



PAB

**POLICE
ACCOUNTABILITY
BOARD**

Disciplinary Matrix Draft

Rochester Police Accountability Board.
City of Rochester, NY 245 E. Main St.

NOTICE OF PUBLIC COMMENT
PERIOD

The PAB announces the publication of the Disciplinary Matrix and seeks comment on the draft set of guidelines for discipline of officers from the Rochester Police Department.

The public comment period will run from October 3, 2022 to December 2, 2022.

You can submit comments online at rocpab.org You can submit comments by phone at 585-428-8852

You can submit comments by email at PABFeedback@CityofRochester.gov

You can submit written comments by mail or at our drop box located at 245 E. Main Street Rochester, NY 14604

Following the public comment period, PAB staff will incorporate all feedback into a revised set of draft recommendations. PAB staff will present the revised draft to the Board to approve, reject, or request a revision.

If the Board votes to approve the draft recommendations, the final approved version will be published at rocpab.org and transmitted to City Council, the Mayor, and the Chief of Police.

The Chief of Police is required to respond to the recommendations within thirty days.

The Chief's response will be published at rocpab.org.

PAB Staff Report
Draft Disciplinary Matrix for Public Comment

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INTRODUCTION

The Rochester Police Accountability Board is required to create a disciplinary matrix to provide guidelines for discipline of sworn Rochester Police Department Officers. Consistent with our commitment to be a community led organization we seek your input on how to improve this proposed matrix. We will incorporate your comments into a revised draft and ultimately approve a disciplinary matrix. Below you will find an explanation of a proposed matrix drafted by staff, a copy of the proposed matrix, and supporting materials that will help you understand and comment on the matrix.

A disciplinary matrix is a set of guidelines for the decision-making process in police discipline. Our proposed matrix provides guidelines for the Police Accountability Board to recommend disciplinary outcomes for sworn officers in the Rochester Police Department. A disciplinary matrix does not define how non-sworn officers are disciplined, nor does it replace the civil justice system, the criminal justice system, or other forms of democratic accountability. It is only one piece of an accountability system for policing.

A disciplinary matrix can take many formats, but the most common type includes a list of rules that are classified by recommended penalties or outcomes. The Rochester Police Department already has a disciplinary matrix called penalty guidelines. The full CBA penalty guidelines are included as an Exhibit to this report. The CBA penalty guidelines specifies maximum penalties and looks like this:

	1 st Incident	2 nd Incident	3 rd Incident
Class 1	3 day suspension	10 day suspension	20 day suspension
Class 2	10 day suspension	30 day suspension	60 day suspension
Class 3	Dismissal	Dismissal	Dismissal

The proposed Matrix that follows this explanation recommends a number of changes to the CBA penalty guidelines by including several different features. Below is an explanation of how these features differ from the CBA penalty guidelines and how we came to recommend those features.

I. Public Comment Process

The staff of the Police Accountability Board presents a draft disciplinary matrix for public comment. This draft will be amended consistent with input from the community, the Rochester Police Department (RPD), the Community Justice Advisory Board, the Police Accountability Board Alliance, and the President of the Rochester Police Locust Club. We will hold a formal public comment period for sixty days and incorporate those comments into an amended draft. The amended draft will be presented to the Police Accountability Board to accept, reject, or modify.

We will seek and accept additional comments after the sixty-day public comment to continually improve the disciplinary matrix. We anticipate reviewing the matrix at least quarterly during the first year after it is adopted.

II. Methodology

This proposed matrix is created consistent with the City Charter's direction to create "A written, consistent, progressive, and transparent tool or rubric to determine discipline for misconduct. The disciplinary matrix shall determine a range of disciplinary action options for misconduct." City Charter 18-2.

To develop a proposed matrix we reviewed the Rochester Police Department's existing penalty guidelines contained in the 2016-2019 collective bargaining agreement between the City of Rochester and the Rochester Police Locust Club ("CBA penalty guidelines").¹ We reviewed the civil service laws of New York State.² We reviewed disciplinary matrices from other cities and performed analysis on those matrices to determine how specific matrix features contributed to disciplinary outcomes.³ We collected best practices and critiques from academic literature.⁴ We consulted with community members who have experienced police misconduct. We consulted with experts who have experience using and drafting disciplinary matrices and reviewed a proposal for a disciplinary matrix for Rochester.⁵ We also reviewed RPDs publicly published disciplinary files.⁶ Those disciplinary files give an incomplete picture of discipline at RPD because it only includes sustained discipline for current officers at the time the dataset was released. Similarly, the dataset references other sustained discipline that has not been released and in some cases is heavily redacted.⁷ We requested complete disciplinary files from RPD. RPD did not release the information we requested to allow for a full and complete analysis of its disciplinary history.⁸

¹ Agreement between the City of Rochester and Rochester Police Locust Club, Inc. July 1, 2016 to June 30, 2019.

² See N.Y. Civil Service Law § 75 et. Seq.

³ See e.g. New York City Police Department Disciplinary System Penalty Guidelines https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compet-e-pdf;

⁴ See e.g. Udi Ofer, Getting It Right: Building Effective Civilian Review Boards to Oversee Police, 46 Seton Hall L. Rev. 1033 (2016); Griffin Edwards, Stephen Rushin and Joseph Colquitt, The Effects of Voluntary and Presumptive Sentencing Guidelines, 98 Tex. L. Rev. 1 (2019); and Carissa Byrne Hessick, Why Are Only Bad Acts Good Sentencing Factors?, 88 B.U. L. Rev. 1109 (2008); Jon M. Shane, Police Employee Disciplinary matrix: An Emerging Concept 15 Police Quarterly 62 (2012).

⁵ Barbara Lacker-Ware and Theodore Forsyth, The Case for an Independent Police Accountability System (2017) <https://www.reuters.com/investigates/special-report/assets/usa-police-rochester-union/cpr-report.pdf>

⁶ Rochester Police Department Discipline Database <https://www.cityofrochester.gov/policediscipline/>

⁷ See e.g. Rochester Police Department Discipline Database PSS 17-1114 (referencing discipline of officers other than the subject of the report. Those officers are not present in the database).

⁸ We made a written request for the complete disciplinary history of all current RPD officers including sustained allegations and complaints on June 22, 2022 date. As of publication RPD has not responded to the request. If we acquire that information we will analyze it for opportunities to improve the matrix.

III. Public Comment Priorities

In seeking public comment, we are particularly interested in comments on the classification of rules and regulations and general orders and whether the range of outcomes or penalties is appropriate. However, we accept comments on all aspects of the matrix. Our ranking of misconduct was informed by our analysis of the actual outcomes released by RPD and the definitions of misconduct classifications in other matrices. Similarly, the number and type of disciplinary outcomes is derived from outcomes specified in the CBA Penalty Guidelines, outcomes listed in other matrices, and restorative outcomes used in the District of Columbia.⁹

The final proposed matrix should reflect community values about how to address police misconduct. We can incorporate your values if we hear them directly from you.

We prioritize comments that come within the first 60 days after publication to allow the Board to begin hearing cases. However, we will review comments that come after the first sixty days as we continue to assess and amend the matrix.

IV. Proposed Matrix Features

A. Penalty levels, Progressive discipline, and ranges of sanctions

The proposed matrix is required to include “clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.”¹⁰ This matrix accomplishes those directives by including a grid that classifies potential wrongdoing “misconducts” into 5 groups and applies a presumptive penalty to each group. Those presumptive penalties increase for prior instances of misconduct that are sustained by either the Board or the Chief of Police.

The grid feature is consistent with RPD’s current CBA penalty guidelines, but differs in three important ways (1) the proposed matrix has a presumptive outcome (2) the proposed matrix has more categories (3) the proposed matrix requires written justification to depart from a presumptive outcome.

A presumptive outcome is the penalty or outcome that should ordinarily result from violating a rule. For example, the matrix recommends that ordinarily an officer who fails to make an appropriate sick leave request should be counseled on the appropriate procedure. An officer who improperly uses deadly force should be terminated.

The proposed matrix has five categories instead of three. We included more categories to more closely match the conduct to the outcome.

The presumptive penalties increase at each step and require written justification for departing from the presumed penalty. The Board or Police Chief should document why they increase or decrease the presumptive penalty, if they change the presumptive penalty.

⁹ Office of the Attorney General for the District of Columbia. “Restorative Justice Program.” <https://oag.dc.gov/public-safety/restorative-justice-program>

¹⁰ City Charter § 18-5(B)

The CBA penalty guidelines are maximums and excuse the Chief from explaining when they impose a reduced penalty. Under the “Discipline Guidelines & Classification of Penalties” the collective bargaining agreement lays out a table of penalties and writes that “Penalties may be assessed up to the maximum listed below for infractions as classified in accordance with Appendix 1.”¹¹ It then lists a series of maximum penalties that increase based on severity of the misconduct and number of prior sustained incidents.¹² The CBA penalty guidelines require that the Chief “explain his reasoning in writing” whenever he exceeds or reduces the penalties in the matrix.¹³ However, the instruction to explain a reduction is ineffective, because the penalties listed in the table of penalties are only maximums.¹⁴ There is no way to give a reduced penalty because the authorized penalty range is no penalty up to the maximum. Similarly, we did not find any instances in the publicly available data where the Chief exceeded the maximums.¹⁵ Therefore, the CBA penalty guidelines do not include a requirement to explain selecting a non-severe penalty for a severely classified misconduct. The proposed matrix does require a written explanation for departing from the presumptive outcome.

B. Aggravating and Mitigating Factors

The proposed matrix includes a list of factors that the Board or Chief of Police may consider to change the disciplinary outcome. An aggravating factor increases the severity of the outcome. A mitigating factor decreases the severity. This proposed matrix lists examples of aggravating and mitigating factors.

The proposed matrix defines aggravation and mitigation by reference to culpability and harm. Less culpability or harm suggests a less severe punishment and more culpability or harm suggests a more severe punishment. Most disciplinary matrices that we reviewed included aggravating and mitigating factors.¹⁶ However, it is possible to draft a matrix without aggravating or mitigating factors. Aggravating and mitigating factors give the decision maker more discretion to fit the punishment to the misconduct. Other critiques of aggravating and mitigating factors suggest that the types of factors in favor of aggravation and mitigation are already be present in the charged misconduct. The proposed matrix responds to this critique by increasing the total number of misconduct charges, defining the outcomes with greater specificity, and clarifying that the presumptive outcome is the most appropriate outcome most of the time. In RPD’s current discipline system there is no public written classification when an officer violates a General Order. Instead, all of these misconducts fall under broad rule violations that can result in a maximum penalty of termination. For example, an officer might be charged

¹¹ Agreement between the City of Rochester and Rochester Police Locust Club, Inc. July 1, 2016 to June 30, 2019. Appendix 1.

¹² *Id.*

¹³ *Id.* Appendix 1 § B.

¹⁴ *Id.* Appendix 1 § A.

¹⁵ Rochester Police Department Discipline Database.

¹⁶ See e.g. New York City Police Department Disciplinary System Penalty Guidelines https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compete-.pdf and Denver Disciplinary Matrix <https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/discipline-handbook/handbook-final.pdf>

with (1) violation of the use of force; and (2) failing to complete a sick leave request form under the same rule in RPD’s regulations.¹⁷

The proposed matrix allows for decision makers to tailor outcomes by using aggravating and mitigating factors but recommends that in most instances the presumptive outcome is the correct outcome to impose.

C. The most severe appropriate charge

The proposed matrix requires that the decision maker utilize the most serious appropriate charge when determining what discipline to impose. Similarly, board staff are directed to choose the most serious readily provable charge when recommending disciplinary charges to the Board. This proposed matrix utilizes this policy in response to the actual disciplinary decisions of the RPD. In our review of publicly available sustained disciplinary charges we found that that RPD routinely sustained charges that were less serious than the described activity.¹⁸ This contributes to two problems. First, it distorts the data about what conduct is disciplined. Second, it distorts whether the discipline for the underlying conduct was appropriate. This policy choice addresses those problems by constraining choices when Board Staff selects what charges to recommend and constraining choices when the Board determines that wrongdoing occurred.

D. Expanded Discipline Outcomes

The proposed matrix recommends a greater variety of disciplinary outcomes that supplement or replace the ordinary disciplinary outcomes. There are two varieties of outcomes standard and alternative. An alternative outcome may supplement or replace a standard outcome. The board must document that they have considered alternative outcomes, whether they have decided to adopt or reject alternative outcomes and their justification for selecting these outcomes.

Standard Outcomes	Alternative Outcomes
Training	Remuneration to the victim
Counseling	Remuneration to the community
Written Reprimand	Engaging in a restorative circle
Suspension	Public service
Termination	Apology
	Demotion
	Fines (up to \$100 for damaged RPD property)
	Driver training
	Transfer
	Employee assistance

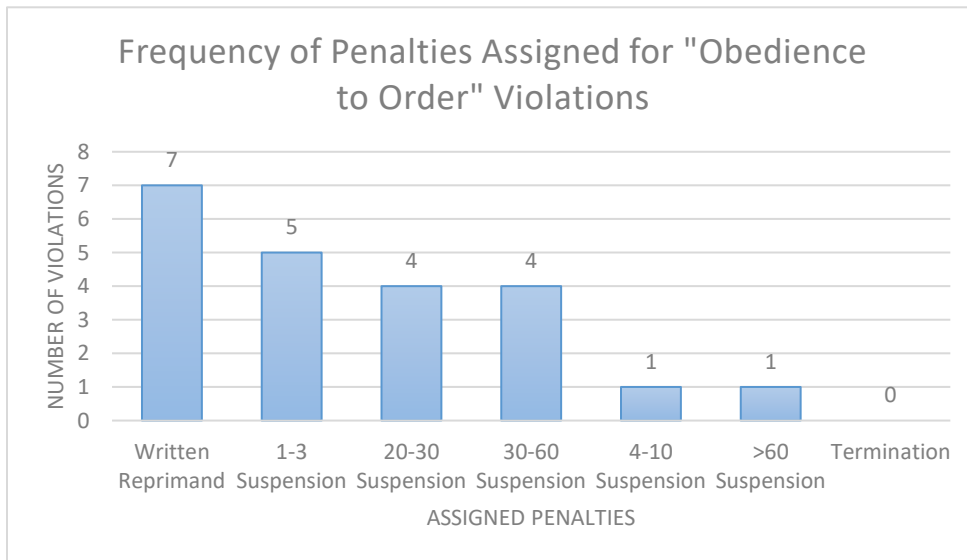
¹⁷ Rochester Police Department Rules and Regulations Rule 1.3.

¹⁸ Rochester Police Department Discipline Database See Frequency of Penalties Assigned for Obedience to Order Violations Figure.

E. General Orders Categorized

The Rochester Police Department has a codified set of rules and regulations.¹⁹ Additionally, RPD directs officers through a number of other documents including General Orders.²⁰ All rules and regulations are classified in the CBA penalty guidelines as a class 1, 2, or 3 penalty.²¹ But all other ways of directing officers to act are not classified in the penalty guidelines. We believe this leads to three problems: First, that officers are not reasonably apprised of the likely penalty for the conduct. Second, that decision makers do not have sufficient guidance to make consistent decisions for like violations of general orders. Third, that the public has insufficient information to evaluate whether imposed penalties are in or outside the norms.

The Rules and Regulations grant decision makers too much discretion to impose any penalty for violating a general order. In particular, Rule 1.3 Obedience to Orders and Rule 1.1 Obedience to Laws, Rules, and Ordinance are class 3 penalties, meaning that the Chief may impose discipline up to termination for violating the catchall category. General orders are diverse and cover matters as trivial as moving a computer without authorization, General Order 380 (IV)(A), and as serious as using deadly force. General Order 340. Under the CBA penalty guidelines violating any rule may result in termination, but violating rules most commonly results in a written reprimand.²² More than half of the time the result is a written reprimand or a one to three-day suspension.²³



The proposed matrix classifies each general order that is capable of subjecting an officer to discipline within 5 categories. Under the proposed matrix officers, the public, and decision makers have greater clarity on the presumed

¹⁹ Rochester Police Department Rules and Regulations

²⁰ See General Order 115 Written Directive System.

²¹ Agreement between the City of Rochester and Rochester Police Locust Club, Inc. July 1, 2016 to June 30, 2019 Appendix 1.

²² Rochester Police Department Discipline Database See Frequency of Penalties Assigned for Obedience to Order Violations Figure.

²³ Id.

outcome. This choice provides greater clarity and matches the severity of the conduct to the presumed penalty.

Similarly, we classify violations of the body worn camera policy. The body worn camera policy is not categorized by the CBA penalty guidelines, but RPD has imposed discipline for violating body worn camera policy.²⁴ In at least one instance that discipline was for Rule 1.2 “familiarity with Laws, Ordinances and Rules” and specific sections of the body worn camera manual.²⁵ Specifying penalties directly in the manual communicates the penalty for specific substantive violations of policy.

F. An optional restorative process that runs in parallel to an investigation

Our review of other cities disciplinary matrix revealed that some agencies utilized an optional restorative process as part of the disciplinary structure.²⁶ The proposed matrix suggests creating a parallel restorative process. On the recommendation of experts that we spoke to, we propose that the restorative process be fully voluntary, proceed in parallel (not in substitution) to the investigative process, and be administered by trained professionals. Implementing a restorative process would require hiring an outside service or panel of professionals willing and able to perform the service. We are surveying our community and investigating the RFP process to create and engage such a service.

In the interim the proposed matrix also includes two sets of outcomes: standard outcomes, and alternative outcomes. The Board is empowered to recommend alternative outcomes including a payment to an affected community member, a payment to a community fund from the RPD budget to pay for community harms (such as breaking down doors when exercising a warrant or inequitably policing the community). The board may also recommend engaging in a restorative circle which is a process designed to resolve disputes between a wrongdoer and the aggrieved, an apology, and public service. We recommend that any restorative process be fully voluntary, and if an officer or the department consents to a restorative outcome that no discipline be imposed unless and until the restorative outcome concludes. The board should account for any restorative outcome in evaluating the appropriate standard outcome.

G. The effect of command discipline on our conclusions

RPD has a separate disciplinary structure for “minor” infractions called command discipline.²⁷ Command discipline has shorter timelines to charge an officer, involves fewer procedural protections and can result in discipline only up to 3 days of suspension.²⁸ The Professional Standards Section does report out some statistics on command discipline.²⁹ However, it is

²⁴ See e.g. Rochester Police Disciplinary Records Database PSS 17-1049; 20-0073

²⁵ Rochester Police Disciplinary Records Database PSS 20-0073

²⁶ Office of the Attorney General for the District of Columbia. “Restorative Justice Program.”

<https://oag.dc.gov/public-safety/restorative-justice-program>

²⁷ Agreement between the City of Rochester and Rochester Police Locust Club, Inc. July 1, 2016 to June 30, 2019 Article 20 § 2.

²⁸ *Id.*

²⁹ Professional Standards Section Annual Reports <https://www.cityofrochester.gov/PSSAnnualReports/>

unclear if these are the only times command discipline is imposed or if PSS only reports whether complaints it investigates result in command discipline. One distorting feature of command discipline is that the records are destroyed or returned to the officer after one year of no further discipline.³⁰

The proposed matrix is consistent with command discipline and recommends that decision makers impose the presumptive penalties outlined in the proposed matrix.

³⁰ Agreement between the City of Rochester and Rochester Police Locust Club, Inc. July 1, 2016 to June 30, 2019 Article 20 § 2(G)

DISCIPLINARY MATRIX

Section 18 of the City Charter requires that the PAB create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines that guide PAB’s own recommendations regarding a response to misconduct. If PAB acquires legal authority to impose binding recommendations this document will be amended.

This disciplinary matrix is founded on the Rochester Police Department (RPD) general values, code of ethics, rules and regulations, and general orders. Under such values, the police department has sworn to:

- Serve mankind³¹
- Protect the innocent³²
- Maintain calmness and courage in the face of danger³³
- Obey laws and regulations³⁴
- Disallow personal biases and prejudice from influencing decision making³⁵
- Respect the Constitutional rights of all people³⁶

Incorporating these, and other core values of PAB and the community, these guidelines furnish the procedure for appropriate discipline of officers who fail to uphold these values.

I. Definitions

- Aggravating factors: Circumstances that increase the culpability of the officer or increase the harm of the misconduct such that the disciplinary outcome should increase in severity.
- Discipline: Any act intended to correct or punish misconduct such as counseling, training, written reprimand, salary reduction, fine, suspension, demotion, or termination.
- Exonerated: A finding at the conclusion of an investigation that, although the act at issue occurred, the subject officer’s actions were lawful and proper and within the scope of the subject officer’s authority under police department guidelines.
- Mitigating factors: Circumstances that decrease the culpability of the officer or decrease the harm of the misconduct such that the disciplinary outcome should decrease in severity.

³¹ Rochester Police Department Rules and Regulations, Law Enforcement Code of Ethics, 2 (Dec. 27, 2020).

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

- Not sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.
- Presumptive penalties: A penalty that must be imposed for the sustained violation of a given offense if no aggravating or mitigating factors are present.
- Progressive discipline: The process of implementing increasingly severe measures or penalties to address recurring instances of misconduct.
- Sustained: A finding at the conclusion of an investigation that there is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and committed misconduct.
- Unfounded: A finding at the conclusion of an investigation that the act that is the basis of the allegation did not occur.

II. Investigation Procedure

a. Cooperation

The PAB Rules for Investigation outline the procedure for the PAB to accept reports of misconduct, investigate misconduct, and refer reports of misconduct to other organizations including the Professional Standards Section (PSS) of the Rochester Police Department. These guidelines provide the PAB's recommendation for consistent and appropriate discipline for all circumstances where discipline is imposed against sworn staff of the Rochester Police Department.

b. Staff and Board Responsibility

The PAB Rules for Investigation outline the responsibilities of the Board and the staff of the PAB in conducting investigations and making determinations utilizing these guidelines.

III. Outcome Guidelines

a. Outcome Guidelines Explained

The purpose of the outcome guidelines in this Disciplinary Matrix is to set expectations for the Rochester Police Department (RPD) and the Police Accountability Board (PAB) and provide greater transparency to the public. The matrix makes officers aware of potential consequences for their actions and ensures that discipline is assigned in a fair and rational way.

b. Presumptive Outcomes

This matrix sets out presumptive outcomes for sustained acts of misconduct and violations of policy. A presumptive outcome is the assumed outcome that is appropriate for the specific act. It is not a mandatory minimum, but serves as the starting point for assigning discipline while analyzing the totality of the circumstances, including mitigating and aggravating factors.

In most cases the presumptive outcome should not be mitigated or aggravated to a different outcome. If outcomes are routinely or uniformly mitigated or aggravated the presumptive penalty should be re-evaluated to ensure the presumptive outcome and the ultimate outcomes of the disciplinary system are consistent with community and RPD values.

c. Mitigating and Aggravating Factors

This matrix facilitates outcomes that are designed to ensure consistency among similarly situated officers while allowing for a reasonable degree of mitigation or aggravation based on the totality of the circumstances and facts specific to each case. Mitigating factors are circumstances that do not excuse or justify the misconduct, but decrease the culpability of the misconduct or the harm of the misconduct and thus the disciplinary action taken. Aggravating factors are circumstances that increase the culpability of the misconduct or the harm of the misconduct and thus the disciplinary action taken. The presumptive penalty for each act of misconduct may be increased or decreased based on the presence of these factors. However, the presence of mitigating or aggravating factors does not automatically lead to the conclusion that departing from the presumptive penalty is necessary. Rather the factors must be weighed against each other and the totality of the circumstances must be considered. In particular, where the proposed aggravating or mitigating factor is already accounted for in the type of misconduct or duties of an officer it ordinarily will not result in departing from the presumptive outcome.

If the board determines that an action is mitigated or aggravated and it wishes to deviate from the presumptive penalty, it must document the reasons thoroughly and explain its reasoning in a memorandum. The board recommends that the police chief also document their reasoning if they depart from the presumptive penalty or the penalty recommended by the board.³⁷

i. Mitigating factors: Considering the totality of the circumstances, mitigating factors decrease culpability of the officer or decrease the harm of the misconduct. Examples include:

- The officer did not know the proper course of action and did not have access to sufficient training or experience relevant to the misconduct;
- The misconduct was not willful or deliberate;
- The officer attempted to de-escalate the situation;
- The officer accepted responsibility for the misconduct;
- Any mitigating or remedial acts taken by the officer prior to any complaint or investigation;
- Willingness to actively participate in restorative practices;
- The misconduct did not result in harm to a community member.

i. Aggravating factors: Considering the totality of the circumstances, aggravating factors increase the officer's culpability or increase the harm of the misconduct. Examples include:

³⁷ The City Charter requires that the police chief provide the board with a “written explanation of the exact discipline imposed in accordance with the matrix.” §§ 18-5(I)(10) and 18-F(J)(2) .

- The officer knew the proper course of action or had access to sufficient training or experience relevant to the misconduct. Past disciplinary history and counseling may inform whether the officer knew or should have known the proper course of action;
- The culpable mental state of the officer such as:
 - Intent;
 - Reckless disregard for the wellbeing of citizens.
- The officer was motivated by bias or prejudice;
- The officer was motivated by personal interest or gain, or to receive a benefit from the misconduct;
- The officer did not attempt to de-escalate the situation and there was an opportunity to attempt to do so;
- Lack of candor or cooperation throughout the investigation;
- Any attempt to interfere with the investigation or attempts to influence others from participating cooperatively in the investigation;
- Extent and nature of the harm or damage caused to persons or property;
- The role of the officer in the particular event (i.e.; the person is a supervisor on the scene of the incident).

ii. The effect of rank on discipline

An officer's rank and their role in a particular event will be considered when assessing an appropriate discipline penalty. An officer's supervisory status will generally be viewed as an aggravating factor, especially when the event in question occurred on duty. This is because supervisors operate under higher expectations to lead with sound judgment and hold their subordinates accountable.

Demotion may be an appropriate disciplinary outcome and should be considered in each case where an officer has been previously promoted. Demotion should be favored outcome where the misconduct indicates that an officer is unable, unwilling, or unfit to serve as a supervisor.

IV. Progressive Discipline

The disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix below.

Prior sustained violations increase the presumptive penalty regardless of severity or relationship to the current misconduct. When a prior violation is older than the time limitations listed below, it is not considered a prior sustained complaint and does not increase the severity of the outcome. The date of the prior sustained violation is the earlier of the date the Chief of Police imposed discipline or the PAB recommended discipline. The limitations are as follows:

- Violations of Level 1 have a limitation of 3 years
- Violations of Level 2 have a limitation of 4 years
- Violations of Level 3 have a limitation of 5 years

- Violations of Level 4 have a limitation of 7 years
- Violations of Level 5 have no limitation

V. Selecting charges

The decision maker should select the most serious appropriate charge. If the conduct shown from the investigation fits two different rules or general orders, the decision maker should ordinarily select the charge of a higher level. Additionally, this matrix recommends that where there is a more specific charge that covers the conduct, the decision maker prefer the more specific charge to the general charge.

An act of misconduct may be subject to or fit multiple definitions of proscribed conduct. In this case, a single penalty will be applied and will be determined based on the most serious appropriate category of misconduct. For example, an officer who drives a city vehicle while intoxicated may technically be unfit for duty, but will be disciplined according to the more serious rule regarding intoxication while driving.

a. A caution on “catchall categories.”

RPD rules and regulations contain catchall categories that cover broad swaths of conduct. In particular, Rules 1.1 Obedience to Laws, Ordinance and Rules and Rule 1.3 Obedience to Orders cover nearly all potential misconduct of an officer. This matrix recommends that where there is a more specific charge that covers the conduct, the decision maker prefer the more specific charge to the general charge. As an example, consider an officer who handcuffs a six-year-old child who is not a danger to himself or others. This violates general order 338(IV)(1). This also violates Rule 1.1 Obedience to Laws, Ordinances and Rules. General Order 338(IV)(1). is the more appropriate charge.

b. Aggregating charges

When an event that is subject to discipline contains multiple acts of misconduct by a single officer, each distinct act will be addressed and the penalties aggregated. In the event that the penalties or each distinct act aggregates at more than 90 days, the matrix recommends termination as the outcome.

c. Use of force

RPD governs the use of force through its general orders. The two most frequently cited general orders in sustained discipline are General Orders 335 and 337.³⁸ Each of those general orders have numerous subsections that describe different levels of force or rules relating to reporting force. As a result, this proposed matrix classifies, with particularity, the different subsections of those general orders into the misconduct levels. The decision maker should select the most serious appropriate charge that matches the circumstance. The decision maker may conclude that

³⁸ PAB Disciplinary Analysis July 2022

more than one subsection has been violated by multiple distinct acts and should aggregate those charges consistent with the aggregation rule above.

VI. Selecting Outcomes

The matrix utilizes a set of standard outcomes as the presumptive outcomes. After selecting a charge and determining the officer’s prior disciplinary history, the board will utilize the matrix to determine the presumptive outcome. On the vertical axis the levels of misconduct and on the horizontal axis are the number of violations. The matrix provides an outcome for each level and number of violations.

The outcomes included as presumptive penalties are training, counseling, written reprimand, suspension, and termination.

Additionally, the matrix requires that the decision maker consider alternative outcomes. Many of these alternative outcomes are directed at correcting the officer’s behavior, providing the officer additional resources, restoring a victim of misconduct, or restoring the community. Some of these alternative outcomes are traditional penalties that could supplant or add to standard outcomes (transfer, demotion, fine).

An alternative outcome may supplement or replace a standard outcome. The board must document that they have considered alternative outcomes, whether they have decided to adopt or reject an alternative outcome, and their justification for selecting these outcomes.

Standard Outcomes	Alternative Outcomes
Training	Remuneration to the victim
Counseling	Remuneration to the community
Written Reprimand	Engaging in a restorative circle
Suspension	Public service
Termination	Apology
	Fines
	Driver training
	Transfer
	Employee assistance
	Demotion

VII. Optional Restorative Process

This matrix recommends a parallel restorative process utilizing the restorative circle model. This process must be fully voluntary, proceed in parallel (not in substitution) to the investigative process, and be administered by trained professionals. To be full voluntary both the officer and the reporter must consent to participating. Implementing a restorative process would require hiring or contracting with professionals willing and able to perform the service. We are surveying our community and investigating the RFP process to create and engage such a service.

In the interim the proposed matrix also includes two sets of outcomes: standard outcomes, and alternative outcomes. The Board is empowered to recommend alternative outcomes, including a payment to an affected community member, a payment to a community fund from the RPD budget to pay for community harms (such as breaking down doors when executing a warrant) engaging in a restorative circle which is a process designed to resolve disputes between a wrongdoer and the aggrieved, an apology, and public service. We recommend that any restorative process be fully voluntary, and if an officer or the department consents to a restorative outcome that no discipline be imposed unless and until the restorative outcome concludes. The board should account for any restorative outcome in evaluating the appropriate standard outcome.

VIII. Categories of Misconduct

Level	Description	Number of Prior Sustained Violations			
		0	1	2	3 or more
1	Minimal negative impacts on the community or department image or operations with no impact on relationships with other agencies.	Written reprimand / counseling and training		3-day suspension	10- day suspension
2	More than minimal negative impact on the community or department image or operations, or relationships with other officers, or agencies.	5-day suspension	10-day suspension	20-day suspension	30 day suspension
3	Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies.	10-day suspension	20-day suspension	30-day suspension	60-day suspension
4	Significant negative impact on the community or department image or operations, or relationships with other officers, or agencies..	60-day suspension		Termination	
5	Criminal misdemeanor, felony, or severe misconduct, or; major negative impact on the community or department image or operations, or relationships with other officers, or agencies, or; demonstrates serious lack of integrity, ethics, or character and includes conduct that could effectively disqualify an officer from continued employment as a law enforcement officer.	Termination			