NYPD
New York City Police Department

New York City Police Department

Disciplinary System Penalty Guidelines

Effective February 15, 2022

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THE POLICE COMMISSIONER
CITY OF NEW YORK

February 10, 2022

The New York City Police Department (NYPD) released the initial version of the department's internal discipline matrix, formally known as the Disciplinary Penalty Guidelines, in January 2021. As promised at that time, the NYPD has now worked together with the Civilian Complaint Review Board (CCRB) and the Commission to Combat Police Corruption (CCPC) on a number of revisions designed to strengthen the matrix and the penalty system it defines and explains. This report describes the changes and additions to the matrix in detail. These revisions have been posted for the required 30-day public comment period, which closed on December 5, 2021.

As New York City Police Commissioner, I believe that a robust, effective, and fair discipline system is essential to the management of the NYPD. Police officers who violate our Rules and Regulations or abuse the public in any way must be assessed appropriate and commensurate penalties, both to hold them accountable and to deter future misconduct. It is also vital that we are as open and transparent about this process as possible, providing both the public and our officers with a clear understanding of what to expect when discipline is imposed in a particular case. That is what the discipline matrix is all about. It defines presumptive penalties for a wide range of possible offenses, as well a progressive discipline system to be applied to those officers whose offenses must be evaluated and penalized in the context of their previous substantiated misconduct.

The current changes to the matrix address Violations of Department Rules and Regulations; Abuse of Authority, Discourtesy and Offensive Language; and domestic violence incidents that may occur in our officers' personal lives. Under Rules and Regulations, new penalties have been specified for misuse of department technology; failure to report racial profiling or a biased-based enforcement action; residing outside of authorized residence counties; general failure to take police action; and unintentional failure to properly record incidents with body-worn cameras. With respect to Abuse of Authority, Discourtesy and Offensive Language, penalties have been defined for improper stop and question practices; refusal to show arrest or search warrants; wrongful questioning of a person's immigration status; failure to provide language interpretation services; and wrongful damaging of a person's property. In the area of Domestic Violence, the new policy adds strangulation to a number of violent acts in domestic situations that will now result in either forced separation or termination from the department.

By defining penalties for these new categories, I believe that NYPD has strengthened the matrix in significant ways. We remain committed to a recurring annual review of the matrix to identify other areas or other specific offenses that should be included on the presumptive penalty list. As we said when the discipline matrix was first introduced in January 2021, we regard the matrix as a living document that can be, and indeed should be, reviewed and revised on a regular basis.

The NYPD is building an effective, fair, and transparent discipline system. I believe that the discipline matrix has fostered progress toward that goal and that the current recommended changes do also. The discipline system is a primary means by which the NYPD takes responsibility for its actions. As a law enforcement executive, I have known throughout my career that I am accountable for everything I do. I have never feared accountability. In fact I welcome it, for me personally and for the department I lead.

Sincerely,

Keechant L. Sewell
Police Commissioner

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Introduction

New York City police officers hold a unique position within our society. They are responsible for the safety and security of all of those who work, live and visit our city. Whether responding to crimes in progress or offering emergency assistance, they are the component of government that civilians most frequently interact with and rely upon in times of need. In order to effectively carry out their duties, police officers are granted vast discretion in how exactly to perform their work. They have 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 discretion comes a responsibility to perform their duties using good judgment and exercise their discretion within the bounds of the law and New York City Police Department ("NYPD") policy.

Both the public and police officers must understand and, indeed expect, that when the bounds of the law or Department policy are exceeded, equitable discipline will result. Similarly, it should be expected that any discipline imposed will be fair, consistent and based upon reasonable standards. Fairness within a disciplinary system begins with taking the time to objectively review the totality of the circumstances surrounding any substantiated misconduct. Proportionality of discipline requires that each instance of misconduct is addressed 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.

Nothing in these Guidelines shall be construed to limit the discretion of the Police Commissioner to impose discipline. The Police Commissioner may modify these Guidelines as appropriate to address emerging issues and advance the goals of the disciplinary system described herein. Any such modifications shall be posted on the Department's website, with an accompanying description of the modifications, as needed. No later than January 30, 2022 and by January 30 of each year thereafter, the Department shall post on its website and deliver to the Speaker of the New York City Council a report that includes the number and percentage of instances within the preceding calendar year in which the Police Commissioner imposed a disciplinary penalty that deviates from the penalties enumerated in these Guidelines.[1]

NYPD Values

The NYPD values provide the foundation for the Department's disciplinary system. Given these values, the standards for professional and personal conduct are high. 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

Neighborhood Policing and the Disciplinary 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: reduce crime; promote trust and respect; and 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 Guidelines contained herein, coupled with the annual "Discipline in the NYPD" report[2], help promote trust and respect by providing greater transparency and insight into the disciplinary system. At the same time, it promotes greater confidence in the process among officers who will be able to see the system as fair, proportional, and equitable.

[1] See New York City Administrative Code § 14-186.

[2] 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 Disciplinary System

Goals of the Disciplinary System

As noted, a disciplinary system must be fair and equitable in order 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 and rehabilitating the member of the service
- 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
- Resolving disciplinary matters impartially and in a prompt and efficient manner
- 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 that are fair, proportional and rational
- Ensuring the good order and efficiency of the Department
- Establishing a culture of accountability and individual responsibility
- Listening to community concerns about officer misconduct and implementing improvements to address them

The desired results to be achieved by the imposition of discipline in a particular case are properly dependent on all the facts and circumstances of each case. The final outcomes may vary and are 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.

Discipline Generally

Discipline in the NYPD is broadly defined, encompassing actions designed to remediate inappropriate behavior, and imposed in a variety of ways, largely determined by the seriousness of the substantiated misconduct. The least serious procedural violations may result in "instruction," a method of re-training through which a commanding officer instructs a member of the service on proper procedures, or "reprimand," where members of the service are admonished for low-level violations. The Department may also require members of the service to participate in other forms of training to address deficiencies, at any time. Depending upon the nature of the misconduct, training will be delivered by the appropriate subject matter expert(s) and in a suitable venue. Examples include training delivered at the command by the Training Sergeant, or at the Firearms and Tactics Section, Legal Bureau, Police Academy, or Risk Management Bureau. Successful completion of the training is memorialized as part of the disciplinary case record.

Technical violations of Department procedures may be addressed through discipline imposed at the command level, through a process referred to as "Command Discipline." The Command Discipline procedure allows commanding officers to maintain order in their commands and impose discipline without initiating a disciplinary hearing by means of serving "Charges and Specifications".

The types of violations subject to punishment by Command Discipline are outlined in Administrative Guide procedure 318-05, and include behavior such as improper uniform, reporting late for duty, and loss of Department property. Depending upon the severity of the violation, commanding officers may impose penalties ranging from oral reprimand to forfeiture of up to 10 vacation days or accrued compensatory time.[3]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

[3] There is also a provision that allows for a Command Discipline to be resolved with a penalty of up to the loss of 20 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.

serious misconduct, serves disciplinary "Charges and Specifications" against members of the service, recommends appropriate disciplinary penalties, and prosecutes disciplinary cases in the Department's Trial Room.

In order to enhance transparency and ensure the integrity of internal investigations and adjudications of Departmental disciplinary proceedings, the Department has issued guidelines to members of the service regarding recusal from involvement in disciplinary proceedings or investigations when there is an actual or perceived conflict of interest based on a personal or familial relationship with a subject.[4]

The Investigative Process

Depending on the nature of a misconduct allegation, the investigation of such allegation may be investigated by either the Department or the Civilian Complaint Review Board ("CCRB").

Civilian complaints against police officers regarding excessive **F**orce, **A**buse of Authority, **D**iscourtesy, and **O**ffensive Language (known collectively as "FADO" complaints) are investigated by the CCRB. The CCRB is an independent city agency[5] authorized under the New York City Charter[6] 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[7] 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 ("APU"). The CCRB may also recommend adjudication of some substantiated FADO allegations, based upon their proposed penalty, by means of a Command Discipline.

The Department investigates allegations of corruption and misconduct, as well as non-FADO complaints related to public contact, against members of the service regarding a wide variety of employee behaviors. 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.

Investigations may also result from media or social media exposure and proactive measures 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 having jurisdiction over the incident. In these cases, internal disciplinary charges may be levied because the commission of a criminal offense also constitutes a violation of Department policy.

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.[8] 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

[4] See Interim Order 11 of 2020.

[5] The Conflicts of Interest Board is another independent City agency that enforces violations of Chapter 68 of the New York City Charter, the City's Conflicts of Interest Law, and § 12-110 of the Administrative Code, the City's Annual Disclosure Law. The New York City Department of Investigation conducts investigations into potential violations for the Board. 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.

[6] See New York City Charter Ch. 18-A § 440.

[7] Available at: https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-ccrb-discipline-matrix-mou-final.pdf

[8] 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. In cases of criminal allegations or other serious allegations of misconduct, a member of the service may also be suspended with pay during the pendency of the investigation and disciplinary process.

because disciplinary action is being taken or contemplated.[9] 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 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 involving officer misconduct. IAB may assign some misconduct investigations to the bureau/borough investigation units, which function as satellites of IAB and are responsible for the integrity controls within their respective units. These investigation units report their findings through IAB, which retains oversight over the 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 trains and advises Department employees on issues of equality and fairness in the workplace.

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.

Intersection with the Criminal Justice System

To the extent any conduct by Department employees is criminal in nature, New York City 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 disciplinary 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 subject to criminal responsibility and potential prosecution in accordance with applicable Federal, state, or local law. The member of the service may also be subject to liability in a civil proceeding. The disciplinary system is an internal administrative process designed to address misconduct with regard to the individual's status as a NYPD employee and operates on a track independent of any criminal and civil proceedings.

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 constitutes a violation of Department policy. 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.

[9] See Administrative Guide procedure 318-05, *Cause for Suspension or Modified Assignment*.

Statute of Limitations

The statute of limitations ("SOL") applicable to 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 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.[10]

Resolution of Disciplinary Charges

Police Commissioner's Authority

The Police Commissioner, by law, has the sole discretion to determine the final disciplinary disposition and penalty imposed.[11] The Police Commissioner reviews recommendations regarding discipline from the prosecuting authority (either DAO or CCRB) and the administrative trial judge, when applicable. When the final disciplinary decision deviates from any one of these recommendations, the Police Commissioner prepares a memorandum to document the factors that were considered in support of that decision and their application justifying the final determination.[12] Any deviation from a presumptive penalty enumerated below is similarly described in the memorandum.

Settlement Agreements

Members of the service who face disciplinary charges and specifications for substantiated allegations of misconduct or violations of Department rules, may agree to take responsibility for the charged misconduct and accept a penalty by entering into a settlement agreement negotiated with the Department.

The starting point for any settlement negotiation is the presumptive penalty/penalty range for each enumerated act of misconduct described in these Guidelines. 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 the Department is contemplating a negotiated settlement in a case. Settlement agreements properly take into account such matters as the availability of witnesses and other evidence, the strength of the available proof, and the viability of available defenses. However, in negotiating settlements, the Department will not bargain away readily provable misconduct merely to dispose of a matter promptly, to allow for a more lenient penalty than would be called for under these Guidelines, or to achieve any other result that serves to undermine the goals and purposes of these Guidelines. Cases falling under the jurisdiction of the CCRB may be resolved by a similar settlement process.

Department Trials

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[13] 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 APU, has the burden of proving the charges by a preponderance of the evidence and is required to present evidence against the member of the service.

[10] See New York Civil Service Law § 75(4).
[11] See New York City Charter § 434 and New York City Administrative Code § 14-115.
[12] This final disciplinary authority is not unique among City Commissioners. Compare New York City Charter § 434 with § 387(a) which states, "[t]he heads of mayoral agencies shall supervise the execution and management of all programs and activities of their respective agencies and shall have cognizance and control of the government, administration, and discipline of their agencies."
[13] See New York Civil Service Law § 75(1).

The member is entitled to cross-examine prosecution witnesses, present a defense to the charges, and/or present evidence in mitigation of the proposed penalty.[14] Each month, the trial calendar for the upcoming month is published on the Department's website.[15]

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. This includes a prohibition against *ex parte* communications with the judges, even by the Police Commissioner.[16] 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.[17] The Trial Commissioner's report and the written comments of the parties are then submitted for the Police Commissioner's review and final decision.

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.

[14] §§ 75 – 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 § 14-115 of the Administrative Code of the City of New York.

[15] See https://www1.nyc.gov/site/nypd/bureaus/administrative/trials.page.

[16] Title 38, Chapter 15, § 15-04(e)(4) Rules of the City of New York states as follows:
"Except for ministerial matters, and except on consent, or in an emergency, communications with the Deputy Commissioner of Trials concerning a case shall only occur with all parties present. If the Deputy Commissioner of Trials receives an *ex parte* communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the *ex parte* communication shall be allowed to do so upon request."

[17] 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 and the public as to the expectations placed upon members of the Department and to provide greater transparency regarding the disciplinary process.[18] Awareness of the likely consequences associated with violations of Department policy promotes greater efficiency and facilitates the fair and rational application of penalties and the adherence to 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 organized thematically into 11 different categories: Criminal Conduct; Excessive Force; Abuse of Authority/Discourtesy/Offensive Language; False Statements; Domestic Violence; Driving While Impaired/Intoxicated; Firearm-Related Incidents; Controlled Substance/Marijuana/Banned Substance Use; Department Rule Violations; Off-duty & Prohibited Conduct; and Employment Discrimination. 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 and does not constitute a mandatory minimum penalty. 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. That penalty determination, including the rationale for any deviation from the presumptive penalty and/or the recommendation of either a trial judge or CCRB, is memorialized in a memorandum, as part of the final adjudication of the case.

Given the complexity of some events and significant variances in the underlying facts of each case, 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. Presumptive penalties, as well as both aggravating and mitigating circumstances, also apply to negotiated settlements of disciplinary matters.

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.

[18] New York City Administrative Code § 14-186 requires the Department to publish it's "internal disciplinary matrix", any subsequent revisions to the matrix and an annual report enumerating penalties that deviate from the matrix.

Mitigating and Aggravating Factors

The Guidelines facilitate penalties designed to ensure consistency among similarly situated members of the service while allowing for reasonable degrees of mitigation and aggravation based upon the specific facts and circumstances of each incident. The presumptive penalty identified for each act of misconduct may be increased or decreased depending upon the presence of these individualized factors. Although it is impossible to pre-determine all the mitigating and aggravating factors that could arise in each case, the guidance below includes universal factors to be taken into account when assessing the fairness and proportionality of a penalty.

The presence of mitigating or aggravating factors does not automatically lead to the conclusion that a departure from the presumptive penalty is justified. The factors must be weighed against each other and the facts and circumstances of the misconduct itself. The presence of one or more mitigating circumstances, along with one or more aggravating circumstances, may or may not offset each other.

For some acts of misconduct, presumptive penalty enhancements have already been identified for specific aggravating factors enumerated in the Guidelines. In other categories of misconduct, presumptive penalty ranges for aggravation and mitigation are provided. Additionally, some behavior that is deemed an aggravating factor, if charged and sustained on the merits, may be adjudicated as a separate act of misconduct in and of itself.

If the determination is made that the misconduct is appropriately mitigated or aggravated, the relevant factors, including a description of how the factors were applied, will be documented as part of any recommendations submitted to the Police Commissioner. The ultimate penalty assigned is guided by the penalty ranges between the mitigated and aggravated penalties, as defined in these Guidelines. The Police Commissioner ultimately determines whether the factors are sufficiently significant to justify a decrease or increase in the presumptive penalty/penalty range and documents such in the memorandum prepared when adjudicating the case.

Potential Mitigating Factors

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

- The reasonably limited or lack of knowledge, training and experience of the member of the service involved that is germane to the incident
- 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 state of mind of the member of the service, including the absence of intent
- The primary motivation for the action is premised upon emergency response or service
- The member of the service endeavored to de-escalate the encounter
- The voluntary candor and assistance of the member of the service, which goes beyond the mandates of cooperation and truthfulness, and aids the investigation
- The acceptance of responsibility and any mitigating or remedial actions taken by the member of the service
- Positive employment history including any notable accomplishments, Departmental recognition and positive public recognition
- The limited nature and extent of the consequences or harm caused by the violation
- The limited impact of the violation upon the Department and its mission
- The role of the member of the service in the particular event (e.g. member of the service is a subordinate and a supervisor was on the scene)
- 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 presence or reasonable availability of knowledge, training and experience of the member of the service involved that is germane to the incident
- The nature of the event is such that it allowed time for deliberate reflection or action
- The culpable mental state of the member of the service, particularly if the actions evince an intent to engage in proscribed conduct, circumvent a policy, exhibit a reckless disregard of an individual's wellbeing, demonstrate bias or prejudice, or constitute harassment or retaliatory conduct
- The member of the service is motivated by personal interest or gain, or receives a personal benefit from the misconduct
- The member of the service failed or declined to attempt to de-escalate the encounter even though feasible to do so
- Disproportionality of misconduct and harm to the community
- The lack of candor of the member of the service and failure to cooperate with the investigation
- Actions by the member of the service to interfere with the investigation or to influence others to participate in misconduct including to aid in hindering an investigation
- The nature and extent of injury or endangerment to a member of the service or civilian
- The nature and extent of property damage
- The adverse 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 legal or financial risk to the Department
- The adverse result of a criminal, administrative or civil proceeding related to the underlying conduct
- Any negative employment history including prior discipline or performance deficiencies
- Conduct demonstrating a pattern of behavior that indicates an inability to adhere to Department rules and standards
- Low probability or limited potential for rehabilitation
- The role of the member of the service in the particular event (e.g. member of the service is a supervisor on the scene of the incident)
- Victim's vulnerability that is related to the act of misconduct (e.g. excessive use force against an elderly person)
- Willful misuse of technology with no legitimate law enforcement purpose

The Effect of Rank on Discipline

An individual member of the service's rank and their particular role in an event are factors to be considered when assessing an appropriate disciplinary penalty. An individual member of the service'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 and the supervisor is subject to discipline for any misconduct related to the event.

Prior Disciplinary History

Generally, an individual member of the service's prior disciplinary history will be considered when assessing an appropriate penalty, potentially serving as an aggravating factor to a presumptive penalty. Factors to be considered when determining whether prior disciplinary history should be considered an aggravating factor include:

- The number of prior disciplinary events
- The nature and seriousness of the prior event(s)
- Any similarities between prior and current acts of misconduct
- Any disciplinary history demonstrating an inability or unwillingness to conform to the Department's expectations for the position or successfully rehabilitate

However, a new act of misconduct that is the same as a prior act of misconduct, or carries a presumptive penalty that is equal to or greater than the presumptive penalty of a prior act of misconduct, may instead result in an increase in the disciplinary penalty for the current violation through the application of progressive discipline.

Progressive Discipline

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

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

The presumptive time limitations[19] and penalty progressions[20] are as follows:

- If the prior misconduct resulted in training or instructions:
    - The time limitation is 3 years
    - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 1-3 days
    - The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 5 days
- If the prior misconduct resulted in 1 through 5 penalty days:
    - The time limitation will be 3 years
    - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 5-10 days
    - The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 10-15 days

[19] Calculated from the date that the Police Commissioner approved the imposition of the final penalty for the prior act(s) of misconduct.

[20] The fourth or subsequent incidents of the same misconduct in the specified time frame may result in more severe disciplinary penalties, up to and including termination.

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

The above time limitations do not apply to prior disciplinary history establishing patterns of misconduct or serious misconduct, including but not limited, to False Statements, Driving While Intoxicated, Domestic Violence, Excessive Force or acts constituting criminal conduct. In addition, a third substantiated incident of excessive force will have a presumptive penalty of termination regardless of the penalties imposed in the first two instances.

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

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[21]. 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 ("DCJS") maintains a "Police Officer and Peace Officer Registry". This registry includes the identities of 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.[22] A member of the service who resigns or retires with charges pending for conduct that, if found guilty, would likely result in a presumed penalty of termination, forced separation or Dismissal Probation under these Guidelines, will be submitted to the registry as a "removal for cause" and may be decertified by DCJS.

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[21] See e.g., Administrative Guide procedure 320-48, Career Advancement Review Board. Members of the service may be denied civil service promotion as a result of certain disciplinary proceedings.
[22] See New York Executive Law § 845.

Calculation of Penalties

Separate presumptive penalties, adjusted for relevant aggravating and mitigating factors, are applied to each substantiated act of misconduct for which there has been a finding or acceptance of guilt. These presumptive penalties are then aggregated to address each distinct act of misconduct. If the same underlying act(s) of misconduct support multiple definitions of proscribed conduct or support alternative theories of prosecution, then a single penalty will be applied. Concurrent penalties may be appropriate when misconduct includes minor technical infractions, or when the effort to maintain a balance between punishment, deterrence and remediation is undermined by consecutive penalties. The totality of the circumstances will be considered in order to maintain the efficiency of the disciplinary system and to ensure a just outcome.

For example, a member of the service who has been determined to have operated a motor vehicle while intoxicated was by definition necessarily unfit for duty. Because these potential 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 forfeited during pre-adjudication suspension) may be applied to any final penalty determination.

In the event that the total number of penalty days is calculated at greater than 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 2-year period. The member of the service must complete 2 years of full-duty status in order to complete this probationary period. Members on entry-level probation who are the subject of a disciplinary matter can be terminated and the Department may summarily dismiss the member of the service without a formal hearing. If termination is the presumptive penalty for an enumerated act of misconduct, 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 is 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. Pursuant to collective bargaining, a member promoted to the rank of Detective is on promotion probation for a 3-year period regardless of duty status. Members promoted to the rank of Sergeant, Lieutenant, or Captain are on promotion probation for a 1-year period. A member must complete 1 year of full-duty status in order to 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. A recommendation relative to demotion or retention of rank under these circumstances is made to the Police Commissioner by the Risk Management Bureau. Members of the service serving in the ranks of Deputy Inspector through Chief of Department are designated by the Police Commissioner. As such, these members may be demoted to their civil service rank of Captain at any time.

Dismissal Probation – When a member of the service is placed on Dismissal Probation as part of a disciplinary penalty, the member 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 1-year period, during which the member must complete 1 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 ordinarily 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 6-month extension of their probation if they are the subject of an investigation or disciplinary matter, or for poor performance during such probation period.[23] A member must complete this extension at full-duty status in order to successfully complete this probationary period.

[23] Members in the rank of Detective cannot have their promotion probationary period extended.

Effect of Precedent

Situations may arise that are not included in or adequately addressed by the Guidelines. If so, a penalty evaluation will be made based upon the facts and circumstances of the present case considering relevant recent or analogous cases. When considering precedent, 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 may not be accorded the same precedential weight as penalties imposed following trials because factors such as the strength of the evidence may affect the calculation and warrant a lesser penalty.

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

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 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 forfeiture of vacation days and/or the imposition of suspension without pay for a specified time period[24]. The decision to suspend, deduct vacation days, or impose a combination of both, is based upon the severity of the misconduct along with any relevant aggravating and mitigating factors. For some of the most serious categories of misconduct in these Guidelines, suspension has been identified, in whole or in part, as the presumptive penalty. A member of the service who is found guilty after an administrative hearing may be suspended without pay for a period not exceeding 30 days for any offense.[25] A member of the service may agree to a longer term of suspension as part of a negotiated settlement agreement. If a member of the service was immediately suspended from duty during the pendency of an investigation, the forfeiture of suspension days, imposed prior to the disposition of the case, may be applied as part of the final disciplinary penalty. When the deduction of vacation days is the imposed penalty, a member of the service may elect suspension in lieu of vacation days if consistent with the needs of the Department.

Dismissal Probation[26] – As part of a disciplinary penalty that includes the imposition of penalty days, Dismissal Probation requires that the member of the service concerned be 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 1-year period during which the member is placed on Dismissal Probation. During the 1-year probationary period, the member of the service is subject to Monitoring and their conduct is evaluated on an ongoing basis. In addition, the member's commanding officer is required to submit monthly reports assessing the member's conduct. If there is

[24] Paid vacation represents a part of a member of the service's total compensation package of salary and benefits which is collectively bargained for between the respective police unions and the New York City Office of Labor Relations. Additionally, police officers perform shift work and are not entitled to holidays or weekends off relying instead on their accrued vacation days to take time off. Contrast suspension which results in an increased financial penalty imposed upon the member of the service but simultaneously reduces Department staffing during the period of suspension.

[25] New York Civil Service Law § 75(3-a) and New York City Administrative Code § 14-115.

[26] Dismissal Probation period will not conclude until a member of the service completed 12 months on full-duty status.

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 ordinarily result in termination for a member not on Dismissal Probation. Dismissal Probation is also used to enforce other conditions 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 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.

Termination[27] – The Police Commissioner, upon a finding or admission of wrongdoing in a disciplinary matter, has the authority to dismiss a member of the service from their employment with the Department[28]. Additionally, upon criminal conviction of a felony, or a misdemeanor that constitutes a violation of a member's oath of office, the member vacates their civil service title and is terminated as a matter of law[29]. A member of the service may be entitled to all or part of their accrued pension benefits in accordance with local law and New York State pension laws[30].

Forced Separation – The Police Commissioner, upon a finding or admission of wrongdoing in a disciplinary matter, may require that a member of the service separate (resignation, retirement or vested interest retirement) from the Department, in lieu of termination, as part of a negotiated settlement agreement. Forced separation may also include the forfeiture of penalty days, all time and leave balances and any terminal leave to which the member of the service may be entitled. A member of the service who retires may be entitled to all or part of their accrued pension benefits in accordance with local law and New York State pension laws[31].

Oath of Office Violation – An Oath of Office violation[32] 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.[33] 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.[34]

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 or off-duty, during the period of probation, or other agreed-upon time period. Should the member be found

[27] See *Duffy v. Ward*, 81 NY 2d 127 (1993) and *Foley v. Bratton*, 92 NY 2d 781 and 789 (1999).
[28] See New York Civil Service Law § 75(3).
[29] New York Public Officers Law § 30(1)(e).
[30] See New York Retirement and Social Security Law Art. 8 and related case law. See also, New York City Administrative Code § 13-256(1).
[31] Ibid.
[32] New York Public Officers Law § 30(1)(e).
[33] See *Duffy v. Ward.*
[34] The courts have held that the commission of the following crimes, while not exhaustive, 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.

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.

Ordered Drug Screening Test – When reasonable suspicion exists that a member of the Department is illegally using drugs or controlled/banned substances, he or she will be directed to submit to testing in which hair and/or urine are collected and tested.

Forfeiture of Time and Leave Balance – As part of settlement agreements that include separation from the Department, the member of the service shall be required to forfeit any time and leave balances. In addition, in cases in which 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 his or her time and leave balance.

Restitution – In cases in which a member of the service is found to have improperly received compensation, such as for duties that were not performed, return or repayment of the compensation may be required. Restitution is made payable to the New York City Commissioner of Finance.

Fine – A fine not to exceed $100 per charge may be deducted from the salary or wages of a member of the service.[35]

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

[35] See New York Civil Service Law § 75(3).

Specific Penalty Guidelines by Category

Conduct Constituting a Crime Proscribed by State or Federal Law[36]

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. [37] 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 member of the service 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[38], 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*[39], 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

[36] The conduct described in this section includes violation of criminal statues proscribed by New York State Law, Federal Law, or an analogous statue of another state.
[37] Some acts described in the other misconduct categories of these guidelines may also satisfy the elements of criminally proscribed conduct.
[38] A member of the service who is arrested should be suspended from duty absent exigent circumstances. See Administrative Guide procedure 318-05, *Cause for Suspension or Modified Assignment*.
[39] 385 U.S. 493 (1967).

Presumptive Penalties for Violation of Criminal Statutes[40]

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Conviction of Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Felony	N/A	Termination	N/A
Engaging in Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Misdemeanor while on Entry-level Probation	N/A	Termination	N/A
Conviction of Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Misdemeanor and Constitutes a Violation of the Member's Oath of Office[41]	N/A	Termination	N/A
Conviction of NYS Penal Law Crime of Petit Larceny or Theft Related Offenses (or analogous statute of another state) or Federal Law	Forced Separation	Termination	N/A
Engaging in Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Felony	Forced Separation	Termination	N/A

[40] 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.

[41] See New York Public Officers Law § 30(1)(e). The courts have held that the commission of the following crimes, while not exhaustive, 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.

Engaging in Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Petit Larceny	Forced Separation	Termination	N/A
Conviction of Conduct Proscribed by the NYS Penal Law (or analogous statute of another state) or Federal Law Constituting Misdemeanor assault[42] Arising out of an On-duty Incident	Forced Separation	Termination	N/A
Engaging in Conduct Proscribed by NYS Law (or analogous statute of another state) or Federal Law that is Classified as a Misdemeanor, not Otherwise Covered Above	N/A	30 Penalty Days	Termination

[42] See New York Penal Law Article 120.

Use of Excessive Force

The use or application of excessive force is strictly prohibited by the Department. Any violation of the NYPD Use-of-Force policy is subject to maximum scrutiny, recognizing the grave impact that excessive force has on the public's trust and confidence in the Department and our officers as well as the increased risk of harm to officers themselves.

The public has every right to expect and demand that the Department and individual officers be held accountable for any and every violation of Department policy. This is especially important for any violation of the Use-of-Force policy. Officers should be aware that, if they are found to have used excessive force after a complete investigation and fair trial or admission of guilt, they will be subject to appropriate discipline commensurate with their level of misconduct. In addition to internal disciplinary charges, the use of excessive force may also result in criminal prosecution and civil litigation 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 procedure 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.

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 NYPD's policies, even when Department policy is more restrictive than local, state or Federal law.

Failure to intervene in the use of excessive force, report excessive force, or to request and/or 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 termination. If a member of the service becomes aware of a use of excessive force or a failure to request or ensure timely medical treatment for an individual, the member must report such misconduct to the IAB Command Center. This report can be made anonymously.

Additional Definitions Pertaining to Use of Force

Violation of Department Use-of-Force Policies & Procedures – Any act by a member of the service that violates the Department Manual, training, or any other policy or rule of the NYPD relating to Use-of-Force.

De-Escalation[43] – 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[44] – 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[45] – Threat or overt act of an assault (through physical or vocal 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.

[43] Patrol Guide procedure 221-01, *Force Guidelines*.
[44] Patrol Guide procedure 221-02, *Use of Force*.
[45] Ibid.

Excessive Force[46] – 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 (e.g. the use of a deadly weapon, such as discharging a firearm, against a person).[47]

Non-Deadly Force – Force not readily capable of causing death or other serious physical injury (e.g. physical force such as employing a takedown technique, and using hand strikes or foot strikes against a person).

Less Lethal Force/Device – The application of a significant intermediate use of force option including Oleoresin Capsicum ("O.C.") spray, conducted electrical weapon ("CEW") or impact weapon against a person.[48]

Physical Illness/Injury – Impairment of physical condition, and/or substantial protracted pain, including: minor swelling, contusions, lacerations or abrasions.[49]

Deadly weapon – Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

Dangerous instrument – Any instrument, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

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.[50]

Chokehold[51] – A chokehold shall include, but is not limited to, any pressure to the throat, carotid artery or windpipe, which may prevent or hinder breathing or reduce intake of air or blood flow.[52]

[46] Patrol Guide procedure 221-01, *Force Guidelines*.
[47] New York Penal Law §10.00(11).
[48] See, e.g. Patrol Guide procedure 221-08, *Use of Conducted Electrical Weapons (CEW)*.
[49] Patrol Guide procedure 221-03, *Reporting and Investigation of Force Incident or Injury to Persons During Police Action*.
[50] Ibid.
[51] Patrol Guide procedure 221-01, *Force Guidelines*.
[52] Ibid.

Presumptive Penalties for Use of Excessive Force

Misconduct	Mitigated Penalty[53]	Presumptive Penalty	Aggravated Penalty
Deadly Physical Force (incl. use of a Deadly Weapon or Dangerous Instrument) Against Another – Resulting in:			
Death/Serious Physical Injury	N/A	Termination	N/A
Physical Injury	Forced Separation	Termination	N/A
No Injury	30 Suspension Days + 30 Penalty Days + Dismissal Probation	Termination	N/A
Less Lethal Force/Device Against Another – Resulting in:			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	15 Suspension Days	15 Suspension Days + 15 Penalty Days	Termination
No Injury	10 Penalty Days	20 Penalty Days	Termination
Non-Deadly Force Against Another – Resulting in:			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	10 Suspension Days	10 Suspension Days + 10 Penalty Days	Termination
No Injury	5 Penalty Days	10 Penalty Days	Termination
Conviction of a Crime:			
Involving Use of a Chokehold or Unlawful Method of Restraint[54]	N/A	Termination	N/A

[53] If a mitigated penalty is listed as "N/A" (Not Applicable), the presumptive penalty cannot be mitigated absent extraordinary circumstances, as determined by the Police Commissioner.

[54] Includes convictions for New York Penal Law § 121.13-a, *Aggravated Strangulation*, New York City Administrative Code § 10-181, *Unlawful Methods of Restraint* or analogous statute.

Chokeholds:			
Application of a Chokehold	Forced Separation	Termination	N/A
Application of a Method of Restraint Prohibited by Law Including Sitting, Standing or Kneeling on a Person's Chest or Back[55] – Resulting in:			
Death/Serious Physical Injury	N/A	Termination	N/A
Physical Injury	30 Suspension Days + Dismissal Probation	30 Suspension Days + 30 Penalty Days + Dismissal Probation	Termination
No Injury	10 Penalty Days	30 Penalty Days	Termination
Failure to Intervene in:			
Unauthorized Use of Deadly Physical Force Resulting in Serious Physical Injury or Death	N/A	Termination	N/A
Unauthorized Use of Deadly Physical Force Resulting in Physical Injury	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination
Unauthorized Use of Deadly Physical Force Not Resulting in Injury	10 Penalty Days	20 Penalty Days	30 Penalty Days + Dismissal Probation
Unauthorized Use of Force Resulting in Death/Serious Physical Injury	30 Penalty Days + Dismissal Probation	30 Suspension Days + 30 Penalty Days + Dismissal Probation	Termination
Unauthorized Use of Force Resulting in Physical Injury	5 Penalty Days	10 Penalty Days	20 Penalty Days
Unauthorized Use of Force Not Resulting in Injury	1 Penalty Day	5 Penalty Days	10 Penalty Days

[55] See New York City Administrative Code § 10-181, *Unlawful Methods of Restraint,* and Patrol Guide procedure 221-02, *Use of Force*.

Failure/Refusal to Obtain Medical Assistance:			
Intentional or Reckless (e.g. injury/illness is readily apparent or visible)	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination
Negligent Failure	1 Penalty Day	5 Penalty Days	10 Penalty Days

Additional Potential Mitigating Factors

- Nature and severity of the crime
- Physical actions taken by the subject
- Duration of the action – relatively brief or momentary
- Immediacy and duration of the credible threat or harm to the subject, members of the service, and/or civilians
- Whether the subject engaged in active resistance or exhibited active aggression
- Actual injury to member of the service, other officers or civilians
- Proportionality of force used
- 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, coerce or harass a subject for any reason including making a statement
- Conduct results in criminal charges
- Handcuffed or otherwise restrained prisoner
- Prolonged or exaggerated duration of the action
- Use of weapon or instrumentality outside of guidelines/inconsistent with its intended purpose
- Nature and severity of the physical illness or injury

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 of the service. This is especially important in any violation of the abuse of authority, discourtesy or use of offensive language guidelines.

Additional Definitions

Investigative Encounters – In accordance with their oath to uphold the law, uniformed members of the service must conduct investigative encounters in a lawful and respectful manner. An investigative encounter is a police interaction with a member of the public for a law enforcement or investigative purpose. The U.S. Supreme Court, in *Terry v. Ohio*, established the authority of police to stop and possibly frisk a person, under certain circumstances. The New York State Court of Appeals, in *People v. DeBour*, established the levels of investigative encounters and the authority of the police at each level, consistent with Federal constitutional standards.

Stop – A stop is any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away. Whether an encounter amounts to a stop will be judged by the facts and circumstances of the encounter. A stop may be conducted only when an officer has an individualized reasonable suspicion that the person stopped has committed, is committing or is about to commit a felony or Penal Law misdemeanor.

Frisk – A frisk is a carefully limited running of the hands over the outside of a person's clothing in order to feel for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury. A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous.

Search – In the context of investigative encounters, a search occurs when an officer places their hands inside a pocket or other interior portions of a person's clothing or personal property.

Discourtesy – Discourtesy may include foul language, acting in a rude or unprofessional manner (such as demeanor or tone), and flashing rude or offensive gestures that is unjustified or unwarranted with no legitimate law enforcement purpose.

> *Example: an officer holding up his middle finger to an individual recording the officer on a cell phone camera, with no legitimate law enforcement purpose.*

Offensive Language – 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. Offensive language is distinguished from "Hate Speech" (see below).

> *Example: an officer is aware that a transgender female identifies as a woman yet the officer referred to the complainant as "he," not the complainant's preferred gender pronoun while speaking to her.*

Presumptive Penalties for Abuse of Authority, Discourtesy, Offensive Language

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Sexual Misconduct:			
Sexual Proposition/Unwanted Verbal Sexual Advances	N/A	30 Penalty Days + Dismissal Probation	Termination
Sexually Motivated Enforcement Action/Sexual Touching/Sexual Solicitation[56]	30 Suspension Days + Dismissal Probation	Termination	N/A
Improper/Wrongful:			
Stop and Question or Improper Question of Person	Training	3 Penalty Days	15 Penalty Days
Frisk of Person	Training	3 Penalty Days	15 Penalty Days
Stop of Vehicle	Training	3 Penalty Days	15 Penalty Days
Search of Vehicle	Training	3 Penalty Days	15 Penalty Days
Search/Seizure of Person/Property	Training	3 Penalty Days	15 Penalty Days
Failure to Cover/Provide Privacy (in a timely manner) to an In-custody Individual's Exposed Intimate Body Parts	5 Penalty Days	10 Penalty Days	20 Penalty Days
Strip Search (procedural violation)	5 Penalty Days	10 Penalty Days	20 Penalty Days
Strip Search (unauthorized/unwarranted)	20 Penalty Days	20 Suspension Days + Dismissal Probation	Termination
Enforcement Action involving Abuse of Discretion or Authority[57]	10 Penalty Days	20 Penalty Days	Termination
Unlawful Entry Premises (pursuant to a public service/safety function)	N/A	Training	1 Penalty Day
Unlawful Search/Entry Premises (entry involves incidental or *de minimis* physical presence e.g. foot over the threshold)	Training	3 Penalty Days	5 Penalty Days

[56] 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.

[57] This includes an enforcement action such as an arrest or summons for which there is a lawful basis, however, but for the officer's improper motive, enforcement action would not have been taken.

Unlawful Search/Entry Premises (entry involves substantial physical presence and/or remaining on the premises)	5 Penalty Days	10 Penalty Days	20 Penalty Days
Unlawful Search/Entry Premises (entry is prolonged or includes additional proscribed conduct)	10 Penalty Days	20 Penalty Days	30 Penalty Days
Threat of Force/Police Enforcement/Notification to Outside Agency/Removal to Hospital - without Justification	5 Penalty Days	10 Penalty Days	20 Penalty Days
Improper/ Wrongful: Question person's immigration status	5 Penalty Days	10 Penalty Days	20 Penalty Days
Failure to provide language interpretation service	Training	3 Penalty Days	5 Penalty Days
Failure to Process Civilian Complaint	5 Penalty Days	10 Penalty Days	20 Penalty Days
Retaliatory Action Against Another for Making a Civilian Complaint	20 Penalty Days	30 Penalty Days	40 Penalty Days
Failure/Refusal to Provide Name or Shield Number	Training	3 Penalty Days	5 Penalty Days
Failure/Refusal to Provide Right-to-Know Business Card	Training	3 Penalty Days	5 Penalty Days
Failure to Comply with the Right-to-Know Act Regarding Consent to Search	Training	3 Penalty Days	5 Penalty Days
Refusal to show Arrest/Search Warrant	Training	3 Penalty Days	5 Penalty Days
Negligent Failure to Obtain Medical Attention	1 Penalty Day	5 Penalty Days	10 Penalty Days
Intentional or Reckless Failure to Obtain Medical Attention (e.g. readily apparent or visible injury/illness)	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination

Removal to a Medical Facility without Consent or Public Health Need	Training	3 Penalty Days	5 Penalty Days
Deletion of Information from a Recording Device	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination
Interfere with a Recording/Recording Device	10 Penalty Days	20 Penalty Days	30 Penalty Days
Improper/Wrongful: Damage Persons Property	5 Penalty Days	10 Penalty Days	20 Penalty Days
Discourtesy	1 Penalty Day	5 Penalty Days	10 Penalty Days
Offensive Language	10 Penalty Days	20 Penalty Days	Termination

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

- Complexity of legal analysis as applied to the facts
- Level of dangerousness of the encounter or surroundings/urgency involved
- Good faith demonstrated by the member of the service and the absence of an intent to violate procedural or legal standards
- Escalation exhibited by the involved civilian(s)
- Member of the service attempted to de-escalate encounter
- Brief duration of encounter or limited impact upon/inconvenience to a civilian
- Potential for training to correct/rehabilitate behavior

Additional Potential Aggravating Factors

- Extended duration of encounter or significant interference with a civilian
- Invasiveness of the encounter
- The member of the service exhibited bad faith, intentionally violated procedural or legal standards, or recklessly disregarded those standards
- Use of a Stop/Question/Frisk to humiliate, demean or retaliate against an individual
- The officer's action was biased, gratuitous, retaliatory, intentional or reckless
- Biased, abusive or obscene language
- Distress/injury caused to the civilian
- Failure to explain the reason for a stop
- Failure to report incident or make required activity log entry
- Pretext based on membership in a protected class
- "Heatedness" or escalation of interaction by the member of the service
- Implied threat of force or violence (vocal or physical)
- Damage to property

False, Misleading and Inaccurate Statements

The following serves as guidance to determine the applicable charge(s) when a uniformed member of the service 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 official statements will be presumed to be termination, 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 will 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[58]
- 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.

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

A material fact may be distinguished from an insignificant, trivial, or unimportant detail.

- 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 culpability, such as a broad statement of "I didn't do anything wrong" or a "not guilty" plea in a criminal, civil or administrative proceeding, is not to be charged as a false statement. 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[59]; 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[60].

The purpose of this extremely narrow exception is to foster truthfulness when a member provides information during 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
- 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.

[59] This prong may be met if the retraction pertains to a statement made during an interview conducted under the provisions of Administrative Guide procedure 318-11, *Interrogation of Members of the Service*, and 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.

[60] 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.

Omissions – An omission is a fact material to the investigation 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[61].

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.

[61] See the discussion in False Statements for the elements "material" and "intentional".

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

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Intentionally Making a False Official Statement	Forced Separation	Termination	N/A
Intentionally Making a Misleading Official Statement	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination
Making an Inaccurate Official Statement, or Causing Same to be Made by Another	5 Penalty Days	10 Penalty Days	15 Penalty Days
Impeding an Investigation	20 Penalty Days	30 Penalty Days + Dismissal Probation	Termination

Additional Potential Aggravating Factors

- The additional expense in terms of time and resources required to further investigate a matter as a result of a false/misleading/inaccurate statement and impeding actions
- Adverse impact upon the outcome of the investigation
- The member's training and experience makes it likely that the member knows or should have known a material fact

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 or health conditions)
- 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
- A member's unique underlying stressors at the time of the statement
- Material facts would not be discovered but for the officer volunteering information

Domestic Violence Incidents

Additional Definition for Domestic Violence Incidents

Family/Household[62] – Family/Household includes persons who are legally married to one another, were formerly legally married to one another, related by marriage (affinity), related by blood (consanguinity), have a child in common regardless of whether such persons have been married or have lived together at any time, not related by consanguinity (blood) or affinity (marriage) and who are, or have been, in an intimate relationship regardless of whether such persons have lived together at any time, currently living together in a family-type relationship, or formerly lived together in a family-type relationship.

Presumptive Penalties for Domestic Violence Incidents Involving Family/Household

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Physical Act(s) of Domestic Violence/Family Offense[63]	N/A	30 Suspension Days + Dismissal Probation + Counseling – 24 week OASAS program[64]	Termination
Physical Act(s) of Domestic Violence/Family Offense with[65]: • Previous determination by the Department that the member committed physical act(s) of domestic violence[66]; or • Clear and convincing evidence demonstrates that the member of the service previously committed physical act(s) of domestic violence whether or not previously reported and/or substantiated[67]; or • Found guilty in a criminal proceeding for a domestic violence crime[68]; or • The act results in a serious physical injury; or • The act results in significant physical injuries and/or injuries generally indicative of sustained or prolonged physical acts, or • Order of Protection violated. • Strangulation	Forced Separation	Termination	N/A

[62] See Patrol Guide procedure 208-36, *Family Offenses/Domestic Violence*.
[63] See Commission to Combat Police Corruption, Eighteenth Annual Report of the Commission, August 2017 at p. 73.
[64] 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.
[65] 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.
[66] See Eighteenth Annual Report at p. 71.
[67] 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.
[68] See Eighteenth Annual Report at p. 53.

Non-physical Act(s) of Domestic Violence/Family Offense[69]	20 Penalty Days + Other Conditions (e.g. counseling, as deemed appropriate)	30 Penalty Days + Other Conditions (e.g. counseling, as deemed appropriate)	Termination
Non-physical Act(s) of Domestic Violence/Family Offense with: • Previous determination by the Department that the member committed an act of domestic violence; or • Alcohol related/involved; or • Weapon of any type (other than firearm) used or threatened; or • Endangering the welfare of a child; or • Other situations deemed appropriate based upon the facts and circumstances (e.g. threats, stalking, etc.).	30 Penalty Days + Other Conditions (e.g. counseling, as deemed appropriate)	30 Penalty Days + Dismissal Probation + Other Conditions (e.g. counseling, as deemed appropriate)	Termination
Use, Threatened Use, or Menacing with a Firearm	Forced Separation	Termination	N/A
Violation of an Order of Protection (first offense)	20 Penalty Days + Other Conditions (e.g. counseling, as deemed appropriate)	30 Suspension Days + Other Conditions (e.g. counseling, as deemed appropriate)	Termination
Violation of an Order of Protection (second offense)	Forced Separation	Termination	N/A

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[70]
- 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
- The likelihood of recurrence, the member's role in the altercation (e.g. primary, only, or co-aggressor) and any other relevant factors will also be considered[71]

[69] Non-physical acts of domestic violence/family offenses Include, but are not limited to, verbal threats, stalking, harassment, coercion, and destruction of property.

[70] 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.

[71] 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.

- Medical Division Assessment[72]
    - The Director of the Psychological Evaluation Section will, in each case of a domestic violence allegation, conduct an assessment of the member of the service concerned to determine whether separation on medical and/or fitness for duty grounds should be considered
    - The Director of the Counseling Services Unit will evaluate each case of domestic violence at inception to determine whether the member would benefit from a particular counseling 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 forfeited. 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.

Aggravating Factor	Presumptive Additional Penalty
Alcohol a Factor in the Incident	10 Penalty Days*
Calling or Showing Up at the Victim's Place of Employment	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 member of the service)	10 Penalty Days
Failure to Report/Notify	5 Penalty Days

[72] These assessments occur following the incident and do not preclude the later imposition of the 24-week counseling program as a condition of dismissal probation.

Failure to Safeguard Firearm During a DV Incident	15 Penalty Days
Harassing the Victim/Witness	10 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 constituting Serious Physical Injury)	10 Suspension Days – Termination (see Force Section)
Preventing 911 Calls/Obstructing Seeking Assistance	15 Penalty Days
Preventing Victim from Leaving Premises/Vehicle	10 Penalty Days
Stalking	20 Penalty Days
Vulnerable Victim (elderly, incapacitated, etc.)	15 Penalty Days
Weapon/Instrument Used (other than firearm)	10 Penalty Days

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

Additional Potential Mitigating Factors

- The other party is the primary aggressor in a physical altercation
- Subject member of the service 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

Presumptive Penalties for Driving While Impaired/Intoxicated

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Driving While Ability Impaired/Driving While Intoxicated[73]	N/A	30 Suspension Days + 20 Penalty Days + Dismissal Probation + Cooperation w/ Counseling + Ordered Breath Testing	Termination
Driving While Ability Impaired/Driving While Intoxicated with any of the following: • Member on Entry-Level Probation; or • Felony Criminal Conviction or Conviction of an Oath of Office Violation; or • DWI involving Death or Serious Physical Injury to another person; or • Leaving the scene of a collision involving an injury to another person; or • DWI while On-Duty; or • DWI with Serious Traffic Violation, or Multiple Traffic Violations; or • Prior DWI History; or • DWI while on Dismissal Probation; or • Failure to comply with the Department's Ordered Breath Testing Program; or • Failed test as part of Ordered Breath Testing; or • Any other conduct deemed by the Police Commissioner to be an aggravating factor warranting Dismissal/Forced Separation	Forced Separation	Termination	N/A
Refusal to Submit to Breathalyzer or Other Appropriate Test	15 Penalty Days	30 Suspension Days + Dismissal Probation	Termination

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
- When considering the penalty range for refusal or failure to submit to a Breathalyzer or other appropriate test, the impact upon the investigation, Departmental operations and any impact upon civilian victims will be considered

[73] See New York Vehicle and Traffic Law, Art. 31 § 1192.

- The Director of the Psychological Evaluation Section, in each case of a DWI allegation, conducts an assessment of the member concerned to determine whether separation on medical and/or fitness for duty grounds should be considered
- The Director of the Counseling Services Unit evaluates each case of DWI at inception in order to determine which type of counseling (inpatient versus outpatient) will most benefit the member and/or whether any other type of counseling should be mandated

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
Any Non-Serious Physical Injury to Another	5 Suspension Days
Collision with Object	5 Penalty Days
Collision with Other Vehicles	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
Firearm Lost	20 Penalty Days
Firearm on Person	5 Penalty Days
Firearm Unsecured in Vehicle	10 Penalty Days
Leaving the Scene of a collision	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	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Accidental Firearm Discharge/Negligence on the Part of the Member (with injury to another)	N/A	30 Suspension Days* + Dismissal Probation	Termination
Accidental Firearm Discharge (self-inflicted injury or significant property damage)	N/A	20 Penalty Days	Termination
Accidental Firearm Discharge (no injury and/or minor property damage)	N/A	15 Penalty Days	30 Penalty Days + Dismissal Probation
Allowing a Civilian to handle Firearm	N/A	15 Penalty Days	30 Penalty Days
Fail to Notify the Department About Firearm Acquisition	N/A	5 Penalty Days	10 Penalty Days
Fail to Safeguard Firearm (not resulting in loss)	N/A	15 Penalty Days	30 Penalty Days
Fail to Safeguard Firearm (resulting in loss or possession by another)	N/A	20 Penalty Days	30 Penalty Days + Dismissal Probation
Failure to Report Improper Discharge	N/A	10 Penalty Days	20 Penalty Days
Failure to Report Lost Firearm	N/A	10 Penalty Days	20 Penalty Days
Firearm Discharge at or from a Moving Vehicle, Outside Department Guidelines not Resulting in Serious Physical Injury	N/A	20 Penalty Days	30 Penalty Days + Dismissal Probation
Firearm Misconduct Involving Risk to Child	N/A	30 Penalty Days	Termination
Possession/Use of an Unauthorized Firearm	N/A	10 Penalty Days	20 Penalty Days

Use of Unauthorized Ammunition	N/A	3 Penalty Days	6 Penalty Days
Use of Unauthorized Holster/Fail to Utilize a Holster	N/A	3 Penalty Days	6 Penalty Days
Misuse of a Firearm while Unfit for Duty	Forced Separation	Termination	N/A

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

Ingesting Controlled Substances, Marihuana/THC, Banned Substances and Excessive/Unexcused Use of Prescription Drugs[74]

Additional Definitions

Controlled Substances[75]: 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:

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

Marihuana/Tetrahydrocannabinol ("THC"): Marihuana is defined under NY Public Health Law § 3302(21) and the Federal Controlled Substances Act 21 U.S.C. § 812.[76] THC is believed to be the primary psychoactive component of marihuana.

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.[77]

[74] The NYPD is a drug-free workplace as defined under 41 U.S.C. § 8101 and NYPD employees are prohibited from using controlled substances. Under 41 U.S.C. § 8103, the Department must adhere to these drug-free requirements in order to receive federal grant funding. Additionally, the Federal Gun Control Act, 18 U.S.C. § 922, prohibits anyone who uses a controlled substance, as that term is defined under the Federal Controlled Substances Act, from possessing a firearm.
[75] See the Controlled Substances Act, 21 U.S.C. §§ 808 – 904.
[76] Includes all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
[77] The list of substances in Appendix A is subject to change at any time. See also, www.nsfsport.com.

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

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Positive Ordered or Random Drug Screening Test Showing Positive for Use of Schedule I or Schedule II Drugs	N/A	Termination	N/A
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	N/A	Termination	N/A
Possession of a Schedule I or Schedule II Drug	N/A	Termination	N/A
Refusal to Submit to an Ordered or Random Drug Screening Test	N/A	Termination	N/A
Attempt to Alter or Mask an Ordered or Random Screening Test	N/A	Termination	N/A
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	Forced Separation	Termination	N/A
Ingestion of a Banned Substance	Forced Separation	Termination	N/A
Possession of Drug Paraphernalia (without a positive ordered or random drug screening test result)	45 Penalty Days + Dismissal Probation +Ordered Drug Screening Tests	60 Penalty Days + Dismissal Probation + Ordered Drug Screening Tests[78]	Termination

[78] 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's electronic portal under the "Directives & Manuals" section.[79] Members are required to remain cognizant of the Department's rules and regulations. The following chart depicts the presumptive penalties for violations that are commonly adjudicated through Charges and 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.

Presumptive Penalties for Violation of Department Rules and Regulations – Adjudicated by Charges and Specifications[80]

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Accessing Confidential Information Without Police Necessity[81]	5 Penalty Days	10 Penalty Days	20 Penalty Days
Body Worn Camera – Unintentional Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time	N/A	Training	1 Penalty Day
Body Worn Camera - Negligent Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time	Training	1 Penalty Day	3 Penalty Days
Body Worn Camera - Negligent Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time AND the Underlying Incident is the Subject of an Investigation	1 Penalty Day	3 Penalty Days	5 Penalty Days

[79] See https://portal.nypd.org/pages/DirectivesAndManuals.aspx

[80] 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. In such cases, the violations may be addressed as aggravating factors related to other acts of misconduct or may be addressed at the command level if there are no associated acts of misconduct being adjudicated through charges and specifications.

[81] See, Patrol Guide procedure 203-22, *Department Confidentiality Policy*.

Body Worn Camera - Intentional or Reckless Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time	10 Penalty Days	20 Penalty Days	30 Penalty Days
Conduct Prejudicial to the Good Order and Efficiency of the Department	Training	N/A	Termination
Conducting Personal Business While On Duty	5 Penalty Days	10 Penalty Days	15 Penalty Days
Criminal Association	15 Penalty Days	20 Penalty Days	30 Penalty Days
Fail to Comply with a Lawful Order	15 Penalty Days	20 Penalty Days	30 Penalty Days
Fail to Follow DARP/Vehicle Tow Procedures	5 Penalty Days	10 Penalty Days	20 Penalty Days
Fail to Invoice Property	5 Penalty Days	10 Penalty Days	20 Penalty Days
Fail to Prepare a Required Report	3 Penalty Days	5 Penalty Days	10 Penalty Days
Fail to Document an Investigative Encounter	3 Penalty Days	5 Penalty Days	10 Penalty Days
Fail to Remain Alert	5 Penalty Days	10 Penalty Days	20 Penalty Days
Fail to Safeguard Prisoner Resulting in Escape	10 Penalty Days	20 Penalty Days	30 Penalty Days
Fail to Supervise	15 Penalty Days	20 Penalty Days	30 Penalty Days
Fail to Take Police Action	10 Penalty Days	20 Penalty Days	Termination
Fail to report a racial profiling or bias-based law enforcement action	5 Penalty Days	10 Penalty Days	20 Penalty Days
Improper Downloading/Disseminating of Department Reports/Data	10 Penalty Days	20 Penalty Days	30 Penalty Days
Improper Downloading/Disseminating of Offensive Material	10 Penalty Days	20 Penalty Days	30 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)	15 Penalty Days	20 Penalty Days	30 Penalty Days

Misuse of technology listed under the POST Act[82]	Training	15 Penalty Days	30 Penalty Days
Insubordination	15 Penalty Days	20 Penalty Days	30 Penalty Days
Making an Unauthorized Radio Transmission	5 Penalty Days	10 Penalty Days	20 Penalty Days
Misuse of Computer, Email, or Mobile Digital devices[83]	5 Penalty Days	10 Penalty Days	20 Penalty Days
Misuse of Time*	N/A	15+ Penalty Days + Forfeiture of Time & Leave Balance and/or Restitution	N/A
Off Post	3 Penalty Days	5 Penalty Days	10 Penalty Days
Out of Residence While on Sick Leave	5 Penalty Days	10 Penalty Days	20 Penalty Days
Residing outside residence Counties	N/A	20 Penalty Days	30 Penalty Days +DP
Possess/Acquire/Publish Child Pornography	Forced Separation	Termination	N/A
Racial Profiling/Bias-Based Policing[84]	Forced Separation	Termination	N/A
Unauthorized Release of Confidential Information to the News Media or other Third Parties[85]	20 Penalty Days	30 Penalty Days	30 Penalty Days + Dismissal Probation
Using Department Logo, Letterhead, Personnel, Resources, etc. for Non-Official Purpose/without Permission	5 Penalty Days	10 Penalty Days	20 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.*

[82] The Public Oversight of Surveillance Technology (POST) Act requires the NYPD to publish impact and use policies for the surveillance technologies used by the department. The department categorizes thirty-six different types of surveillance technology. Impact and Use Policies for surveillance technology can be found at, www1.nyc.gov/site/nypd/about/about-nypd/public-comment.page.

[83] See, Patrol Guide procedures 219-32, *Department Mobile Digital Devices*, 203-27 *Department Email Policy* and 203-10 *Public Contact – Prohibited Conduct*.

[84] See Patrol Guide procedure 203-25, *Department Policy Prohibiting Racial Profiling and Bias-Based Policing.*

[85] See Patrol Guide procedure 212-77, *Release of Information to News Media*.

Off-Duty Misconduct & Prohibited Conduct Generally

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 on- and off-duty deportment and conduct. The following chart provides presumptive penalties for acts of misconduct that typically occur off-duty, however, this does not preclude the application of these penalties if the conduct occurs while on-duty. Committing acts of misconduct described below while on-duty may be an aggravating factor in assessing the appropriate penalty.

Presumptive Penalties for Off-Duty Misconduct & Prohibited Conduct

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Animal Cruelty	N/A	30 Penalty Days + Dismissal Probation	Termination
Consuming Intoxicants While in Uniform	N/A	30 Penalty Days + Dismissal Probation	Termination
Displaying a Weapon While Off-Duty	10 Penalty Days	15 Penalty Days	20 Penalty Days
Dispute/Failure to Comply with On-Duty Law Enforcement Officer While Off-Duty	10 Penalty Days	15 Penalty Days	20 Penalty Days
Fail to Identify Self to Responding Officers at the Scene of a Police Incident	5 Penalty Days	10 Penalty Days	15 Penalty Days
Fail to Remain at the Scene of a Police Incident	1 Penalty Day	5 Penalty Days	10 Penalty Days
Fail to Report Incident or Notify the Department of Involvement in a Police Incident	1 Penalty Day	5 Penalty Days	10 Penalty Days
Financial Restrictions – Prohibited[86]	10 Penalty Days + Divesture of Interest	20 Penalty Days + Divesture of Interest	30 Penalty Days + Divesture of Interest
Hate Speech[87]	Forced Separation	Termination	N/A

[86] See Patrol Guide procedures 203-13 *Financial Restrictions – Prohibited Acts* and 203-14 *Financial Restrictions – Prohibited Interests.*

[87] Such misconduct may apply to activity covered by the following Patrol Guide procedures: 203-32, *Personal Social Media Accounts and Policy*, 203-28, *Department Social Media Accounts and Policy*, 203-10, *Public Contact – Prohibited Conduct,* and *205-36, Employment Discrimination*.

Misrepresentations Regarding Contractual or Financial Matters (e.g. Military Duty Status, Housing, Mortgages, etc.)	N/A	30 Suspension Days + Dismissal Probation	Termination
Off-Duty Employment – Prohibited Employment or Application Denied	10 Penalty Days	15 Penalty Days	25 Penalty Days
Off-Duty Employment – Unauthorized/Authorization Denied or Expired	5 Penalty Days	10 Penalty Days	15 Penalty Days
Operating a Vehicle in a Reckless Manner	15 Penalty Days	20 Penalty Days	30 Penalty Days + Dismissal Probation
Public Assistance – Apply for or Obtain Benefits Without Justification or Qualification	Forced Separation	Termination	N/A
Unfit for Duty	N/A	30 Penalty Days + Dismissal Probation + Ordered Breath Testing + Cooperation with Counseling	Termination
Vehicle Insurance – Causing the Incorrect Rate to be Applied	5 Penalty Days	10 Penalty Days	15 Penalty Days
Vehicle Identification Plate/Placard Misuse[88]	5 Penalty Days	10 Penalty Days	20 Penalty Days

Definition of Hate Speech:

Speech or other form of expression that is intended to intimidate, attack, or threaten/incite violence against a person or group on the basis of national origin, ethnicity, color, religion, gender, gender identity, sexual orientation, disability or other protected class. Hate Speech is more egregious than "Offensive Language" and may not be language that merely offends or insults an individual or is considered rude, distasteful or offensive but rather shocks the conscience. A charge of Hate Speech will only be sustained when the language so clearly damages the employee's ability to continue to perform their job responsibilities, damages the ability of co-workers to perform their own duties or has such an effect on good order and discipline that it damages the credibility of the Department or the Department's ability to provide services and fulfill its mission.

[88] Examples of placard abuse not covered in the sections on Command Discipline may include, but is not limited to, misconduct such as duplicating a placard for another's use (e.g. family member) or using/creating an unauthorized placard when one is not assigned to the member of the service.

Equal Employment Opportunity Division and the Discipline System

Since the enactment of Title VII of the Civil Rights Act, a number of categories that are considered employment discrimination have been established 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 ("EEOD"), a sub-unit of OEI, is responsible for the prevention and investigation of employment discrimination claims. EEOD investigations occur under the guidance and supervision of the Deputy Commissioner of Equity and Inclusion.

The EEOD 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 EEOD investigator will promptly and thoroughly investigate the allegations. When an informal or formal complaint is made, it is EEOD's 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, EEOD 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 member of the service's history of substantiated misconduct, if any, and input from the victim.

In most cases in which there has been a determination that the allegations are substantiated, the Deputy Commissioner of Equity and Inclusion 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 service of Charges and Specifications. The EEOD will make recommendations, where appropriate, regarding whether a transfer of the member of the service is appropriate. In cases where the member of the service is a probationary member of the Department (either entry-level, dismissal or promotion probation), the EEOD will make recommendations regarding the extension of probation, dismissal and/or demotion to the member of the service's former civil service title.

Presumptive Penalties for Equal Employment Opportunity Violations

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Breach of Confidentiality	10 Penalty Days	15 Penalty Days	30 Penalty Days
Disparaging Remarks Based on Membership in a Protected Class	10 Penalty Days	20 Penalty Days	Termination
Disparate Treatment Based on Membership in a Protected Class	N/A	30 Penalty Days	Termination
Display of Offensive Material Based[89] on Membership in a Protected Class	10 Penalty Days	20 Penalty Days	30 Penalty Days

[89] See Patrol Guide Procedure 205-37, *Sexual, Ethnic, Racial, Religious, or Other Discriminatory Slurs Through Display of Offensive Material*.

Failure to Report EEO Allegations	5 Penalty Days	10 Penalty Days	20 Penalty Days
Retaliation	20 Penalty Days	30 Penalty Days	Termination
Sexual Harassment (verbal)	10 Penalty Days	20 Penalty Days	Termination
Sexual Harassment (suggestive touching)	N/A	25 Penalty Days	Termination
Sexual Harassment (overt sexual touching/intimate physical contact)	30 Suspension Days + Dismissal Probation	Termination	N/A
Sexual Harassment (habitual/predatory behavior)	Forced Separation	Termination	N/A

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

Race/Ethnicity	Creed
Gender (Sex or Gender Identity)	Prior Record of Arrest or Conviction
National Origin	Predisposing Genetic Characteristics/Genetic Information
Color	Consumer Credit History/Payment History
Religion (Including attire)	Caregiver Status
Disability	Status as a Victim of Domestic Violence, Sex Offenses or Stalking
Military Status	Partnership Status
Immigration or Citizenship Status	Unemployment Status
Age	Familial Status
Marital Status	Sexual and Reproductive Health Decisions
Sexual Orientation	Hairstyle Based on Race or Religion

Additional Potential Aggravating Factors

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

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"). The A-CD and B-CD permit the commander of the unit involved to address minor misconduct/rule violations and set the penalty within the established ranges for each type of CD. For acts of misconduct enumerated in the Guidelines that are adjudicated by CD, commanders will impose penalties that are consistent with the presumptive penalties described herein, while considering relevant aggravating and mitigating factors. The C-CD is only issued by the Department Advocate for certain enumerated offenses and utilized in lieu of Charges and Specifications. An A-CD carries a penalty range from oral 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[90]. The Department Advocate may direct that a disciplinary matter be adjudicated through CD in lieu of Charges and Specifications when appropriate.

Adjudicated by Schedule A Command Discipline[91]

MISCONDUCT – SCHEDULE "A" CD
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

[90] Vacation days and or accrued compensatory time may be forfeited through the Command Discipline process.
[91] See Administrative Guide Procedure 318-01, *Command Discipline and Authorized Penalties*.

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 (“Placard”) 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[92]

MISCONDUCT – SCHEDULE "B" CD
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[93]

A C-CD 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 C-CD 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 C-CD inappropriate. At the direction of the Deputy Commissioner, Department Advocate, the assigned member from the Department Advocate's Office will prepare the C-CD and forward it 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 the presumptive penalty.

In accordance with Administrative Guide procedures 318-01, *Command Discipline and Authorized Penalties* and 318-03, *Preparation of Charges and Specification or Schedule C Command Discipline*, the Borough Adjutant (or equivalent) will adjudicate the Schedule C-Command Discipline promptly, adhering to the guidance/direction provided by the Department 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 Administrative Guide procedure 318-03, *Preparation of Charges and Specifications or Schedule C Command Discipline*.

[92] 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.

[93] See Administrative Guide procedure 318-01, *Command Discipline and Authorized Penalties*.

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 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.

MISCONDUCT – SCHEDULE "C" CD
Accidental Firearm Discharge[94]
Computer Misuse with Dissemination of Information
Conducting Personal Business While On-Duty
Duplication of Parking Permit for Member's Own Use
Fail to Invoice 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[95]

[94] Following review by the Use-of-Force Review Board and final determination by the Police Commissioner.

[95] Social Media means a category of internet-based resources that integrate user generated content and user 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 procedures 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.