harassment, etc.)
Driving While Intoxicated
Excessive Misuse of Time
Fail to Supervise
Fail to Take Police Action
Failed Drug Screening Test
False Statements
Impeding an Official Department investigation
Insubordination
Misconduct Resulting in a Penal Law Charge for a Crime
Misleading Statements
Perjury
Petit Larceny
Poor Performance
Refusal to Answer Questions During an Official Department Interview
Any other misconduct deemed appropriate by the Police Commissioner

## Effect of Precedent

Situations may arise that are not adequately covered by the guidelines or in which the outcome is inconsistent with similar circumstances. An evaluation will be made based upon the facts and circumstances of the present case in light of recent cases<sup>17</sup>. Similar circumstances may be determined based upon an assessment of the relative degree to which the present case and any prior cases contain the following factors:

- Similar factual situations
- Similar disciplinary histories
- Same or similar aggravating and or mitigating factors
- Same or substantially similar proscribed conduct

Settlement negotiations do not have the weight of precedent because factors such as expediency of resolution and strength of the evidence may affect the calculation and warrant a lesser penalty.

## Definitions

**Presumptive Penalty** – A presumptive penalty is the assumed penalty or penalty range generally deemed appropriate for a specific proscribed act. The presumptive penalty serves as the starting point for analysis during the penalty phase of a case, which must include consideration of the totality of the circumstances, strength of the evidence and any aggravating and or mitigating factors. The Police Commissioner, who is statutorily empowered to adjudicate discipline, makes the final determination and may deviate from the presumptive penalties. The penalty determination and the bases for deviations are memorialized as part of the final adjudication of the case.

**Penalty Days** – The term penalty days refers to the loss of vacation days<sup>18</sup> and/or the imposition of suspension days. If a member of the service was immediately suspended from duty during the pendency of the investigation, the forfeiture of suspension days, imposed prior to the final disposition of the case, may be used or applied as part of the disciplinary penalty. A member of the service who is found guilty after an administrative hearing may be suspended without pay for a period not exceeding thirty days for any offense.<sup>19</sup> In some cases, the member of the service will be required to take some or all of the penalty days as suspension days, as noted herein. When the loss of vacation days is the imposed penalty, a member of the service may elect suspension in lieu of vacation days when consistent with the needs of the Department.

**Dismissal Probation**<sup>20</sup> – As part of a disciplinary penalty that includes the imposition of penalty days, Dismissal Probation requires that the member of the service concerned be that dismissed from the Police Department, and he or she acknowledges that dismissal in writing. The Department then delays the imposition of the dismissal for a one-year period during which the member is placed on dismissal probation. During the one-year probationary period, the member of the service is subject to Level 3 Monitoring and their conduct is monitored and evaluated on a monthly basis. In addition, the member's commanding officer is required to submit monthly reports assessing the member's conduct. If there is further misconduct within the probationary period, the Department may summarily dismiss the member of the service without a formal hearing, including for offenses that would not result in termination for a member not on Dismissal Probation. Dismissal Probation is also used to enforce other conditions

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<sup>17</sup> These Guidelines while having taken precedent into account have not blindly been wedded to prior penalties imposed. Cases decided prior to the publication of this document will not be considered of precedential value to the extent that these Guidelines have intentionally elevated the presumptive penalties or aggravating presumptive enhancements.

<sup>18</sup> Paid vacation days represent a part of a member of the service's total compensation of salary and benefits which are collectively bargained between the respective police unions and Office of Labor Relations. Additionally, police officers are not entitled to holidays or weekends off and may rely on their vacation days to take this time off.

<sup>19</sup> New York Civil Service Law § 75(3-a) and New York City Administrative Code § 14-115.

<sup>20</sup> Dismissal Probation period will not conclude until a member of the service completed twelve months on full duty status.

in disciplinary penalties. For example, when a member of the service has admitted to, or been found guilty of, a domestic violence offense, the member may also be required to participate in counseling services. The failure to abide by any condition attached to the disposition of a case may be considered cause to invoke the provisions of Dismissal Probation. If a member of the service successfully completes the year on probation, the dismissal penalty will be waived, and the member returned to a non-probationary status.

**Dismissal or Forced Separation**<sup>21</sup> – The Police Commissioner, upon a finding or admission of wrongdoing in a disciplinary matter, has the authority to dismiss (terminate) a member of the service from the Department<sup>22</sup>. The Department may require that a member of the service separate (forced separation) from the Department, in lieu of dismissal, as part of a negotiated settlement agreement. Forced separation may also include a penalty of suspension days and/or vacation days. A member may be entitled to all or part of their accrued pension benefits, as governed by New York State pension laws<sup>23</sup>. Forced Separation may also include a forfeiture of all time and leave balances and any terminal leave to which the member may be entitled.

**Oath of Office Violation** – An Oath of Office violation<sup>24</sup> includes a conviction for any felony offense under State or Federal Law, or a conviction for a misdemeanor when the crime involves knowing and intentional conduct evidencing willful deceit, a calculated disregard for honest dealings, or intentional dishonesty or corruption of purpose.<sup>25</sup> This provision applies to crimes committed on or off duty. Oath of Office offenses include, but are not necessarily limited to, Official Misconduct and Perjury among other crimes.<sup>26</sup>

## Additional Requirements

In addition to the penalties outlined above, the Department may require a member of the service to participate in counseling or monitoring programs, designed to prevent any future misconduct from occurring by addressing those issues that surfaced in the adjudication of the misconduct.

**Monitoring** - An assessment will be made by the Risk Management Bureau to determine whether the member of the service would benefit from monitoring geared toward assuring that additional misconduct will be avoided.

**Ordered Breath Testing Program** - Any negotiated penalty in a Department disciplinary proceeding involving a member of the service who is determined to have committed a DWI offense, either by operating a motor vehicle while intoxicated or while their ability to operate a vehicle is impaired by the consumption of alcohol or another substance, or other alcohol-related misconduct shall include a period of Dismissal Probation. Further, any such negotiation shall include the member's agreement to submit to ordered breath testing for the presence of alcohol while on duty and or off duty, during the period of probation, or other agreed-upon time period. Should the member be found to be in violation of the terms of the ordered breath testing agreement, or should the member refuse to submit to ordered breath testing, such refusal will result in additional disciplinary action against the member that may include termination.

**Cooperation with Counseling** – Members of the service are required to cooperate with all counseling as determined by the Department's Counseling Services Unit.

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<sup>21</sup> See *Duffy v. Ward*, 81 NY 2d 127 (1993) and *Foley v. Bratton*, 92 NY 2d 781 and 789 (1999).

<sup>22</sup> See New York Civil Service Law § 75(3).

<sup>23</sup> See New York Retirement and Social Security Law Art. 8 and related case law.

<sup>24</sup> New York Public Officers Law § 30(1)(e).

<sup>25</sup> See *Duffy v. Ward*.

<sup>26</sup> The courts have held that the commission of the following crimes constitutes a violation of a public officer's oath of office: Perjury, Official Misconduct, Bribery and related offenses, Aggravated Harassment, Menacing, Assault, Reckless Endangerment, Stalking, Sex Abuse 3rd Degree, Falsifying Business Records, Offering a False Instrument for Filing, and Endangering the Welfare of a Child.

**Ordered Drug Screening Test** - When reasonable suspicion exists that a member of the Department is illegally using drugs or controlled/banned substances, they will be directed to submit to testing in which hair and/or urine are collected and tested. The Department's Chief Surgeon will review all test results.

**Forfeiture of Time and Leave Balance** - In cases when a member of the service is found to have received compensation for duties not actually performed, the member will be required to forfeit the amount of time from their time and leave balance.

**Restitution**- In cases where a member of the service is found to have improperly received compensation, such as for duties that were not performed, restitution is made payable to the New York City Commissioner of Finance.

**Fine** – A fine not to exceed one hundred dollars per charge may be deducted from the salary or wages of a member of the service.<sup>27</sup>

**Additional Terms** – Any terms not expressly defined herein shall have their same meanings as in NYS Law, Departmental procedure or in common parlance.

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<sup>27</sup> See New York Civil Service Law § 75(3).

## Specific Penalty Guidelines by Category

### Improper Use of Force

The Department prohibits misconduct involving the excessive use of force and takes every instance of violating its Use-of-Force guidelines and related procedures seriously.

Because of the trust placed in them and the discretion and authority granted to police officers, the community has every right to expect and demand the highest level of accountability from the Department, as well as from individual officers. This is especially important in any violation of the Use-of-Force guidelines. Officers should be aware that, if they engage in misconduct relating to force, they will be subject to fair and appropriate discipline commensurate with the level of misconduct. Discipline will be imposed only after a full and complete investigation that takes account of the fact that split-second decisions are often made by officers when determining whether to use force and to what extent to use force. In addition to being a violation of the Department's Use-of-Force policies, misconduct related to excessive force may also result in criminal charges against the member of the service in accordance with Federal, state, and local laws.

The primary duty of all members of the service is to protect human life, including the lives of individuals being placed in police custody. This primary duty is reflected in Patrol Guide section 221-01 which defines the circumstances under which force may be used: "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. The reasonableness of the use of force is based upon the totality of the circumstances known by the member of the service at the time of the use of force. The Department assesses the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy."

#### Additional Definitions Pertaining to Use of Force

**Violation of Department Use-of-Force Guidelines/Procedures** – Any act by a member of the service that violates the Department Manual, training, or any other policy or rule of the New York City Police Department relating to Use of Force

**De-Escalation**<sup>28</sup> - Taking action in order to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available (e.g., tactical communication, requesting a supervisor, additional members of the service and/or resources such as Emergency Service Unit or Hostage Negotiation Team, etc.). The goal is to gain the voluntary compliance of the subject, when appropriate and consistent with personal safety, in order to reduce or eliminate the necessity to use force.

**Active Resisting**<sup>29</sup>– Includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

**Active Aggression**<sup>30</sup> – Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

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<sup>28</sup> Patrol Guide Procedure 221-01, *Force Guidelines*.

<sup>29</sup> Patrol Guide Procedure 221-02, *Use of Force*.

<sup>30</sup> Patrol Guide Procedure 221-02, *Use of Force*.

**Excessive Force**<sup>31</sup> - Use of force deemed by the investigating supervisor as greater than that which a reasonable officer, in the same situation, would use under the circumstances that existed and were known to the member of the service at the time force was used.

**Deadly Physical Force** –Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.<sup>32</sup>

**Non-Deadly Physical Force** – Force not readily capable of causing death or other serious physical injury.

**Physical Illness/Injury** – Impairment of physical condition, and/or substantial protracted pain, including: minor swelling, contusions, lacerations, and/or abrasions.<sup>33</sup>

**Serious Physical Injury/Illness** – Physical injury or illness that creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of function of any bodily organ/limb.<sup>34</sup>

**Chokehold**<sup>35</sup> - A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

## Prohibited Uses of Force

Members of the service **SHALL NOT**:

1. Discharge a firearm when, in the professional judgment of a reasonable member of the service, doing so will unnecessarily endanger innocent persons
2. Discharge firearms in defense of property
3. Discharge firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to the member of the service or another person present
4. Fire warning shots
5. Discharge firearm to summon assistance, except in emergency situations when someone's personal safety is endangered and no other reasonable means to obtain assistance is available
6. Discharge firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, by means other than a moving vehicle
7. Discharge firearm at a dog or other animal, except to protect a member of the service or another person present from imminent physical injury, and there is no opportunity to retreat or other reasonable means to eliminate the threat
8. Cock a firearm. Firearms must be fired double action at all times
9. Use a chokehold
10. Use a prohibited method of restraint
11. Use any level of force to punish or retaliate against subjects or coerce a subject to make statements
12. Use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury or escape or to overcome active physical resistance or assault
13. Connect or tie rear-cuffed hands to cuffed or restrained ankles or legs
14. Transport a subject facedown

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<sup>31</sup> Patrol Guide Procedure 221-01, *Force Guidelines*.

<sup>32</sup> New York Penal Law §10.00(11).

<sup>33</sup> Patrol Guide Procedure 221-03, *Reporting and Investigation of Force Incident or Injury to Persons During Police Action*.

<sup>34</sup> Patrol Guide Procedure 221-03, *Reporting and Investigation of Force Incident or Injury to Persons During Police Action*.

<sup>35</sup> Patrol Guide Procedure 221-01, *Force Guidelines*.

15. Use force to prevent a subject from swallowing alleged controlled substance or other substance, once a subject has placed suspected controlled substance in his or her mouth, or forcibly attempt to remove substance from subject's mouth or other body cavity.

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and or appropriate, members of the service will use only the reasonable force necessary to gain control or custody of a subject. All members of the service are responsible and accountable for the proper use of force. The application of force must be consistent with existing law and with the New York City Police Department's policies, even when Department policy is more restrictive than local, state or federal law.

Failure to intervene in the use of excessive force, or report excessive force, or failure to request or to ensure timely medical treatment for an individual is serious misconduct that may result in criminal and civil liability and will result in Department discipline, up to and including dismissal. If a member of the service becomes aware of a use of excessive force or a failure to request or to ensure timely medical treatment for an individual, the member must report such misconduct to the Internal Affairs Bureau Command Center. This report can be made anonymously.

#### Presumptive Penalties for Use of Excessive Force

Misconduct	Presumptive Penalty
<b>Deadly Physical Force – Resulting in:</b>	
Serious Physical Injury/Death	Termination
Physical Injury	Termination
No Injury	Termination
<b>Non-Deadly Physical Force – Resulting in:</b>	
Death	Termination
Serious Physical Injury	30 Suspension Days + 20 Penalty Days + Dismissal Probation
Physical Injury	10 Suspension Days + 10 Penalty Days
No Injury	5 Penalty Days
<b>Intentional Application of a Chokehold</b>	Termination
<b>Conviction of a Crime of Chokehold (Felony or Misdemeanor)</b>	Termination
<b>Chokehold – Resulting in:</b>	
Death	Termination

Serious Physical Injury	Termination/Forced Separation
Physical Injury	30 Suspension Days + 30 Penalty Days + Dismissal Probation
No Injury	30 Penalty Days + Dismissal Probation
<b>Failure to Intervene:</b>	
Unauthorized Use of Deadly Physical Force Resulting in Serious Physical Injury or Death	Termination
Unauthorized Use of Deadly Physical Force Resulting in Physical Injury	30 Penalty Days + Dismissal Probation
Unauthorized Use of Deadly Physical Force Not Resulting in Injury	20 Penalty Days
Unauthorized Use of Physical Force Resulting in Death	30 Suspension Days + 30 Penalty Days + Dismissal Probation
Unauthorized Use of Physical Force Resulting in Serious Physical Injury	30 Penalty Days + Dismissal Probation
Unauthorized Use of Physical Force Resulting in Physical Injury	10 Penalty Days
Unauthorized Use of Physical Force Not Resulting in Injury	5 Penalty Days
<b>Failure/Refusal to Obtain Medical Assistance:</b>	
Readily apparent or visible injury/illness	20 Penalty Days
No apparent or visible injury/illness	5 Penalty Days

#### Additional Potential Mitigating Factors

- Attempt to de-escalate
- Nature and severity of the crime/circumstances
- Actions taken by the subject such as attempting to evade arrest by flight
- Duration of the action – relatively brief or momentary
- Immediacy of the perceived threat or harm to the subject, members of the service, and or bystanders
- Whether the subject is engaged in active resisting or exhibiting active aggression
- Actual injury to respondent or other responding officers
- Number of subjects in comparison to the number of respondents
- Size, age, and condition of the subject in comparison to the respondent
- Subject's violent history, if known to the respondent

- Presence of hostile crowd or individuals who attempt to interfere or create unsafe conditions for the member of the service
- Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence
- Prohibited force was incidental to an otherwise appropriate use of force and did not result in harm

#### Additional Potential Aggravating Factors

- Inappropriate purpose or motivation such as the use of force to punish, retaliate or coerce a subject for any reason including making a statement
- Conduct results in criminal charges
- Handcuffed or otherwise restrained prisoner
- Vulnerable subject
- Duration of the action – prolonged or exaggerated action
- Unjustified force used to maximize pain
- History of inappropriate force
- Use of weapon or instrumentality outside of guidelines
- Failure to report the use of excessive force
- Intentional use of prohibited force (e.g. chokehold)
- Nature, number and severity of the physical injury
- No force was justified under Department rules

#### Justification

Article 35 of the New York State Penal Law states that the use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal when such conduct is performed by the member of service in the reasonable exercise of his or her official powers, duties, or functions.<sup>36</sup> This includes, but is not limited to, certain circumstances such as self-defense or defense of a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody.<sup>37</sup>

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<sup>36</sup> See, New York Penal Law section 35.05.

<sup>37</sup> See, New York Penal Law section 35.10 (6). See generally, New York State Penal Law section 35.00-35.30.

## Abuse of Authority, Discourtesy, and Offensive Language

The Department prohibits misconduct involving the abuse of authority, discourtesy or use of offensive language, including but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The Department takes every instance of violating the Abuse of Authority, Discourtesy, and Offensive Language guidelines and related procedures seriously. Because of the trust placed in them and the discretion and authority granted to members of the service, the community has every right to expect and demand the highest level of accountability from the Department, as well as from individual members. This is especially important in any violation of the abuse of authority, discourtesy or use of offensive language guidelines.

### Presumptive Penalties for Abuse of Authority, Discourtesy, Offensive Language

Misconduct	Presumptive Penalty
<b>Sexual Misconduct:</b>	
Sexual Proposition/Unwanted Sexual Advances	30 Penalty Days + Dismissal Probation
Sexually Motivated Enforcement Action/Sexual Touching/Sexual Solicitation <sup>38</sup>	Termination
<b>Improper/Wrongful:</b>	
Stop/Question/Frisk of Person (objectively reasonable mistake of fact or law) <sup>39</sup>	Training
Stop/Question/Frisk of Person (know or should have known mistake of law or fact) <sup>40</sup>	3 Penalty Days
Stop/Question/Frisk of Person (intentional action or bad faith conduct)	20 Penalty Days
Stop/Search of Vehicle (objectively reasonable mistake of fact or law)	Training
Stop/Search of Vehicle (know or should have known mistake of law or fact)	3 Penalty Days
Stop/Search of Vehicle (intentional action or bad faith conduct)	20 Penalty Days

<sup>38</sup> This includes any conduct or solicitation for the purpose of sexual gratification, or sexual abuse or any sexual behavior that a reasonable person would consider to be an abuse of authority.

<sup>39</sup> Cases have established that improper police action is punishable only if an officer acted with knowledge that he/she was acting improperly, acted without concern for the propriety of his/her actions or was unreasonable in believing his/her actions were proper.

<sup>40</sup> "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes, whether of fact or of law, must be objectively reasonable. Courts do not examine the subjective understanding of the particular officer involved... Thus, an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *Heien v. North Carolina*, 135 S. Ct. 530 (2014).

Search/Seizure of Person/Property (objectively reasonable mistake of fact or law)	Training
Search/Seizure of Person/Property (know or should have known mistake of law or fact)	3 Penalty Days
Search/Seizure of Person/Property (intentional action or bad faith conduct)	20 Penalty Days
Failure to Cover/Provide Privacy (in a timely manner) to an In-custody Individual's Exposed Intimate Body Parts	10 Penalty Days
Strip Search (procedural violation)	10 Penalty Days
Strip Search (unauthorized/unwarranted)	20 Suspension Days + Dismissal Probation
Arrest	20 Penalty Days
Summons	10 Penalty Days
Unlawful Entry Premises (pursuant to a public service/safety function)	Training
Unlawful Search/Entry Premises (entry involves incidental or <i>de minimis</i> physical presence e.g. foot over the threshold)	3 Penalty Days
Unlawful Search/Entry Premises (entry involves substantial physical presence and/or remaining on the premises)	10 Penalty Days
Unlawful Search/Entry Premises (entry is prolonged or includes additional proscribed conduct)	20 Penalty Days
Threat of Force/Police Enforcement/Notification to outside Agency/Removal to hospital	10 Penalty Days
Failure to Process Civilian Complaint	10 Penalty Days
Failure Provide Shield Number	3 Penalty Days
Failure Provide Right to Know Business Card	3 Penalty Days
Failure to Obtain Medical Attention (no visible/obvious injury or need for medical attention)	5 Penalty Days
Failure to Obtain Medical Attention (obvious injury or need for medical attention)	20 Penalty Days

Deletion of information-Recording Device	30 Penalty Days + Dismissal Probation
Interfere with Recording Device	20 Penalty Days
Discourtesy <sup>41</sup>	5 Penalty Days
Offensive Language <sup>42</sup>	20 Penalty Days

*Additional Data: Any misconduct with a penalty of 10 days or less may be eligible for the issuance of a Schedule “B” Command Discipline. Any misconduct with a penalty of 5 days or less may be eligible for the issuance of a Schedule “A” Command Discipline. Training may be included with the imposition of any penalty.*

#### Additional Potential Mitigating Factors

- Good faith or reasonable mistake of law or fact
- Complexity of legal analysis as applied to the facts
- Level of dangerousness of the encounter or surroundings/urgency involved
- Rude or sarcastic language vs. biased, abusive or profane statements
- Escalation of tension in encounter by the involved civilian
- Respondent attempted to de-escalate encounter
- Respondent acknowledged violation
- Malice or provocation of others involved
- Duration of encounter
- No prior violations

#### Additional Potential Aggravating Factors

- Extended duration of encounter
- Invasiveness of the frisk or search
- Use of a Stop/Question/Frisk to humiliate, demean or retaliate against an individual
- Failure to explain the reason for a stop
- Failure to comply with the Right to Know Act
- Failure to request consent to search
- Improper escalation of Levels of Investigative Encounter
- Vulnerable subject (e.g. physically disabled)
- The officer’s action was biased, gratuitous, retaliatory, intentional or reckless
- Distress/injury caused to the subject
- Biased, abusive or obscene language based on a protected class
- Failure to report incident or include in activity log
- Pretext based on membership in a protected class
- “Heatedness” of interaction
- Prior violations
- Implied threat of force or violence (verbal or physical)
- Damage to property

<sup>41</sup> Discourtesy may include foul language, acting in a rude or unprofessional manner (such as demeanor or tone), and flashing rude or offensive gestures.

<sup>42</sup> Offensive language is more serious conduct than discourtesy and includes slurs based on membership in a protected class such as race, religion, ethnicity, gender, gender identity, sexual orientation, age, or disability.

## False, Misleading and Inaccurate Statements

The following serves as guidance to determine the applicable charge(s) when a uniformed or civilian member of the Department makes a false, misleading, or inaccurate statement, written or spoken, during an official investigation. The goal of any internal investigation is to get to the truth. False, misleading, and inaccurate official statements are contrary to this goal. The justice system relies on members of the service to provide truthful and accurate information in a wide variety of contexts and circumstances. The functioning of that system, and the public's trust in that system, are both severely undermined by false, misleading, and inaccurate statements. Therefore, the penalty for members of the service who are found guilty of making false or misleading official statements will be presumed to be termination/forced separation, absent extraordinary circumstances, as determined by the Police Commissioner on a case by case basis.

Each allegation of a false, misleading or inaccurate statement shall be charged separately. For example, if the investigator believes a statement to be both false and misleading, the investigator should make a charge of false statement and another charge of misleading statement. Also, if the statement includes multiple separate instances of false statements about different facts, each statement shall be charged separately. Instances of multiple statements during the same interview about the same fact may be charged as one.

A statement is false or misleading when the investigator determines the charge is proven by a preponderance of the evidence, including credible witness testimony. All examples provided are for illustrative purposes only and are not exhaustive. Each case is weighed on its own merits after a strong fact-based analysis to determine the appropriate charge(s).

### Additional Definitions for False, Misleading and Inaccurate Statements

**False Statement** – An intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made.

**Intent** – A statement is an intentionally false statement when it is the conscious objective to make the false statement. Determining intentionality requires a consideration of the relevant factors. Some factors which may be considered include:

- Whether the fact(s) at issue is/are memorable
- The length of time between the event and the statement
- The significance of the fact(s) at the time that the event occurred
- Whether the nature of the event allowed for accurate perception or memory
- The subject's physical, mental, or emotional condition at the time the statement is made<sup>43</sup>
- Whether the investigator gave the subject memory prompts or cues (e.g., Memo books, video, arrest reports, etc.) to assist his/her recollection and yet the speaker persisted in making the statement
- Whether the speaker has a motive to lie or deceive or an interest in the outcome of the investigation, proceeding, or other matter in connection with which the statement was made

**Material Fact** - A significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and where the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.

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<sup>43</sup> For example, when a statement is made or elicited in the immediate aftermath of a stressful incident such as an adversarial shooting or other traumatic event, and before the member has had sufficient opportunity to reflect and recall details of an event.

- Materiality is fact-specific and must be evaluated on a case-by-case basis
- Examples of material statements include:
  - When the validity of the search of a vehicle is at issue and an officer states that he/she never opened and searched the trunk of a car during a car stop, but video shows that he/she did in fact open and search the trunk, the officer’s statement about their actions is material
  - When a member of the service denies to an investigator that he/she attended a meeting where alleged misconduct occurred, yet independent evidence (e.g., video) indicates the member was in fact present at the meeting, the statement is material

**Denial** – A distinction must be drawn between a procedural denial of a charge or allegation and denial of facts. A general denial of the commission of misconduct, such as a broad statement of “I didn’t do anything wrong” or a “not guilty” plea, is not to be charged as a false statement<sup>44</sup>. However, if the speaker after being afforded the opportunity to recollect, intentionally denies specific facts that are proven by credible evidence to have occurred, he or she has made a false statement. An example of denial of the facts that would be appropriate for a charge of false statement: A member of the service states, “I did not take any money from the location,” but credible evidence conclusively demonstrates that the member of the service did, in fact, remove money from the location.

**Retraction** – In an investigation or proceeding, if a member of the service intentionally makes a false statement, but then retracts the statement and substitutes a truthful statement during the same interview, deposition, or other session of oral testimony, a charge of false statement is not appropriate if each of the following circumstances is present:

1. The retraction occurs within the same interview or proceeding as the false statement<sup>45</sup>; and
2. The member retracts the false statement before the fact-finder has been deceived or misled to the harm and prejudice of the investigation or proceeding (i.e., the false statement is retracted before it has substantially affected the investigation or proceeding); and
3. The retraction and substituted truthful statement are made before the member knows or has reason to know that the fact-finder is or will be aware of the false statement. The substituted truthful statement must occur at a time when no reasonable likelihood exists that the member has learned that his or her falsehood has become known to the fact-finder<sup>46</sup>.

The purpose of this extremely narrow exception is to foster truthfulness when a member provides information in an investigation or proceeding. It encourages and allows the member, on their own initiative, to correct and retract a false statement before it has the potential to do irreparable harm.

**Misleading Statement** - A statement that is intended to misdirect the fact finder, and materially alter the narrative by:

- Intentionally omitting a material fact or facts, or
- Making repeated claims of “I do not remember” or “I do not know” when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or

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<sup>44</sup> For example, if the member is confronted with either a charge or allegation and responds that he or she is “not guilty” or provides a blanket statement such as, “I did not do it,” this general denial is not chargeable as a false statement.

<sup>45</sup> This prong may be met if the retraction occurs within 24 hours of the false statement after the member of the service has had the opportunity to reflect and consult with counsel and/or family. An additional charge or impeding an investigation may still be appropriate however.

<sup>46</sup> Therefore, if the member retracts the statement after he or she is confronted with evidence that demonstrates its falsity, this third prong would **not** be met.

- Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement.

**Omissions** – An omission is a fact material to the investigation and that has been intentionally left out of the statement of the member. Not every omission can be considered misleading. The omitted fact(s) must be material and the omission must be intentional<sup>47</sup>.

**Failure to Recollect Considerations** - Factors to be considered in determining if a reasonable person would remember or would be aware of the facts include:

- The time that has elapsed between the event and the statement
- How unique or memorable the event is
- The member's overall ability to recall events before and after the event
- The member's continued lack of recollection after efforts are made to refresh their recollection by showing video, photos, memo book entries, or other prompts

**Inaccurate Statement** - A statement that a member of the service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member's actions are grossly negligent.

**Mistakes** – Mere clerical errors may not be considered inaccurate statements when the statement error is so minor that it has little, or no effect, on the overall intent of the statement. An error will be considered to be an inaccurate statement when a member of the service does not intend to deceive, but causes a material variation. Erroneous statements, lacking in willful intent, and not so unreasonable as to be considered gross negligence are not a basis for finding misconduct.

**Impeding an Investigation** – An investigation is considered impeded when a member of the service makes false, misleading, and/or inaccurate statements, or engages in impeding actions. A member of the service who impedes or attempts to impede an official investigation will face disciplinary action for conduct prejudicial to the good order, efficiency, or discipline of the Department.

Examples of conduct which impedes an investigation may include:

- Failure to produce documents in a member's possession or control that the member knows or has been informed are necessary and relevant to an investigation
- Intentionally making statements that misdirect or misinform the investigator and/or interfere with or undermine the goals of the investigation
- Tampering with a witness by attempting to, or succeeding in, causing the witness to refuse to cooperate with an investigation or proceeding
- Improperly influencing a witness to make false, misleading, or inaccurate statements during the course of an investigation or proceeding

A charge of impeding an investigation may be appropriate even if the member did not ultimately succeed in impeding the investigation. For example, if the Member intentionally attempts to influence a witness, but the witness resists the efforts, a charge of impeding an investigation may still be appropriate.

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<sup>47</sup> See the discussion in False Statements for the elements "material" and "intentional".

Presumptive Penalties for False, Misleading & Inaccurate Statements and Impeding an Investigation:

Misconduct	Presumptive Penalty
Intentionally Making a False Official Statement	Termination/Forced Separation
Intentionally Making a Misleading Official Statement	30 Penalty Days + Dismissal Probation
Making an Inaccurate Official Statement, or Causing Same to be Made by Another	10 Penalty Days
Impeding an Investigation	30 Penalty Days + Dismissal Probation

Additional Potential Aggravating Factors

- The additional expense in terms of time and resources required to further investigate a matter as a result of false/misleading/inaccurate statement and impeding actions
- The member’s training and experience makes it likely that the member knows or should have known a material fact
- Harm or potential harm caused to the Department or others
- History of making false, misleading, or inaccurate statements

Additional Potential Mitigating Factors

- Complexity and rapidly changing nature of the underlying incident
- Misconduct itself is not a presumptive termination act and the nature of the statement is such that it was made with the intent to avoid embarrassment (particularly in the context of interpersonal relationships)
- The extended length of time that has elapsed between the event and the statement
- The event is relatively routine or not memorable
- The member’s inability to recall activities before or after the event.
- Lack of prior disciplinary history
- Positive service record
- Positive evaluations and/or commanding officers’ reviews
- A member’s unique underlying stressors at the time of the statement
- Material facts would not be discovered but for the officer coming forward and making a truthful statement

## Domestic Violence Incidents

### Additional Definition for Domestic Violence Incidents

**Family/Household**<sup>48</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	Presumptive Penalty
Physical act(s) of domestic violence/family offense <sup>49</sup>	30 Suspension Days + Dismissal Probation + Counseling – 24 week OASAS program <sup>50</sup>
Physical act(s) of domestic violence/family offense with <sup>51</sup> : <ul style="list-style-type: none"> <li>• Previously determined by the Department to have committed physical act(s) of domestic violence<sup>52</sup>; or</li> <li>• Clear and convincing evidence demonstrates that the respondent previously committed physical act(s) of domestic violence whether or not previously reported and or substantiated<sup>53</sup>; or</li> <li>• Found guilty in a criminal proceeding for a domestic violence crime<sup>54</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> </ul>	Termination/Forced Separation
Non-physical act(s) of domestic violence/family offense	30 Penalty Days +

<sup>48</sup> See NYPD Patrol Guide Procedure 208-36, *Family Offenses/Domestic Violence*, effective 12/10/18.

<sup>49</sup> See Commission to Combat Police Corruption, Eighteenth Annual Report of the Commission, August 2017 at p. 73.

<sup>50</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>51</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>52</sup> See Eighteenth Annual Report at p. 71.

<sup>53</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>54</sup> See Eighteenth Annual Report at p. 53.

	Other conditions (including any or all of the above) deemed appropriate
<p>Non-physical act(s) of domestic violence/family offense with mandatory enhancement for the following:</p> <ul style="list-style-type: none"> <li>• Previously determined by the Department to have committed an act of domestic violence;</li> <li>• Alcohol related/involved;</li> <li>• Weapon of any type (other than firearm) used or threatened;</li> <li>• Endangering the welfare of a child;</li> <li>• Other situations deemed appropriate based upon the facts and circumstances (e.g. threats, stalking, etc.).</li> </ul>	<p>30 Penalty Days + Dismissal Probation Other conditions (including any or all of the above) deemed appropriate</p>
Use, Threatened Use, or Menacing with a Firearm	Termination/Forced Separation
Violation of an Order of Protection (First Offense)	30 Suspension Days + Other conditions (including any or all of the above) deemed appropriate
Violation of an Order of Protection (Second Offense)	Termination/Forced Separation

#### Additional Considerations for Domestic Violence Incidents

- Settlement agreements for cases involving a physical act of domestic violence shall include the specific acts for which the member of the service is admitting responsibility and accepting discipline<sup>55</sup>.
- In reaching settlement agreements, factors such as evidentiary issues, the likelihood of a successful prosecution, cooperation of the victim/witnesses, timeliness of resolution, the severity of any force employed, the nature of the restrictions enumerated in an order of protection and the nature of the exact circumstances of the altercation shall be considered when determining the appropriate penalty including any deviations from the presumptive penalties.
- In reaching settlement agreements, the member’s complete history including tenure, prior discipline, accomplishments and evaluations as well as the likelihood of recurrence, role in the altercation (e.g. primary, only or co-aggressor) and any other relevant factors will also be considered<sup>56</sup>.
- Medical Division Assessment<sup>57</sup>
  - The Director, Psychological Evaluation Section, will in each case of a domestic violence allegation, conduct an assessment of the member concerned to determine whether separation on medical and/or fitness for duty grounds should be considered.

<sup>55</sup> This requirement may be waived if there is an ongoing proceeding in Criminal and or Family Court, or a criminal investigation related to the acts underlying the misconduct being adjudicated.

<sup>56</sup> The Commission to Combat Police Corruption noted that, “subject officers who commit one domestic violence offense, in most circumstances, should be given the opportunity to rehabilitate themselves and conform their behavior to the standards required of law enforcement officers.” Eighteenth Annual Report at p. 70.

<sup>57</sup> These assessments occur following the incident and do not preclude the later imposition of the 24-week program as a condition of dismissal probation.

- The Director of the Counseling Services Unit will evaluate each case of domestic violence at inception determining whether the member would benefit from a particular program focusing on domestic violence prevention and/or anger management.

### Unique Aggravating Factors and Additional Presumptive Penalties for Misconduct Involving Family/Household

While the presumptive penalties outlined above are significant and reflect the seriousness of domestic violence offenses, certain aggravating factors may lead to additional penalties, over and above the presumptive penalties. The following aggravating factors may impact domestic violence penalties and result in an increase in the total number of penalty days taken. These increased penalties may be imposed upon a member of the service who is determined to have committed act(s) of domestic violence whether or not such incident included a physical act. These factors and corresponding penalty enhancements are only a guide. Depending upon the facts and circumstances of the case, actual penalties may vary.

<b>Aggravating Factor</b>	<b>Presumptive Additional Penalty</b>
Alcohol a Factor in the Incident	10 Penalty Days*
Calling or Showing Up at C/W's Job and or Harassing C/W	10 Penalty Days
Children Present	10 Penalty Days
Children Present w/Reasonable Risk of Harm to Child	15 Penalty Days
Coerce/Threaten/Intimidate Witness and or C/W (including threatening third parties)	10 Penalty Days
Confiscating/Damaging Victim's Phone	15 Penalty Days
Damage Property	15 Penalty Days
Enter/Remain Without Permission in Victim's Home/Place of Refuge	10 Penalty Days
Eviction	15 Penalty Days
Failure to Identify Self to Responding Law Enforcement Personnel	10 Penalty Days
Failure to Notify re Service of Order of Protection (member is the named respondent)	10 Penalty Days
Failure to Report/Notify	5 Penalty Days
Failure to Safeguard Firearm During a DV Incident	15 Penalty Days
Harming Animal/Family pet	15 Penalty Days

Incident While On-Duty	10 Penalty Days
Leaving the Scene (absent exigency)	5 Penalty Days
Menacing	10 Penalty Days
Physical Injury (not SPI)	5 Penalty Days – Termination/Forced Separation depending on the nature, severity and frequency of injury
Preventing 911 Calls/Obstructing Seeking Assistance	15 Penalty Days
Preventing Victim from Leaving Premises/Vehicle	10 Penalty Days
Stalking	20 Penalty Days
Violate Order of Protection	20 Penalty Days**
Vulnerable Victim (elderly, incapacitated, etc.)	15 Penalty Days
Weapon/Instrument Used (other than firearm or SPI)	10 Penalty Days

*\*Also includes alcohol counseling and ordered breath testing.*

*\*\* Unless act qualifies as a separation case.*

#### Additional Potential Mitigating Factors

- The other party is the primary aggressor in a physical altercation.
- Subject respondent is the victim only and the disciplinary issue is related to other misconduct (e.g. failure to report or alcohol-related infraction).

## Driving While Ability Impaired/Intoxicated Incidents<sup>58</sup>

### Presumptive Penalties for Driving While Impaired/Intoxicated

Misconduct	Presumptive Penalty
<p>Driving While Ability Impaired / Driving While Intoxicated without mandatory enhancement</p>	<p>30 Suspension Days + 20 Penalty Days + Dismissal Probation + Cooperation with Counseling + Ordered Breath Testing</p>
<p>Driving While Ability Impaired / Driving While Intoxicated with mandatory enhancement for any of the following:</p> <ul style="list-style-type: none"> <li>• Members on Entry-Level Probation;</li> <li>• Felony Criminal Conviction or Conviction of an Oath of Office Violation;</li> <li>• DWI with Death or Serious Physical Injury to another person;</li> <li>• DWI while On-Duty;</li> <li>• DWI with Serious Traffic Violation, or Multiple Traffic Violations;</li> <li>• Prior DWI History;</li> <li>• DWI while on Dismissal Probation;</li> <li>• Failure to comply with the Department’s Ordered Breath Testing Program;</li> <li>• Failed test as part of Ordered Breath Testing;</li> <li>• Any other conduct deemed by the Police Commissioner to be an aggravating factor warranting Dismissal/Forced Separation</li> </ul>	<p>Termination /Forced Separation</p>

### Additional Considerations for DWI Incidents

- Evidence of discipline for prior DWI event(s) will always be considered a relevant factor regardless of the length of time elapsed between the incidents.
- Medical Division Assessment Assessments:
  - The Director of the Counseling Services Unit will evaluate each case of DWI at inception in order to determine which type of counseling (inpatient versus outpatient) most benefit the member and/or whether any other type of counseling should be mandated;
  - The Director, Psychological Evaluation Section will, in each case of a DWI allegation, conduct an assessment of the member concerned to determine whether separation on medical and/or fitness for duty grounds should be considered.

<sup>58</sup> DWI penalty guidelines effective for incidents that occur on or after August 1, 2017.

## Unique Aggravating Factors and Additional Presumptive Penalties

While the presumptive penalties outlined above are significant and reflect the seriousness of Driving While Ability Impaired/Intoxicated, certain aggravating factors may lead to additional penalties, over and above the presumptive penalties. The following aggravating factors may impact Driving While Ability Impaired/Intoxicated penalties and result in an increase in the total number of penalty days. These factors and corresponding penalty enhancements are only a guide. Depending upon the facts and circumstances of the case, actual penalties may vary.

Aggravating Factor	Presumptive Additional Penalty
Accident with Other Vehicles	5 Penalty Days
Any Non-Serious Physical Injury to Another	5 Suspension Days
Accident with Object	5 Penalty Days
DWI while Off-Duty and Driving a Department Vehicle	10 Suspension Days and Restitution for any Damage to the Vehicle
DWI with any Traffic Infraction	5 Penalty Days
DWI with Child in Vehicle	10 Suspension Days
DWI with Open Container of Alcohol in Vehicle	10 Penalty Days
DWI with Passenger in Vehicle	5 Penalty Days
DWI with Refusal to Submit to Breathalyzer or Other Appropriate Test	5 Penalty Days
Firearm Lost	20 Penalty Days
Firearm on Person	5 Penalty Days
Firearm Unsecured in Vehicle	10 Penalty Days
Leaving the Scene of an Accident	5 Penalty Days
Leaving the Scene of an Accident with Injury to Another	5 Suspension Days + 5 Penalty Days
Prior Alcohol Offenses (which occurred within the past 5 years or for which penalty was imposed in the past 5 years)	10 Suspension Days
Resisting Arrest/Aggression with Arresting Officer	10 Suspension Days

## Firearm-Related Incidents

### Presumptive Penalties for Firearm-Related Incidents

MISCONDUCT	PRESUMPTIVE PENALTY
Accidental Firearm Discharge/Negligence on the Part of the Member (with injury to another)	30 Suspension Days* + Dismissal Probation
Accidental Firearm Discharge (self-inflicted injury or significant property damage)	20 Penalty Days
Accidental Firearm Discharge (no injury and or minor property damage)	15 Penalty Days
Allowing a Civilian to handle Firearm	15 Penalty Days
Fail to Notify the Department About Firearm Acquisition	5 Penalty Days
Fail to Safeguard Firearm (not resulting in loss)	15 Penalty Days
Fail to Safeguard Firearm (resulting in loss or possession by another)	20 Penalty Days
Failure to Report Improper Discharge	10 Penalty Days
Failure to Report Lost Firearm	10 Penalty Days
Firearm Discharge at or from a moving vehicle, outside Department guidelines not resulting in Serious Physical Injury	20 Penalty Days
Firearm Misconduct involving Risk to Child	20 Penalty Days
Possession/Use of an Unauthorized Firearm	10 Penalty Days
Use of Unauthorized Ammunition	3 Penalty Days
Use of Unauthorized Holster/Fail to Utilize a Holster	3 Penalty Days
Misuse of a Firearm while Unfit for Duty	Termination/Forced Separation

\* The penalty escalates commensurate with the nature and extent of the injury.

## Ingesting Controlled Substances, Marijuana/THC, Banned Substances and Excessive/Unexcused Use of Prescription Drugs

### Additional Definitions

**Controlled Substances:** Drugs that are regulated by state and federal laws that aim to control the danger of addiction, abuse, physical and mental harm, the trafficking by illegal means, and the dangers from actions of those who have used the substances, as follows:

1. Schedule I Drugs: Drugs, substances, or chemicals are defined as drugs without currently accepted medical use and a high potential for abuse.
  - a. Examples of Schedule 1 Drugs include: Heroin, LSD, Ecstasy, Crack-Cocaine, etc.
2. Schedule II Drugs: Drugs, substances, or chemicals are defined as drugs with high potential for abuse, with use potentially leading to severe psychological or physical dependence.
  - a. Examples of Schedule II Drugs include: Vicodin, methamphetamine, methadone, oxycodone, etc.
3. Schedule III Drugs: Drugs, substances or chemicals are defined as drugs with a moderate to low potential for physical and psychological dependence.
  - a. Examples of Schedule III Drugs include: Tylenol with codeine, ketamine, etc.

**Marijuana/Tetrahydrocannabinol “THC”:** Mind-altering (psychoactive) drug, produced by the Cannabis sativa plant. THC is believed to be the main ingredient that produces the psychoactive event.

**Anabolic Steroids:** Synthetically produced variants of the naturally occurring male hormone testosterone that are abused in an attempt to promote muscle growth, enhance athletic or other physical performance, and improve physical appearance.

- Examples of Anabolic Steroids include: Testosterone, nandrolone, stanozolo, methandienone, boldenone, etc.

**Banned Substances:** Dietary supplements that are prohibited by the Department as listed in Personnel Bureau Memo #44 s.2011, Appendix “A” (Anabolic Steroids and Human Growth Hormone), and any subsequent updates.<sup>59</sup>

### Presumptive Penalties for Controlled Substances, Marijuana/THC, Banned Substances and Excessive/Unexcused Use of Prescription Drugs

MISCONDUCT	PRESUMPTIVE PENALTY
Positive Ordered or Random Drug Screening Test Showing Positive for Use of Schedule I or Schedule II Drugs	Termination
Positive Ordered or Random Drug Screening Test Showing Use of Schedule III Drug Without a Valid, Lawfully Obtained Prescription or with No Legitimate Medical Reason	Termination

<sup>59</sup> The list of substances in Appendix A is subject to change at any time. See also, [www.nsfspport.com](http://www.nsfspport.com).

Positive Ordered or Random Drug Screen Test Showing Positive For Marijuana/THC With No Prescription or With No Legitimate Medical Reason	Termination
Possession of a Schedule I Drug	Termination
Refusal to Submit to an Ordered Or Random Drug Screening Test	Termination
Attempt to Alter or Mask an Ordered or Random Screening Test	Termination
Positive Ordered/Random Drug Screening Test Showing Positive for an Anabolic Steroid without a Valid and Lawfully Obtained Prescription or with No Legitimate Medical Reason	Termination/Forced Separation
Ingestion of a Banned Substance	Termination/Forced Separation
Possession of Drug Paraphernalia (without positive ordered or random drug screening test)	60 Penalty Days + Dismissal Probation + Ordered Drug Screening Tests <sup>60</sup>

<sup>60</sup> Ordered drug screening tests may be agreed upon in a negotiated settlement. The member of the service may be subject to testing at any time during this period.

## Violations of Department Rules and Regulations

Department rules and regulations are codified in the Patrol Guide, Administrative Guide, Detective Guide, DAS Bulletins, Finest Messages, Reference Guides and other publications available to members on the Department electronic portal under the “Directives & Manuals” section.<sup>61</sup> Members are required to remain cognizant of the Department’s rules and regulations. The following chart depicts the presumptive penalties for the violations that are the most commonly adjudicated through Charges & Specifications. This list is not exclusive. For any Rule or Regulation not listed, a determination will be made based upon the facts and circumstances surrounding the incident. Violations of Department rules and regulations may also be addressed as aggravating factors applied to other acts of misconduct.

### Presumptive Penalties for Violation of Department Rules and Regulations – Adjudicated by Charges and Specifications<sup>62</sup>

MISCONDUCT	PRESUMPTIVE PENALTY
Accessing and/or disseminating confidential information <sup>63</sup>	10 Penalty Days
Conducting Personal Business While On Duty	10 Penalty Days
Criminal Association	20 Penalty Days
Fail to Comply with a Lawful Order	20 Penalty Days
Fail to Follow DARP Procedures	10 Penalty Days
Fail to Invoice Property	10 Penalty Days
Fail to Prepare a Required Report	5 Penalty Days
Fail to Remain Alert	10 Penalty Days
Fail to Safeguard Prisoner Resulting in Escape	20 Penalty Days
Fail to Supervise	20 Penalty Days
Fail to Take Police Action	20 Penalty Days
Improper Download/Disseminating of Department Reports/Data	20 Penalty Days
Improper Download/Disseminating of Offensive Material	20 Penalty Days
Improper Recording of a Police Incident (using any personal electronic/digital device to record video and/or audio or take photographs during any police encounter)	20 Penalty Days
Insubordination	20 Penalty Days

<sup>61</sup> See <https://portal.nypd.org/pages/DirectivesAndManuals.aspx>

<sup>62</sup> Charges and Specifications is one method suitable for the adjudication of the misconduct listed. The misconduct specified here may or may not rise to the level of Charges and Specifications as determined by the Department Advocate based upon all of the facts and circumstances surrounding the incident.

<sup>63</sup> See, Patrol Guide Procedure 203-22, *Department Confidentiality Policy*.

Making an Unauthorized Radio Transmission	10 Penalty Days
Misuse of Computer, Email, or Mobile Digital devices <sup>64</sup>	10 Penalty Days
Misuse of Time*	15+ Penalty Days + Forfeiture of Time & Leave Balance and/or Restitution
Negligent Failure to Record a Prescribed Event with a Body Worn Camera	3 Penalty Days
Off Post	5 Penalty Days
Out of Residence While on Sick Leave	10 Penalty Days
Possess/Acquire/Publish Child Pornography	Termination/Forced Separation
Purposeful Failure to Record a Prescribed Event with a Body Worn Camera	20 Penalty Days
Racial Profiling/Bias-Based Policing <sup>65</sup>	Termination/Forced Separation
Unauthorized Release of Confidential Information to the News Media <sup>66</sup>	20 Penalty Days
Using Department Logo, Letterhead, Personnel, Resources, etc. for Non-Official Purpose/without Permission	10 Penalty Days

*\*The number of penalty days shall increase based on the amount of time misused or severity of the misuse to reimburse the Department for the improper use of time. The penalty may also include dismissal probation or forced separation from the Department.*

<sup>64</sup> See, Patrol Guide Procedures 219-32, *Department Mobile Digital Devices*, 203-27 *Department Email Policy* and 203-10 *Public Contact – Prohibited Conduct*.

<sup>65</sup> See Patrol Guide Procedure 203-25, *Department Policy Prohibiting Racial Profiling and Bias-Based Policing*.

<sup>66</sup> See Patrol Guide Procedure 212-77 *Release of Information to News Media*.

## Off-Duty Conduct

Members of the service are required to maintain the standards established by the Department for their conduct whether on or off duty and are held to a higher standard of ethics and integrity. The misconduct described and the presumptive penalties enumerated throughout these guidelines are equally applicable to off-duty department and conduct. Additionally, the following chart provides presumptive penalties for discrete acts of off-duty misconduct.

### Presumptive Penalties for Off-Duty Misconduct

MISCONDUCT	PRESUMPTIVE PENALTY
Animal Cruelty	30 Penalty Days + Dismissal Probation
Consuming Intoxicants While in Uniform (whether On or Off Duty)	30 Penalty Days + Dismissal Probation
Displaying a Weapon While Off-Duty	15 Penalty Days
Dispute with On-Duty Law Enforcement Officer While Off-Duty	15 Penalty Days
Fail to Identify Self to Responding Officers at the Scene of a Police Incident	10 Penalty Days
Fail to Remain at the Scene of a Police Incident	5 Penalty Days
Fail to Report Incident or Notify the Department of Involvement in a Police Incident	5 Penalty Days
Financial Restrictions – Prohibited <sup>67</sup>	20 Penalty Days + Divesture of Interest
Hate Speech <sup>68</sup>	Termination
Misrepresentations Regarding Contractual or Financial Matters (e.g. Military Duty Status, Housing, Mortgages, etc.)	30 Suspension Days + Dismissal Probation
Off-Duty Employment – Prohibited Employment	15 Penalty Days
Off-Duty Employment – Unauthorized/Authorization Denied or Expired	10 Penalty Days
Operating a Vehicle in a Reckless Manner	20 Penalty Days
Physical Altercations (no injury)	30 Penalty Days + Dismissal Probation

<sup>67</sup> See Patrol Guide Procedures 203-13 *Financial Restrictions – Prohibited Acts* and 203-14 *Financial Restrictions – Prohibited Interests*.

<sup>68</sup> Such misconduct also applies to the following procedures: Patrol Guide 203-32 (Personal Social Media Accounts and Policy), 203-28 (Department Social Media Accounts and Policy), and 203-10 (Public Contact – Prohibited Conduct).

Physical Altercations (with injuries)	Termination
Public Assistance – Apply for or Obtain Benefits Without Justification or Qualification	Termination/Forced Separation
Unfit for Duty	30 Penalty Days + Dismissal Probation + Ordered Breath Testing + Cooperation with Counseling
Vehicle Insurance – Causing the Incorrect Rate to be Applied	10 Penalty Days

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## Violations of Crimes Specified in the NYS Penal Law<sup>69</sup>

Conduct that is prohibited by criminal statutes or other applicable laws is also prohibited by the Department regardless of whether there is a procedural corollary codified in a Department policy or procedure. Such conduct, in addition to violating Department standards of conduct, may negatively affect an officer’s ability to perform his/her job functions. When misconduct by a member of the service also constitutes a crime, he or she is subject to the criminal justice process in addition to the administrative discipline process described herein.

An arrest, charging, or conviction of a criminal offense is not required to find that the respondent has engaged in conduct that is prohibited by law and/or Department policy. Similarly, a Declination to Prosecute by a prosecutor, a vote of “no true bill” by a grand jury, or a “not guilty” determination by a judge or jury is not dispositive in these matters, as the standard of proof for criminal proceedings (“beyond a reasonable doubt”) is a much higher burden of proof than that required in a disciplinary proceeding (“preponderance of the evidence”).

When a criminal case has been brought<sup>70</sup>, the Department may opt to proceed with the administrative disciplinary case while such criminal case is pending or may await the disposition of the criminal matter before proceeding. In cases when the Department chooses to proceed before the outcome of a criminal case, it will ensure that constitutional safeguards as outlined in *Garrity v. New Jersey*<sup>71</sup>, are followed. Many factors may influence the decision to proceed prior to the outcome of a criminal case. This decision will generally be made in consultation with the prosecutor’s office. The factors for consideration include, but are not limited to:

- The seriousness of the officer’s alleged conduct and or the nature of charges
- The strength of the evidence
- The amount of additional investigation necessary
- The length of the criminal process
- The potential detrimental effect on the criminal prosecution
- The potential impact on the Department and community

## Presumptive Penalties for Violation of Criminal Statutes

MISCONDUCT	PRESUMPTIVE PENALTY
Conviction of conduct proscribed by NYS Law (or analogous statute of another state) or Federal Law that is classified as a Felony	Termination
Engaging in conduct proscribed by NYS Law (or analogous statute of another state) that is classified as a Misdemeanor while on entry-level probation <sup>72</sup>	Termination

<sup>69</sup> Some acts of misconduct described in the other sections of these guidelines may also satisfy the elements of criminally proscribed conduct. In such cases where an act of misconduct may fall into more than one category, the highest applicable presumptive penalty will apply.

<sup>70</sup> A member of the service who is arrested should be suspended from duty absent exigent circumstances. See Patrol Guide procedure 206-07, *Cause for Suspension or Modified Assignment*.

<sup>71</sup> 385 U.S. 493 (1967).

<sup>72</sup> Any terms not expressly defined herein shall have their same meanings as described or used in New York State Law, Departmental procedure or plain language/common parlance.

Conviction of conduct proscribed by NYS Law that is classified as a misdemeanor and constitutes a violation of the member's Oath of Office <sup>73</sup>	Termination
Conviction of NYS Penal Law crime of Petit Larceny or theft related offenses (or analogous statute of another state)	Termination/Forced Separation
Engaging in conduct proscribed by NYS Law (or analogous statute of another state) that is classified as a Felony	Termination/Forced Separation
Engaging in conduct proscribed by NYS Law (or analogous statute of another state) that is classified as a Petit Larceny	Termination/Forced Separation
Conviction of conduct proscribed by the NYS Penal Law constituting misdemeanor assault <sup>74</sup> arising out of an on-duty incident	Termination/Forced Separation
Engaging in conduct proscribed by NYS Law (or analogous statute of another state) that is classified as a Misdemeanor <sup>75</sup> not otherwise covered above	30 Penalty Days
Engaging in conduct proscribed by the NYS Penal Law (or analogous statute of another state) that is classified as a Misdemeanor <sup>76</sup> not otherwise covered above with at least one aggravating circumstance	30 Penalty Days + Dismissal Probation

<sup>73</sup> See Public Officers Law § 30(1)(e). The courts have held that the commission of the following crimes constitutes a violation of a public officer's oath of office: Perjury, Official Misconduct, Bribery and related offenses, Aggravated Harassment, Menacing, Assault, Reckless Endangerment, Stalking, Sex Abuse 3rd Degree, Falsifying Business Records, Offering a False Instrument for Filing, and Endangering the Welfare of a Child.

<sup>74</sup> These misdemeanors are those involving assault under the NYS Penal Law:

<sup>75</sup> Any terms not expressly defined herein shall have their same meanings as described or used in New York State Law, Departmental procedure or plain language/common parlance.

<sup>76</sup> See Footnote 75.

## Equal Employment Opportunity Division and the Discipline System

Since the enactment of Title VII of the Civil Rights Act, four theories of employment discrimination have emerged under U.S. law: disparate treatment, disparate impact, harassment and retaliation. The NYPD Office of Equity and Inclusion (“OEI”) promotes a fair, safe, inclusive and accommodating work environment for all members of the NYPD. OEI is responsible for ensuring that our employees are treated with dignity and respect in the workplace, identifying and addressing obstacles to success, and promoting a fair and inclusive workplace that is free from discrimination and harassment. The Equal Employment Opportunity Division (“EEO”) is a sub-unit of OEI, is responsible for the prevention and investigation of employment and harassment claims.

The EEO investigator will evaluate the information submitted and make a recommendation as to whether there is reasonable cause to believe that unlawful discrimination has taken place. If there is a reasonable cause to believe that an unlawful discriminatory act has taken place, an EEO investigator will promptly and thoroughly investigate the allegations. When an informal or formal complaint is made, it is our responsibility to make sure immediate steps are taken to stop the alleged misconduct and begin the investigation. The goal of the investigation is to identify and resolve internal problems before they become widespread and effect the overall culture of the NYPD. Investigations must be prompt and thorough to ensure everyone has the ability to work in a safe environment, free from any unlawful discriminatory practices. Once the investigator has completed the investigation, EEO will make a determination on the merits of the charge. The final disposition is dependent on a variety of factors, including, but not limited to, the severity of the conduct, the impact of the conduct on good order and discipline, the respondent’s history of substantiated misconduct, if any, with this office, and input from the victim. Penalties include verbal admonishment, letter of instruction with an accompanying CPI entry, schedule A & B command discipline, Charges and Specifications, transfer for cause, demotion, and termination. Penalties imposed as a result of a Schedule A or B command discipline can range from warn and admonish up to the loss of ten (10) vacation days. The EEO is not ordinarily involved in the decision-making process determining the actual number of days that an employee is docked. The EEO has not yet had any cases where a Schedule C command discipline has been issued.

In most cases where there has been a determination that allegations are substantiated, the EEO submits a final case report to the Police Commissioner with recommendations regarding whether the case merits the issuance of a command discipline or whether the case should be handled through the formal disciplinary process by the issuance of Charges and Specifications. The EEO will make recommendations, where appropriate, regarding whether a transfer of the respondent is appropriate. In cases where the respondent is a probationary member of the Department (either entry-level probation or probationary in their new rank), the EEO will make recommendations for possible extensions of probation or demotion to their previous rank/title.

### Presumptive Penalties for Equal Employment Opportunity Violations

<b>Misconduct</b>	<b>Presumptive Penalty</b>
Breach of Confidentiality	15 Penalty Days
Disparaging Remarks based on membership in a Protected Class	20 Penalty Days
Disparate Treatment based on membership in a Protected Class	40 Penalty Days
Failure to Report EEO Allegations	10 Penalty Days

Retaliation	30 Penalty Days
Sexual, Ethnic, Racial, Religious or other Discriminatory Slurs through Display of Offensive Material <sup>77</sup>	20 Penalty Days
Sexual Harassment (verbal)	20 Penalty Days
Sexual Harassment (suggestive touching)	25 Penalty Days
Sexual Harassment (overt sexual touching/intimate physical contact)	30 Suspension Days + Dismissal Probation
Sexual Harassment (habitual/predatory behavior)	Termination/Forced Separation

#### Protected Classes Pursuant to Federal, State, and Local Law (current as of June 16, 2020)

- 1) Race/Ethnicity
- 2) Gender (Sex or Gender Identity)
- 3) National Origin
- 4) Color
- 5) Religion (Including attire)
- 6) Disability
- 7) Military Status
- 8) Alienage or Citizenship Status
- 9) Age
- 10) Marital Status
- 11) Sexual Orientation
- 12) Creed
- 13) Prior Record of Arrest or Conviction
- 14) Predisposing Genetic Characteristics/Genetic Information
- 15) Consumer Credit History/Payment History
- 16) Caregiver Status
- 17) Status as a Victim of Domestic Violence, Sex Offenses or Stalking
- 18) Partnership Status
- 19) Unemployment Status
- 20) Familial Status
- 21) Sexual and Reproductive Health Decisions
- 22) Hairstyle Based on Race or Religion

#### Additional Potential Aggravating Factors

- Professional relationship between respondent and complainant (e.g. supervisor/subordinate)
- Nature of Assignment
- Rank/Supervisory role of respondent
- Misconduct indicative of a pattern of behavior

<sup>77</sup> See Patrol Guide Procedure 205-37, *Sexual, Ethnic, Racial, Religious, or Other Discriminatory Slurs Through Display of Offensive Material*.

## Misconduct Adjudicated by Command Discipline – General Terms

There are three types of Command Discipline (CD): Schedule A (A-CD); Schedule B (B-CD); and Schedule C (C-CD). Schedule A and B Command Disciplines permit the commander of the unit involved to address minor misconduct/rule violations and set the penalty within established ranges for each type of Command Discipline. The Schedule C Command Discipline is only issued by the Department Advocate for certain enumerated offenses. An A-CD carries a penalty range from verbal admonishment up to 5 days; a B-CD carries a penalty range up to 10 days; and a C-CD carries a penalty range up to 20 days. The Department Advocate may direct that a disciplinary matter be adjudicated through Command Discipline in lieu of formal charges when the appropriate penalty is consistent with the Command Discipline penalty range.

### Adjudicated by Schedule A Command Discipline<sup>78</sup>

<b>MISCONDUCT – SCHEDULE “A” CD</b>
Absence from meal location, post or assignment
Carrying packages, newspapers or other articles as prohibited while in uniform or Department vehicle
Failure to attend a range training cycle
Failure to comply with proper driving rules and regulations
Failure to have locker secured or properly tagged
Failure to lock an unguarded Department vehicle
Failure to maintain live, authorized ammunition in authorized weapons (includes having the required maximum amount of ammunition in the weapon)
Failure to maintain neat and clean professional appearance
Failure to make a timely notification to the Sick Desk and command, as required
Failure to make proper notifications
Failure to make routine inspections and surveys as required
Failure to notify commanding officer when address, telephone number, or social condition changes
Failure to notify supervising officer when leaving post for Department or personal necessity
Failure to perform duties in connection with court appearances
Failure to present required firearms to the range officer at firearms training cycle
Failure to properly perform patrol or other assignment

<sup>78</sup> See Patrol Guide Procedure 206-03, *Violations Subject to Command Discipline*. A member’s Commanding Officer can impose a penalty of up to five (5) vacation days or accrued time for Schedule “A” Command Discipline violations.

Failure to sign in or out of court
Failure to sign return roll call
Failure to signal or improperly signal
Failure to submit reports in a timely manner
Illegal parking of Department or private vehicle
Improper uniform or equipment
Loss of Identification Card
Loss of summons or loss of summons book
Obvious neglect or care of firearms
Omitted Activity Log entries
Omitted entries in Department records, forms or reports
Reporting late for duty
Report present for duty before the start of the regular tour without prior authorization from a supervisor of a higher rank
Smoking as Prohibited
Use or display Vehicle Identification Plate while off duty or while not on official Department business
Using Any Electronic/Digital Device (e.g., personal gaming device, MP3 player, personal digital assistant, Bluetooth headset, etc.) while on duty
Unauthorized Person Riding in a Department vehicle
Unauthorized Use of Department telephones
Unnecessary conversation
Any minor FADO violation that, in the opinion of the CCRB or NYPD is appropriate for a Schedule "A" Command Discipline
Any minor violation that, in the opinion of the commanding/executive officer is appropriate for Schedule "A" Command Discipline procedure

Adjudicated by Schedule B Command Discipline<sup>79</sup>

<b>MISCONDUCT – SCHEDULE “B” CD</b>
Bringing alcohol beverages into a Department facility or vehicle unless it is in within the scope of an assignment
Failure to give name and shield number to person requesting
Failure to respond, report disposition promptly, or acknowledge radio call directed to member’s unit
Failure to safeguard prisoner
Loss of Activity Log
Loss of Department property
Loss of Shield
Unauthorized Radio Transmissions
Unauthorized Use of a Department Vehicle
Any FADO violation that, in the opinion of the CCRB or NYPD is appropriate for a Schedule “B” Command Discipline
Any other violation, which, in the opinion of the commanding/executive officer and consultation with the Department Advocate is appropriate for Schedule “B” Command Discipline procedure

Adjudicated by Schedule C Command Discipline.<sup>80</sup>

A Schedule “C” Command Discipline may be utilized in lieu of Charges and Specifications by the Deputy Commissioner, Department Advocate for situations in which there are no significant aggravating factors or additional misconduct.

The Deputy Commissioner, Department Advocate will evaluate each case on its merits and consider all relevant factors when making a determination to issue a Schedule “C” Command Discipline including consultation with the member’s Commanding Officer. Prior disciplinary history, including the same or similar acts of misconduct, contemporaneous pending unrelated disciplinary matters and any significant aggravating factors may make the issuance of a Schedule “C” Command Discipline inappropriate. At the direction of the Deputy Commissioner, Department Advocate, the assigned member from the Department Advocate’s Office will prepare the Schedule “C” Command Discipline and forward to the Commanding Officer of the appropriate adjudicating borough or equivalent command with a memorandum identifying the significant facts related to the misconduct, the appropriate penalty range as well as a mandatory minimum penalty.

In accordance with Patrol Guide procedures 206-04 and 206-05, the Borough Adjutant (or equivalent) will adjudicate the Schedule “C” Command Discipline promptly, adhering to the guidance/direction provided by the Department

<sup>79</sup> See Patrol Guide Procedure 206-03, *Violations Subject to Command Discipline*. A members Commanding Officer or the Department Advocate’s Office can impose a penalty of up to ten (10) vacation days or accrued time for Schedule “B” Command Discipline violations.

<sup>80</sup>See Patrol Guide Procedure 206-03, *Violations Subject to Command Discipline*.

Advocate. If the subject member of the service declines the proposed penalty or elects Charges and Specifications, the Adjutant will comply with the provisions of Patrol Guide section 206-05. Upon adjudication of the Command Discipline, the Adjutant will return the endorsed Command Discipline to the Department Advocate. Once the Command Discipline is adjudicated and received by the Department Advocate’s Office, it will be forwarded to the Leave Integrity Management Section (“LIMS”) for the appropriate deduction of any time penalty. An assigned member of the Department Advocate’s Office will confirm the deduction of time with LIMS.

Commencing July 1, 2019, any misconduct that satisfies the requirements for Schedule “C” Command Discipline will be processed as such.

<b>MISCONDUCT – SCHEDULE “C” CD</b>
Accidental Firearm Discharge <sup>81</sup>
Computer Misuse with Dissemination of Information
Conducting Personal Business While On-Duty
Duplication of Parking Permit for Member’s Own Use
Fail to Voucher Property
Failure to Comply with Direction
Failure to Notify the Department – Involvement in an Unusual Occurrence
Failure to Supervise
Insurance - Causing the Incorrect Rate to be Applied
License Plate Cover Violations
Misclassified Complaint Report/Fail to Prepare a Report
Out of Residence while Sick
Paid Detail Violations
Unauthorized Off-Duty Employment
Vehicle Pursuits that are outside Department guidelines and related policy violations
Violation of Social Media Guidelines <sup>82</sup>

<sup>81</sup> Following review by the Use-of-Force Review Board and final determination by the Police Commissioner.

<sup>82</sup> Social Media means a category of internet-based resources that integrate user generated content and use participation. This includes, but is not limited to, social networking sites, photo and video sharing sites, wikis, blogs, and websites such as Facebook, Instagram, Flickr, YouTube, LinkedIn, Snapchat, and Twitter. See, Patrol Guide 203-32 (Personal Social Media Accounts and Policy), 203-28 (Department Social Media Accounts and Policy), and 203-10 (Public Contact – Prohibited Conduct)

## Conclusion

The vast majority of members of the service abide by the many laws, policies, procedures and rules governing the policing profession. Police work and police decision making in the field rely on the discretionary judgment of officers and their accumulated experience, as well as an adherence to guiding principles, to solve a variety of problems. Public trust is eroded each time a New York City police officer's conduct does not conform to the values and standards of the New York City Police Department and the policing profession. Both the public and our officers must be assured and, indeed, must expect, that when the bounds of the law or Department policy are exceeded, fair and equitable discipline, will result. These guidelines serve to inform members of the service as to the expectations placed upon them and provide greater transparency regarding the Department's disciplinary process.

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