

**The Bill Blackwood
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Discipline: A Fair Process for All Agencies

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ABSTRACT

Police discipline is relevant to contemporary law enforcement because every agency has to train and lead their department, and when dealing with people and law enforcement, discipline is a natural part of the process. Law enforcement officers are held to a higher standard than regular citizens and should be held more accountable when they engage in police misconduct. Discipline has to be fairly administered, and there has to be consistency when meting out discipline, regardless of agency size or location.

The position of the researcher is that officers should be disciplined the same regardless of agency size. Officer misconduct has been reported with every law enforcement agency throughout the nation, but how they are disciplined for that misconduct varies from one agency to another. It is possible an officer working for a smaller agency can be punished more severely for the same conduct than if he had committed the misconduct at a larger agency. A discipline matrix can reduce factors like police culture or the “blue code” of not reporting, supervisor bias, and leniency. A matrix has a recommended level of punishment assigned to the misconduct committed.

Klockars (1997) has done extensive work on the study of officer misconduct and found that punishment for conduct committed varies and differs from one agency to another. He theorized that this is attributed to what he calls an environment of integrity. Klockars concluded that if the environment is changed, then the behavior of officers could be affected. Guthrie (1996) stated that the Fresno Police Department changed the environment of integrity within their agency and wanted to ensure that punishment was fair and consistent. They developed a matrix to achieve that goal.

The conclusion drawn from this position paper is that bias and subculture need to be taken out of the disciplinary process because it can create an unequal and unfair process for all stakeholders involved. A discipline matrix can reduce the amount of litigation for an agency if a clear set of guidelines and a prescribed level of discipline can be used. The citizens and the public as a whole want the police department to be accountable for their actions. They want a process they can feel comfortable with for the police department in their community, and they want to know it has clearly defined rules for misconduct.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	2
Counter Position	5
Conclusion/Recommendation	9
References	11
Appendix	

INTRODUCTION

Corruption and officer misconduct are common issues in any law enforcement agency. However, there is little to no consistency in the discipline meted out by agencies when addressing corruption and misconduct. Officers are held to a higher standard and should be held accountable regardless of agency and size. Many agencies are known for being corrupt agencies, and other agencies have fewer discipline problems. Officers should be disciplined the same regardless of agency size.

If agencies are disciplining the same, then the culture or reputation of certain larger agencies should not vary from the culture or reputation of another agency. The percentages of officers engaged in misconduct should be no different between agencies. Slack and Smalley (2005) did a study on the number of policy violations within the Boston Police Department and found 116 cases of officer misconduct. The conduct was described as falsifying police reports, tampering with evidence, abusing drugs and alcohol, and physically assaulting civilians. The records found that only 30 officers were terminated, resigned, or left the profession (as cited in Boston's Police Discipline Program: a work in progress, 2005). In the Charleston Police Department, there were 24 allegations of excessive force in 1998, and only three were sustained of the 11 that were actually investigated. Written reprimand was the most common disciplinary action taken for allegations of excessive force (West Virginia Advisory Committee to the U.S. Commission on Civil Rights, 2004).

It is clear that both agencies classified their misconduct differently, and the results of their discipline had different consequences for some of the same behavior. One agency had terminations and resignations whereas another gave written

reprimands. Charleston is a much smaller agency than Boston; however, the misconduct was the same, and the discipline should have been the same or similar. Research examined the factors for when officers are treated differently from one agency to another and what the constraints or internal mechanisms were that kept administrators and supervisors from enacting the same decision. Research concluded that law enforcement should discipline officers the same, regardless of agency size, using a clear pattern or matrix to discipline.

POSITION

A discipline matrix should be used by all agencies as a discipline guide for administering discipline throughout the department. The matrix will have a number of prescribed discipline levels for each situation and the proposed punishment for each. The matrix will take into account any changes based on an officer's previous disciplinary record and prior performance.

According to Walker (2003), a discipline matrix is similar to the sentencing guidelines used in the federal criminal courts because sentencing guidelines and a police matrix are made using a grid table. The grid table is a system with a prescribed level of discipline for the prescribed misconduct. The offense seriousness is placed on one axis and any prior disciplinary history is placed on the other axis. The matrix gives police agencies a range of prescribed disciplinary action for a particular offense and shows disciplinary levels and steps for each level of discipline. This can accomplish the goal of showing the agency's values and clearly communicating that within the agency.

In an automated system of discipline (matrix), officers are rated by a number of factors, which ensures discipline is fair and consistent. Guthrie (1996) pointed out that

the police chief in Fresno, California created an automated system within his agency to measure the amount of discipline and to make sure that it was consistent and fair for all officers within the department. The system took into account a number of variables to eliminate concerns of unfairness or bias. The system was also able to withstand legal liability due to the process being instituted and proven to be fair and consistent.

Walker (2003) stated, "Lack of consistency in discipline is a special problem in large agencies where responsibility for discipline is decentralized among commanders at the precinct level" (p. 2). A matrix can show what the agency values and can make sure that there is accountability by defining the appropriate discipline. It can also assess the minimum discipline standard. It makes discipline fair and consistent and keeps the command officers accountable. The matrix could be used as a model for all agencies by establishing minimum and maximum standards for each conduct.

Walker (2003) asserted that a matrix assists in fairness because it can take an administrative personal bias and an organization's culture out of the prescribed decision making when it comes to discipline. The matrix can communicate to a department the values and standards, and it sets the guidelines in clear written language. The expectations and consequences for misconduct is stated and provided to the agency. The matrix is a simple way to tell citizens that misconduct will not be tolerated and that there are levels of discipline prescribed for certain violations. The matrix can be used for training and coaching or mentoring. This is essential in curtailing misconduct and deterring unacceptable behavior. The discipline levels and types of punishment prescribed on the matrix can change as needs change and society changes.

Discipline in law enforcement is needed, and the top administrators want it to be clearly defined, fair, and consistent. Stronger rules have established procedures and policies to ensure that the disciplinary process is administered fairly. Although procedures and policies can be influenced by the political culture, there are national, state, and local guidelines that specifically dictate how discipline is applied and administered that guarantee due process and equal protection against unfair practices or discipline.

Swanson, Territo, and Taylor (1993) stated: "Today with court rulings and civil service rules, discipline must be based on fair, consistent and equitable procedures" (p. 363). These procedures were enacted to provide a safeguard for every officer that faces a disciplinary action and faces fear of termination of employment as a possible action. They can seek these safeguards so their basic rights are protected.

Today, the Fifth and Fourteenth Amendments to the U.S. Constitution gives every individual the right to life and liberty and states that no person will be deprived of property without due process of law. It also gives every person equal protection of the laws. Police departments, along with police unions, have established certain guidelines that are consistent for dealing with the disciplinary process to reflect the equal protection and due process rights.

Martinez (1995) stated that internal affairs divisions were created in most agencies to help prevent an agency from overstepping or abusing the basic protections and due process awarded to an individual. Court rulings have also enhanced the equal protections of individuals, and these rulings made it easier for employers to follow certain guidelines when enacting discipline. There are four court rulings that have

drastically affected the way law enforcement officers are disciplined. The National Relations Board v. J. Wiengarten (1975) gave the employee the right to legal representation. *Morrisey v. Brewer* gave the criteria for police agencies to use when conducting internal affairs investigations. *Garrity v. New Jersey* protects officers against self-incrimination during a criminal investigation. *Cleveland Board of Education v. Loudermill* gave the employee the right to a hearing. The hearing is mainly supported by major police and labor unions, civilian review boards, and most human resources departments. The fundamental basis of these court rulings and civil service rules were to protect the officer from unfair practices, and the implementation of a matrix could keep the agency from excessive litigation and unfair practices.

A matrix can be reviewed by police labor unions and civil review boards, and it can assist during collective bargaining agreements to help make discipline fair. These rights are applied to ensure equal protection, and employers know the basic provisions that are awarded to the employee. Martinez (1995) asserted, "The general theme of this legislation is simply to ensure a fair and equitable working relationship between the employer and its employee" (p. 6). This is stated to provide a fair and equitable system that is understood and clearly defined.

COUNTER POSITION

There are several factors to examine when an officer commits misconduct, and the prescribed discipline is not always applied to every individual the same way. Walker (2003) noted that "absolute consistency in discipline does not always result in fair outcomes" (p. 6). Police officers are inherently different, and each incident or

circumstance should be taken into consideration. Such factors could include but are not limited to their time in service or their prior performance and/or their conduct.

In a research project by Martinez (1995), it was stated that “Police Administrators must have a philosophical basis and hold to certain values before any formal disciplinary process can be fair and equitable” (p. 6). Klockars (1997) also called this the “prevention and control mechanisms” (p. 2). These are programs and statements or understandings that police agencies establish to ensure that police officers know what the rules are and to prevent them from engaging or participating in those types of activities. Police agencies have enacted mission statements and core values training. These statements are part of the organization’s values and are stressed by the administrators. It declares to each officer what is acceptable and what will not be tolerated. These statements indicate that agencies will not tolerate misbehavior and that discipline will be imposed if an officer is in violation. Most agencies have enacted these basic protections in what they call their agencies’ Bill of Rights.

Another factor that negates the use of a discipline matrix is that misconduct and discipline is defined by what Klockars (1997) and his research called an organization theory of police culture. He identified agencies that had their own internal mechanisms for reporting or, in some cases, not reporting misconduct and by simply changing the environment of integrity, the way agencies discipline without a matrix could be changed.

Klockars (1997), who is a renowned professor in the study of public integrity, examined the organizational theory of police culture and found that 30 agencies differed on how seriously officers viewed behavior and what they would report and not report; he called this the environment of integrity. Klockars (1997) noted during research of police

integrity in 30 agencies that a couple of the agencies rated the punishment or discipline imposed from a series of given scenarios, which included excessive force, theft, and bribes as being perceived as severe misconduct. The other agencies believed that the punishment or discipline was not perceived as severe but normal or fair. Klockers (1997) theorized that law enforcement has an underground culture of not letting officers report misconduct and overlooks certain conduct committed by their fellow officers. This theory is called the “code or the blue curtain” (Klockars, Ivkovich, and Haberfeld (p. 3). Furthermore, he identified officers who viewed certain violations of misconduct as less than serious conduct, and those officers and superiors would not discipline officers based on their belief about that misconduct.

The culture of police agencies overlooking certain types of police misconduct is especially noticeable in larger police agencies because they may be divided into larger sectors or areas of their jurisdiction. Their area may be several miles away from police headquarters and commanded by another administrator. Smaller agencies may have a centralized area and may be controlled by just one administrator or commander. The commander can directly influence discipline differently from the organization or the agency head.

Klockars, Ivkovich, and Haberfeld (2005) cited their theory of the “code or blue curtain” to be true “because the loyalty and support those officers come to expect from one another can be a source of the failure to report misconduct, the agencies regularly rotated new supervisors between service areas, patrol districts, and patrol teams” (p. 8). The loyalty between a supervisor and employee can be broken if supervisors are given only a certain number of years in one area or division.

The practice of correcting officer misconduct and meting out discipline in a fair and consistent way can be achieved according to Klockars through proven strategies as opposed to absolute discipline. Most of the problem is changing a culture of not reporting misconduct or reluctance to report and discipline when misconduct is committed. Klockars, Ivkovich, and Haberfeld (2005) stated that the “relative success the agencies had in encouraging officers to come forward derived from five strategies used to weaken an officer’s tendency not to report misconduct” (p. 7). This was completed by either punishing an officer for not reporting another officer or by punishing a supervisor for failing to discipline an officer for misconduct. An agency would also severely punish an officer for lying while under investigation. If an officer was caught, they would be terminated. Another agency rewarded officers for reporting misconduct, which created a paradigm shift from thinking poorly of one officer reporting another. The agency kept the reward confidential. Lastly, two agencies would change supervisors between patrol districts and precincts to another district or precinct to reduce supervisory loyalty and support.

Police unions, civil courts, and civilian review boards are other factors that may affect discipline and a discipline matrix. The geographical region and culture of the police unions, civil courts, and civilian review boards could affect the administration of discipline. Court rulings, collective bargaining, and civil protections vary from agency to agency, large and small (Employee Disciplinary Matrix, 2006). According to Anglen (2002), arbitrators have viewed the matrix as ineffective, and discipline is handed down unfairly. Because of the differences in the unions, courts, and boards, discipline is

handed down differently, and there is not a minimum or maximum standard for a certain type of misconduct that refutes the institution of a matrix.

CONCLUSION

According to Iris (2002), police officers are often in the community and are the symbol of their municipality or jurisdiction because they are seen in the community, and they are present and readily identifiable within their community. Because of that, they are rightfully held to a higher standard if they commit any violations of city, county, state, or federal laws. Discipline of an employee can take into consideration several factors, including the culture of the agency's environment and the "Code" or "The Blue line," which is cultivated in a culture of not reporting misconduct. Supervisory loyalty may influence one agency from imposing stiffer sanctions against an employee than another agency.

Even with those factors hindering the fair and equitable treatment and administration of discipline, there are plenty of rules and regulations that are put in place to ensure that discipline is fair. Police agencies have protections and regulations in place because of court rulings, collective bargaining, and basic civil rights protections. Other agencies, large and small, have enacted those basic protections in what they call their agency's Bill of Rights.

According to Guthrie (1996), the Fresno Police Department and the Providence Police Department are using automation. The Fresno Police Department has prepared a system that uses the matrix to measure and determine what types of discipline should be prescribed. The system uses a number of variables to derive the level and type of discipline based on the seriousness of the offense and the performance of the officer.

Klockars (1997) showed that in the agencies he studied, all of the agencies perceived that the most serious violations deserved the most serious types of discipline. Taking the bias and subculture out of the disciplinary process can create an equal and fair process for all stakeholders involved. Using a clear set of guidelines and a prescribed level of discipline can also reduce the amount of litigation incurred by an agency. The research has shown that citizens and the public as a whole want the police departments to be accountable for their actions. They want a process they can feel comfortable with for the police department in their community, and they want to know it has clearly defined rules for misconduct. Often the sanctions of officers are shrouded in secrecy, and with a universally applied discipline matrix, the public can see that discipline is being applied fairly and judiciously proportional to the violation.

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APPENDIX

(Reprinted with the permission of Providence External Review Authority)

Providence External Revue Authority

Disciplinary Matrix



Sec. 18 1/2-2. Providence External Review Authority (PERA).

“Within thirty (30) days of the completion of an evidentiary hearing, the hearing panel shall issue a written report containing findings of fact; a determination of whether or not the complaint has been sustained by a preponderance of the evidence; if applicable, the level of violation described in the disciplinary matrix developed by PERA and the chief of police; and a recommendation of discipline. When a complaint is sustained, the findings of fact and the determination shall be submitted to the chief of police. The chief shall impose discipline based upon the level of violation as found in the disciplinary matrix, to be promulgated by the authority in accordance with subsection (e)(1). The chief of police shall also provide the authority, the city council, and the mayor with a written explanation of the reason(s) for his/her disciplinary decision. The hearing panel report and the police chief’s explanation for his/her decision shall be available to the public provided that the name of the complainant(s) and/or respondent(s) shall be kept confidential,” in accordance with Rhode Island General Laws §38-2-2.

This is a confidential document for the purposes of review by PERA Board Members, City of Providence Mayor and Chief of Police only.

Operational Definitions

Coaching: Corrective action by the officer's unit supervisor.

Demotion / Loss of Rank: Loss of rank refers to demotion from a formally recognized organizational position with authority over other members. Loss of rank is a significant sanction because it represents a loss of earnings, a loss of status (in both the formal and informal organization), and a liability in career growth.

Discipline Worksheet: Contains aggravating and mitigating circumstances, if any, and documents the findings of the discipline panel. A completed form bears the signature of the Chief of Police indicating his/her final decision.

Enhanced Violation: A repeated offense within a specified time period that causes the recommended action to be elevated to a higher category level.

Exceptionally Clear: The complaint was investigated, but a finding cannot be determined due to lack of cooperation from the complainant, death, employee resigns, etc.

Exonerated: The incident did occur, but was lawful and proper.

Fitness for Duty Evaluation: Evaluation to determine if an officer is fit for duty as a result of a finding of misconduct.

Formal Complaint: Allegations that identify specific Providence Police Department Rules and Regulations and/or City of Providence Civil Services rules allegedly violated by a Providence Police Department employee.

General Complaint: Information containing allegations of misconduct on the part of any Providence Police Department employee from outside or within the department.

Habitual Offender: An officer who has been sanctioned more than once for the same offense or type of offense.

Mandatory Training: If the officer's misconduct was a product of misfeasance, a reasonable sanction may be to provide the officer with additional mandatory training on the subject(s) of issue related to the misconduct.

Not Sustained: There is insufficient evidence to either prove or disprove the complaint.

Policy Failure: The complaint is true, but the employee's actions were consistent with Providence Police Department policy.

Progressive Discipline: Disciplinary procedures designed to provide consequences that are commensurate with the reasons or a cause for disciplinary action, i.e. the discipline imposed is appropriate for the misconduct.

Suspension: In a suspension an officer is barred from work with or without salary, for a designated period.

Reassignment: The sanction of reassignment is most appropriately used in cases in which an officer has been involved in misconduct associated with his or her current assignment.

Sustained Complaint/Violation: The complaint as supported by sufficient evidence to indicate an act of misconduct.

Termination of Employment: This is complete severance from the police department including salary, benefits, and any other reciprocal relationship between the officer and department.

Verbal or Written Reprimand: A reprimand is when the officer is officially admonished for his or her behavior. If the admonishment is in written form a copy shall be placed in the officer's personnel record.

Violation: A finding of misconduct on the part of a member of the Providence Police Department including but not limited to inappropriate language or conduct, harassment, theft or excessive use of force.

Violation Categories

The allegations of employee misconduct are divided into four categories. A minor violation is in the "A" category. When a violation becomes more serious or the employee is determined to be a habitual offender it progresses through the levels of categories "B", "C", and "D". The most serious violations are categorized as a "D" violation. Evidence uncovered during the investigation may raise or lower the original category level.

Category/Violation Definitions

If a complaint is sustained after the review, then the reviewing body assesses the sanction for the rule violation. Disciplinary alternatives usually depend on the seriousness and circumstances surrounding the rule violation, aggravating and mitigating factors, and the officer's personnel history. Several potential sanctions are available.

Category "A" Violation: Lowest level violation. Consequences are disciplinary and may include, but are not limited to coaching, counseling training, verbal or written reprimand.

Category “B” Violation: Second level violation. Consequences are disciplinary and may include, but are not limited to oral or written reprimands and/or suspension from duty.

Category “C” Violation: Third level violation. Consequences are disciplinary and may include, but are not limited to oral or written reprimands, suspension from duty, and/or demotion.

Category “D” Violation: Fourth level violation. Consequences are disciplinary and may include, but are not limited to suspension from duty, demotion or termination from employment.

1. Scope of authority. The authority shall receive complaints that allege misconduct by a police officer or officers, including, but not limited to, the following:

1.1 Inappropriate language or conduct. "Inappropriate language" shall mean harsh, violent, profane, or derogatory language or any action that demeans the dignity of an individual, including, but not limited to, profanity or ethnic, sexist, sexually oriented, religious or racial slurs.

1.2 Harassment. "Harassment" shall mean repeated unwarranted verbal or physical annoyances, abuse (whether physical, psychological or verbal), threats or demands.

1.3 Discrimination. In the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual or gender orientation, disability, age, gender, or economic status.

1.4 Theft. "Theft" shall mean the taking or concealing of any item or thing of value without the consent of the rightful owner and with the intent to deprive the rightful owner of that item or thing.

1.5 Excessive use of force. The use of greater physical force than reasonably necessary to repel an attacker or terminate resistance. It does not include force that is reasonably necessary to affect a lawful purpose.

2.1. Category “A” Violation **(Lowest Level Violation)**

Consequences may include, but are not limited to coaching, counseling training, verbal or written reprimand.

I. Description

- First occurrence of a minor violation.
- One sustained category “A” violation within three years enhances the second same or similar violation to a category “B.”

- Combination of any two sustained category “A” violations within three years enhances the third violation to a category “C”.

II. Possible Disciplinary Consequences

- Oral correction/ coaching
- Verbal or written reprimand
- Counseling
- Training
- Oral documented Reprimand
- Written Reprimand

2.2. Category “B” Violation **(Second Level Violation)**

Consequences are disciplinary and may include, but are not limited to oral or written reprimands and/or suspension from duty.

I. Description

- First occurrence of a more severe violation.
- Enhanced violation from category “A”.
- One sustained category “B” violation within three years enhances the second same or similar violation, to a category “C”.
- Combination of any two sustained category “B” violations within three years enhances the third violation to a category “D”.

II. Possible Disciplinary Consequences

-
- Oral documented Reprimand
- Written Reprimand
- Suspension of up to eighty (80) hours.

2.3. Category “C” Violation **(Third Level Violation)**

Consequences are disciplinary and may include, but are not limited to documented oral or written reprimand, punitive suspension from duty and /or demotion.

I. Description

- First occurrence of a major violation.
- Enhanced violation from category “A” or “B.”
- One sustained category “C” violation, within three years enhances the second same or similar category “C” violation to a category “D.”

II. Possible Disciplinary Consequences

- Training
- Counseling
- Consider conduct for fitness for duty evaluation referral
- Documented oral or Written Reprimand
- Up to 120 hours Suspension from duty
- Demotion
- Reassignment

2.4. Category “D” Violation **(Fourth Level Violation)**

Consequences are disciplinary and may include, but are not limited to suspension from duty, demotion and or termination from employment.

I. Description

- A major violation.
- Enhanced violation from category “B” or “C”.

II. Possible Disciplinary Consequences

- Training
- Counseling
- Consider conduct for fitness for duty evaluation referral.
- Suspension from duty for up to one year.
- Demotion
- Termination
- Reassignment

TABLE 1

<u>Category</u>	<u>1.A</u>	<u>2.B</u>	<u>3.C</u>	<u>4.D</u>
<u>I. Violation</u>	<ul style="list-style-type: none"> • Inappropriate language or conduct 	<ul style="list-style-type: none"> • Harassment • Discrimination 	<ul style="list-style-type: none"> • Theft • Excessive use of force 	<ul style="list-style-type: none"> • Theft • Excessive use of force
<u>II. Description</u>	<ul style="list-style-type: none"> • First occurrence of a minor violation. • One sustained category “A” violation within three years enhances the second same or similar violation to a category “B”. • Combination of any two sustained category “A” violations within three years enhances the third violation to a category “C”. 	<ul style="list-style-type: none"> • First occurrence of a more severe violation. • Enhanced violation from category “A”. • One sustained category “B” violation within three years enhances the second same or similar violation, to a category “C”. • Combination of any two sustained category “B” violations within three years enhances the third violation to a category “D”. 	<ul style="list-style-type: none"> • First occurrence of a major violation. • Enhanced violation from category “A” or “B.” • One sustained category “C” violation within three years enhances the second, same or similar category “C” violation to category “D”. 	<ul style="list-style-type: none"> • A major violation. • Enhanced violation from category “B” or “C”.
<u>III. Discipline</u>	<ul style="list-style-type: none"> • Oral correction/coaching • Verbal or written reprimand • Counseling • Training • Oral documented Reprimand • Written Reprimand 	<ul style="list-style-type: none"> • Oral documented Reprimand • Written reprimand • Suspension up to eighty (80) hours 	<ul style="list-style-type: none"> • Training • Counseling • Consider conduct for fitness for duty evaluation referral • Documented oral or Written Reprimand • Up to 120 hours suspension from duty • Demotion • Reassignment 	<ul style="list-style-type: none"> • Training • Counseling • Consider conduct for fitness for duty evaluation referral. • Suspension from duty for up to one year • Demotion • Termination • Reassignment