



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

Introduction

Effective July 15, 2020, the New York City Council passed, and the Mayor signed, Local Law 69 to amend the administrative code of the City of New York to require the New York City Police Department (NYPD) develop an internal disciplinary matrix. In accordance with Local Law 69, the Department published the Disciplinary System Penalty Guidelines which became effective on January 15, 2021. In July 2021, the department conducted a review of the NYPD Disciplinary Penalty Guidelines to determine the efficacy of the new penalty guidelines and identify any areas which required clarification, correction or additional information. On February 15, 2022 revised guidelines were published.

The NYPD Disciplinary Penalty Guidelines is intended to be a continually evolving document with the goal of providing fair, equitable and appropriate outcomes while bringing transparency to the process. With this in mind, recommendations were submitted from various stakeholders to further this goal.

The recommended changes will address Violations of Department Rules and Regulations; Abuse of Authority; Discourtesy and Offensive Language; Domestic Violence Incidents; Firearm-Related Incidents; Off-Duty Misconduct & Prohibited Conduct Generally; revisions to Resolution of Disciplinary Charges; Penalty Guidelines; Controlled Substance Violations & Marihuana Laws.

A complete list of all recommended changes is listed below.

Violations of Department Rules and Regulations

Three additional misconduct categories are proposed to address improper relationships, reporting requirements to Internal Affairs and workplace conduct standards. Two revisions to preparation of reports and property deficiencies are proposed.

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Engage in a relationship beyond the scope of official duties <i>*New Footnote</i>	10 Penalty Days	20 Penalty Days	30 Penalty Days + DP
Fail to report misconduct to Internal Affairs	5 Penalty Days	10 Penalty Days	20 Penalty Days
Unprofessional conduct in the work place	Training	10 Penalty Days	20 Penalty Days
Fail to invoice Property	3 Penalty Days	10 Penalty Days	20 Penalty Days
Fail to prepare a Required Report	Training	5 Penalty Days	10 Penalty Days

New Footnote: See Administrative Guide procedure 304-06, Prohibited Conduct

Abuse of Authority, Discourtesy and Offensive Language

Five categories of misconduct were revised to better reflect the goal of providing fair, equitable and appropriate outcomes.

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Unlawful Search/Entry Premises (entry involves substantial physical presence and/or remaining on the premises)	Training	10 Penalty Days	20 Penalty Days
Threat of Force/Police Enforcement/Notification to Outside Agency/Removal to Hospital - without Justification	Training	10 Penalty Days	20 Penalty Days
Failure to Process Civilian Complaint	Training	10 Penalty Days	20 Penalty Days
Discourtesy	Training	5 Penalty Days	10 Penalty Days
Offensive Language	1 Penalty Day	20 Penalty Days	Termination

An additional misconduct category will be added to the list of aggravating factors which may lead to additional penalties currently outlined under the section:

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

Aggravating Factor	Presumptive Additional Penalty
Using status as a law enforcement officer to intimidate victim, etc.	10 Penalty Days

Under presumptive penalties for Firearm-Related incidents, a mitigated penalty will be incorporated into accidental firearm discharges which result in no injuries and/or minor property damage.

Presumptive Penalties for Firearm-Related Incidents

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Accidental Firearm Discharge (no injury and/or minor property damage)	5 Penalty Days	15 Penalty Days	30 Penalty Days + Dismissal Probation

A new misconduct category will be added to the Off-Duty/Prohibited Acts section and a mitigated penalty will be included for Unfit for Duty misconduct.

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Unfit for Duty	10 Penalty Days	30 Penalty Days + Dismissal Probation + Ordered Breath Testing + Cooperation with Counseling	Termination
Non Domestic Physical Altercation	10 Penalty Days	20 Penalty Days	Termination
<i>*New Footnote</i>			

**New Footnote: The circumstances surrounding the altercation and severity/lack of injuries will be a factor when determining aggravating or mitigating penalties. Any verbal altercation absent any additional misconduct will not result in disciplinary action.*

Language within the *Settlement Agreements* section under Resolution of Disciplinary Charges, and *Calculation of Penalties* under the Penalty Guidelines section has been revised to clarify the intent of this process.

The sections will now read:

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. A legal analysis and a penalty determination may take into account prosecutorial discretion which advances the Department's disciplinary goals. Cases falling under the jurisdiction of the CCRB may be resolved by a similar settlement process.

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 consecutive penalties are then aggregated to address each distinct act of misconduct not related to each other by fact, scheme or pattern. 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 or where the separate acts of misconduct are inherent in each other and inseparable. 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, and cannot be separated because they are intrinsic to each other, a single concurrent penalty will be applied.

Similarly, if a member of service has been determined to have failed to conduct a proper investigation or failed to properly supervise, the additional charges for failing to take a complaint report, aided report, stop report, complete activity log entries, or make proper notifications, for example, will not be considered separately. In these cases a concurrent penalty should be applied.

**Insert Footnote*

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.

**Footnote to be added: In cases where the lesser misconduct consists of acts that may also be incorporated into the same incident that gives rise to the greater charge, the penalty days may run concurrently. For example, when a charge consists of an overall failure to act, any lesser act such as failing to make a proper notification or complete necessary paperwork, may be incorporated into the greater charge. This does not remove discretion to apply an aggravated penalty in cases where there are multiple lesser acts and a higher penalty, other than the presumptive one, is warranted.*

References to repealed NY Public Health Law § 3302(21) are removed from the Controlled Substances section related to Marihuana/THC and the Unexcused Use of Prescription Drugs.

Ingesting Controlled Substances, Marihuana/THC, Banned Substances and Excessive/Unexcused Use of Prescription Drugs⁷⁴

Additional Definitions

Controlled Substances⁷⁵: 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 I 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 a schedule I substance listed in 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, stanozolol, 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.nsfpsport.com.

Conclusion

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

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