



Discipline in the NYPD
2018

Introduction

The vast majority of police officers 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.

When an allegation of misconduct is substantiated, disciplinary action is imposed to:

- Correct employee misconduct;
- Maintain the orderly functioning of the department;
- Ensure compliance to high standards of conduct and establish appropriate consequences for the failure to comply; and
- Assure the public that the department will hold employees accountable for misconduct.

Discipline must be imposed fairly and with equity. **Fairness** within a discipline system means taking the time and effort to objectively review the circumstances surrounding the alleged misconduct, including the reliability, intention and motivation of all witnesses, impact of the misconduct on the department and members of the public, the absence, presence and extent of damages, the level of training of the officer in question, and the history of the officer with the department, as well as other mitigating and aggravating factors. **Equity** within a discipline system means holding all employees accountable for unacceptable behavior. Unacceptable behavior for one is unacceptable for all, regardless of rank, demographic, assignment or tenure. Each disciplinary matter is unique, requires a comprehensive analysis, and must consider the totality of the circumstances.

What is Investigated

The department receives complaints regarding a wide variety of employee behavior, and then conducts thorough investigations to ascertain the veracity of these complaints. Complaints are received from the public, as well as from department personnel who have an obligation to report corruption or other misconduct of which they become aware, or as the result of proactive investigations by various entities within the department itself.¹

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

¹ The **Conflicts of Interest Board** is another independent City agency that refers alleged violations of the City's conflicts of interest laws to the Department of Investigation for further review. Numerous outside entities also examine policies and procedures of the Department regarding misconduct and discipline. The **Commission to Combat Police Corruption** performs audits, studies, and analyses of the Department's corruption controls. The **Inspector General for the New York City Police Department** investigates and makes recommendations regarding the operations, policies, programs, and practices of the Department.

behavior or criminal conduct. The department investigates allegations of criminal conduct in conjunction with the appropriate prosecutor's office. In these cases, administrative charges can also be levied because the offenses encompass corresponding violations of departmental policies and procedures.

Who Conducts the Investigation

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, enhanced drug testing, confidential informants, and undercover officers to investigate incoming complaints as well as to conduct pro-active investigations. IAB works closely with Investigation Units located within the various bureaus of the department to assist in identifying and exposing corruption. At the precinct level, the **Integrity Control Officer (ICO)** identifies and monitors misconduct within their designated jurisdictions, and assists IAB in any investigations that may arise.

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

Civilian complaints against officers regarding excessive force, abuse of authority, discourtesy, and offensive language (known collectively as FADO complaints) are investigated by the **Civilian Complaint Review Board (CCRB)**. The CCRB is an independent city agency authorized under the New York City Charter to investigate FADO civilian complaints with the cooperation of the NYPD. The CCRB then 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 between the NYPD and the CCRB, prosecutions for the most serious violations within these categories result in the filing of formal disciplinary charges and are handled by CCRB attorneys assigned to their Administrative Prosecution Unit.

To the extent any conduct by department employees is criminal in nature, New York City's **District Attorneys** and the **United States Attorneys' Offices** may also conduct investigations. Once it is ascertained that a department employee 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 Disciplinary Process

When an allegation(s) of misconduct against a police officer is investigated and evidence is found to show that the event did occur, that the officer 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 against an officer may result in disciplinary action.

Discipline in the police department is imposed in a variety of ways, largely determined by the seriousness of the substantiated misconduct allegation. The least serious violations result in an “**instruction**,” a method of re-training through which a commanding officer instructs an officer on proper procedures, or a “**reprimand**,” where officers are admonished for low level violations. Other less serious violations of department policies can also be addressed through discipline imposed at the command level, called “**command discipline**.” Command disciplines allow a commanding officer to impose discipline without resorting to filing formal disciplinary charges.

The types of violations subject to punishment by command discipline are outlined in “Patrol Guide 206-03,” and include behavior such as improper uniform, reporting late for duty, and loss of department property. Depending on the severity of the violation, commanding officers may impose penalties that range from ‘warn and admonish’ to revoking up to ten days of vacation time.²

Most substantiated allegations of serious misconduct are handled by the **Department Advocate’s Office**. Staffed by civilian attorneys, and augmented by a complement of uniformed and civilian personnel, the Department Advocate’s Office evaluates substantiated allegations of serious misconduct, files administrative charges known as “**Charges and Specifications**” against police officers, recommends appropriate disciplinary penalties, and prosecutes disciplinary matters. Police officers who face disciplinary charges and specifications may elect to resolve the matter by entering into a **settlement agreement**. They also have the right to decline a settlement agreement and have the case heard at a **department trial**. Both settlement agreements and trial decisions are subject to the Police Commissioner’s approval.

When an NYPD officer is charged with a crime, the department also files internal disciplinary charges against the officer because criminal conduct always includes a corresponding violation of the department’s internal rules. Generally, the department’s internal disciplinary cases will not begin until criminal prosecutions have been fully resolved.

² There is also a provision that allows for a Command Discipline to be resolved with a penalty of up to the loss of twenty vacation days, however that is a hybrid procedure that involves consultation with the DAO, and a formal disciplinary review of the matter.

Resolution of Disciplinary Charges

Faced with disciplinary charges and specifications for substantiated allegations of misconduct or violations of department rules, New York City police officers may agree to take responsibility for the charged misconduct, and accept a penalty by entering into a **settlement agreement** negotiated between the officer's attorney and the department. Cases falling under the jurisdiction of the CCRB go through a similar settlement process. The agreed-upon penalty is subject to the Police Commissioner's approval. Settlement terms are based on prior case precedent for similar misconduct among other factors. Settlements benefit all parties involved by resolving and imposing penalties quickly and efficiently.

If an officer 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 known as a **Department Trial**, a process overseen by the **Office of the Deputy Commissioner of Trials**. All officers are entitled to be represented by counsel, and the trial proceedings are open to the public. At trial, the Department Advocate's Office, or where applicable the CCRB Administrative Prosecution Unit, has the burden of proving the charges and is required to present evidence against the officer. The officer is entitled to cross-examine prosecution witnesses, present a defense to the charges, and/or present evidence in mitigation of the proposed penalty.³

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

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

³ Section 75 of the New York State Civil Service Law mandates that permanent, competitive-class employees, including police officers, are entitled to certain rights prior to the imposition of any disciplinary action. These rights include notice of the charges, an opportunity to answer the charges (at a hearing or otherwise), representation at official interviews or disciplinary hearings, and the right to summon witnesses on the accused officer's behalf. *See also*, Title 38, Chapter 15 of the Rules of the City of New York and Section 14-115 of the Administrative Code of the City of New York

Misconduct Categories

For the purposes of this analysis, the NYPD identified a top misconduct category for each Charges and Specifications case, by determining the most serious allegation in each case closed in 2018. The ten misconduct categories are set forth below:

Department Rule Violations - any act by a police officer that violates the Department Manual, training, or any other policy or rule of the New York City Police Department

Domestic Incident - when a police officer engages in physical or other types of abuse of an intimate partner or member of the family.

DWI/Alcohol Related - when a police officer drives while under the influence of an intoxicant, or is unfit for duty, while on or off-duty, because of his or her ingestion of alcohol or any other intoxicant.

False Statements - when an officer makes a verbal or written statement that is misleading, that intentionally impedes an investigation, or that is intentionally false as to a material matter.

Firearms - any misconduct involving the illegal/improper possession, carrying, use, or discharge of a firearm, including on and off-duty incidents.

Force - when a police officer uses force during a police encounter that is either excessive for the situation, or when force was used in violation of the Department's guidelines.

Misconduct Involving Public Interaction - any misconduct by an on-duty police officer that occurred when he or she had contact with a civilian, including during law enforcement activities or any other dealings with the public.

Narcotics - when a police officer illegally possesses, uses, or traffics illegal drugs, steroids, or any other prohibited substances.

Sexual Misconduct - when a police officer engages in any sexual contact, including verbal, text, social media or physical sexual contact, or makes sexual requests of a prisoner or a complainant, or has any unwanted sexual contact with any person.

Unlawful/Criminal Conduct - any conduct committed by a police officer, either on or off duty that violates any criminal statute, irrespective of whether the officer was arrested or charged criminally.

Penalties

Final penalties imposed by the Police Commissioner are based upon a number of factors, which may differ from case to case.⁴ Factors that may be considered, include but are not limited to: the nature and seriousness of the misconduct, the circumstances under which the misconduct was committed, the impact of the misconduct on the department and the public, damages or injuries, relevant aggravating and mitigating factors, case precedent for similar infractions, and the officer's personnel record, including length of service, training, performance evaluations, honors and awards, his or her commanding officer's recommendation, and prior disciplinary history, if any. Penalties are designed to maintain a consistent level of discipline across the department's approximately 36,000 police officers.

The most severe penalty the NYPD can impose is dismissal from the department. Lesser penalties include suspension without pay and the loss of vacation leave days. The allowable penalties are described below:

Reprimand

The least severe department penalty is a verbal or written admonishment from the officer's commanding officer or supervisor. This form of penalty may be documented in an officer's personnel file.

Penalty Days

The most common penalty imposed by the department in disciplinary matters is the loss of vacation days or the imposition of suspension days. By law, police officers, like most city employees, may be suspended without pay for a maximum of 30 days per charge before they must be returned to salary. If an officer was immediately suspended from duty upon the discovery of misconduct, the forfeiture of suspension days, imposed prior to the disposition of the case, may also be considered as part of a disciplinary penalty.

Dismissal Probation

In serious cases of misconduct, the department may place an officer on dismissal probation in addition to imposing the loss of vacation days and/or suspending officers without pay. In these cases, the officer is dismissed from the Police Department, and he or she acknowledges that dismissal in writing, but the department delays the imposition of the dismissal for a one-year period during which the officer is placed on probation. During the one-year probationary period, the officer's conduct is monitored and evaluated on a monthly basis, and the officer's commanding officer is required to submit monthly reports assessing the officer's conduct. If the officer successfully completes the year on probation, the dismissal penalty will be waived and the officer returned to a non-probationary status. If, however, there is further misconduct within the probationary period, the department may summarily dismiss the officer without a hearing.

Dismissal Probation is also used to enforce other conditions in disciplinary penalties; for example, when an officer has admitted to, or been found guilty of, an alcohol-related offense, they may also

⁴ See Appendix B for text of NYC Administrative Code § 14-115 pertaining to discipline of members.

be required to attend counseling services or submit to alcohol testing. Such officers may be placed on dismissal probation to ensure their continued cooperation with counseling services, and to allow the department to take immediate action against them if they do not successfully complete the mandated program(s).

Dismissal or Forced Separation

The maximum penalty the department can impose in a disciplinary case is dismissal from the department. Under appropriate circumstances, the department may require that an officer separate from the department, in lieu of dismissal, as part of a disciplinary Settlement Agreement. In these cases, the officer may be entitled to all or part of their accrued pension benefits, as governed by New York State pension laws.

Additional Sanctions

In addition to the penalties outlined above, the department may require officers to participate in **non-punitive counseling or monitoring programs**⁵, designed to address the type of misconduct in which they were involved. For example, an officer guilty of alcohol abuse may be required to attend counseling or to submit to ordered breath testing, a process by which an officer is randomly notified for alcohol testing. In limited circumstances, the department may opt to place an official **letter of instruction** in an officer's personnel file to address low level misconduct, or misconduct which has passed the administrative statute of limitations.

Limited fines or restitution in the form of payments to the city may also be imposed.

Finally, the Police Commissioner may determine that due to the misconduct it is in the best interests of the department to **demote** a probationary supervisor or an officer who has received a discretionary promotion, and/or administratively transfer an officer to a different precinct or command.

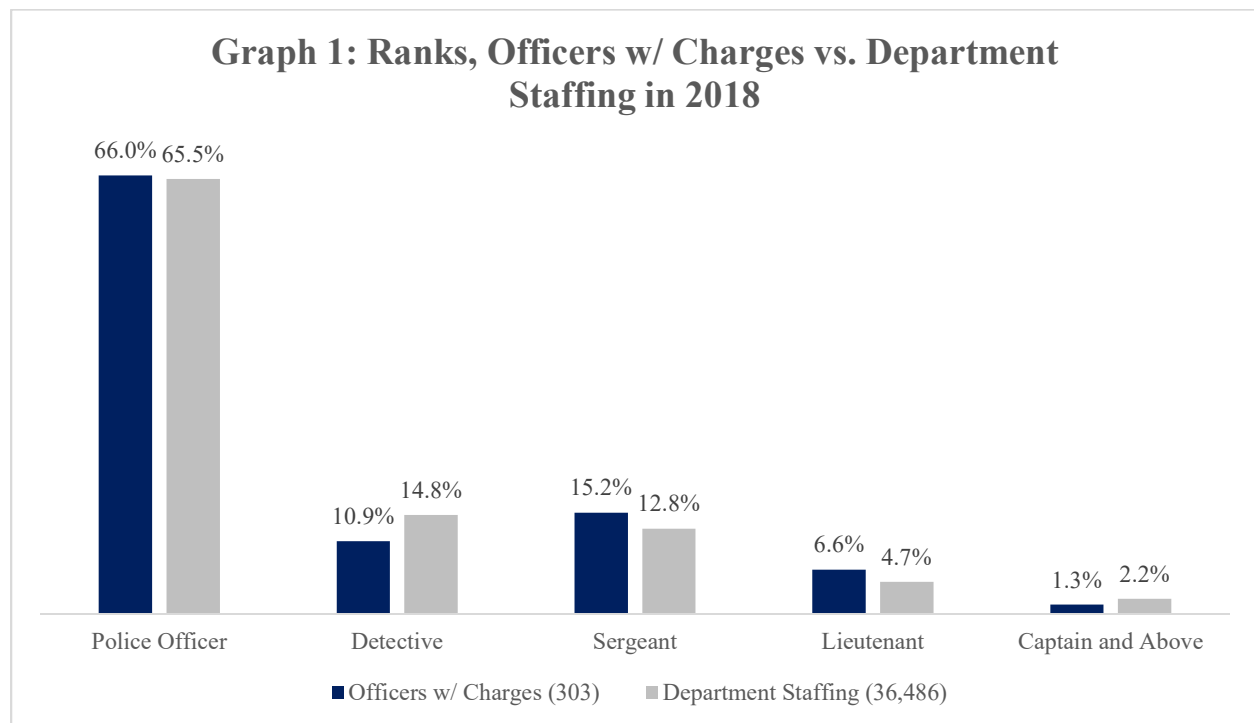
⁵ Officers placed in a monitoring program as a result of a disciplinary penalty are subject to increased supervision, a change of assignment, more frequent evaluations, and restrictions on hours worked, assignments and off-duty employment. Additionally, officers in monitoring may not be promoted or eligible for specialized assignment.

Overview of 2018 Disciplinary Cases⁶

In calendar year 2018 the NYPD closed discipline cases which involved 303 officers as respondents. This total does not include officers who received command level discipline. The tables below reflect the percentage of officers by rank whose disciplinary cases were resolved in 2018.

Rank	Total	% of Total	% Dept. Staff ⁷
Police Officer	200	66.0%	0.8%
Detective	33	10.9%	0.6%
Sergeant	46	15.2%	1.0%
Lieutenant	20	6.6%	1.2%
Captain and Above	4	1.3%	0.5%
Total	303	100.0%	0.8%

- The 303 officers with disciplinary cases represent 0.8% of the Department’s staff during 2018.



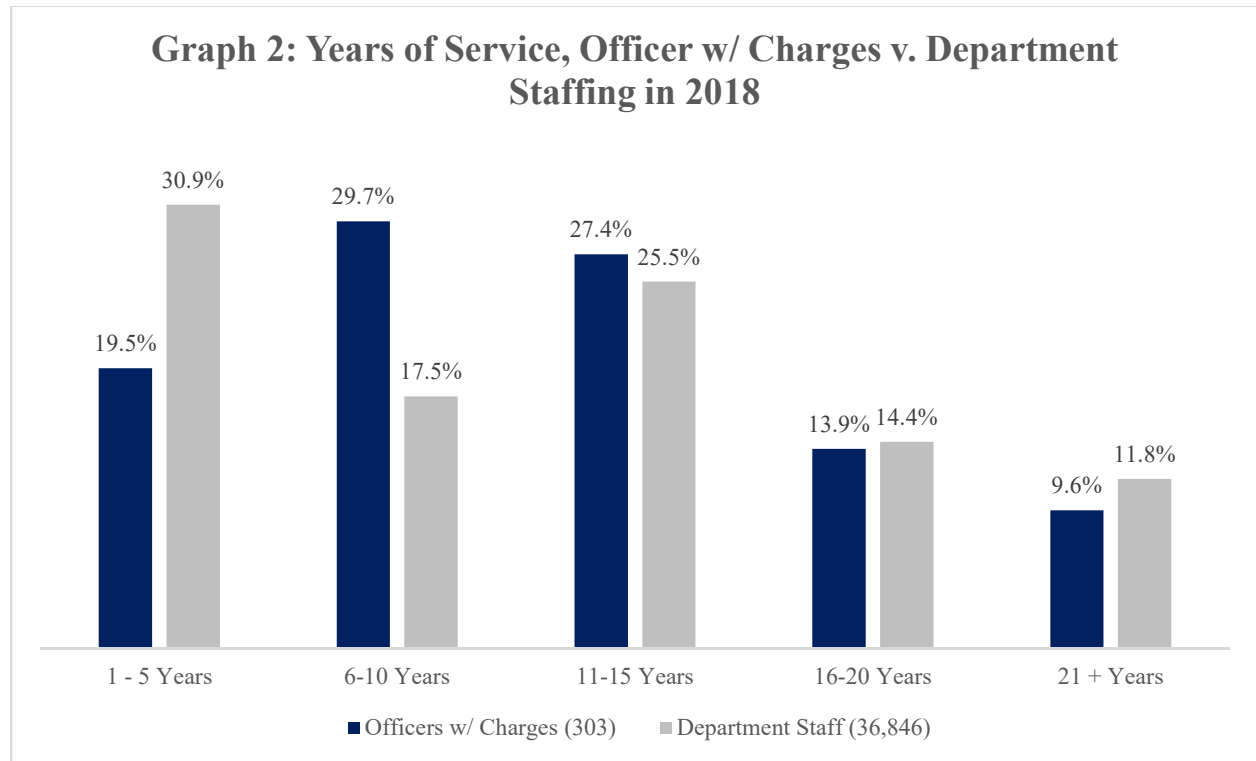
- In 2018, 66% of uniform personnel with disciplinary charges were police officers. Police officers represented 65.5% of the Department’s uniform staff.
- 15.2 % were sergeants, who represent 12.8% of the Department’s total uniform staff.

⁶ All figures are preliminary and subject to further analysis and revision.

⁷ Department staffing numbers are based on an average of 12 monthly snapshots taken throughout the year.

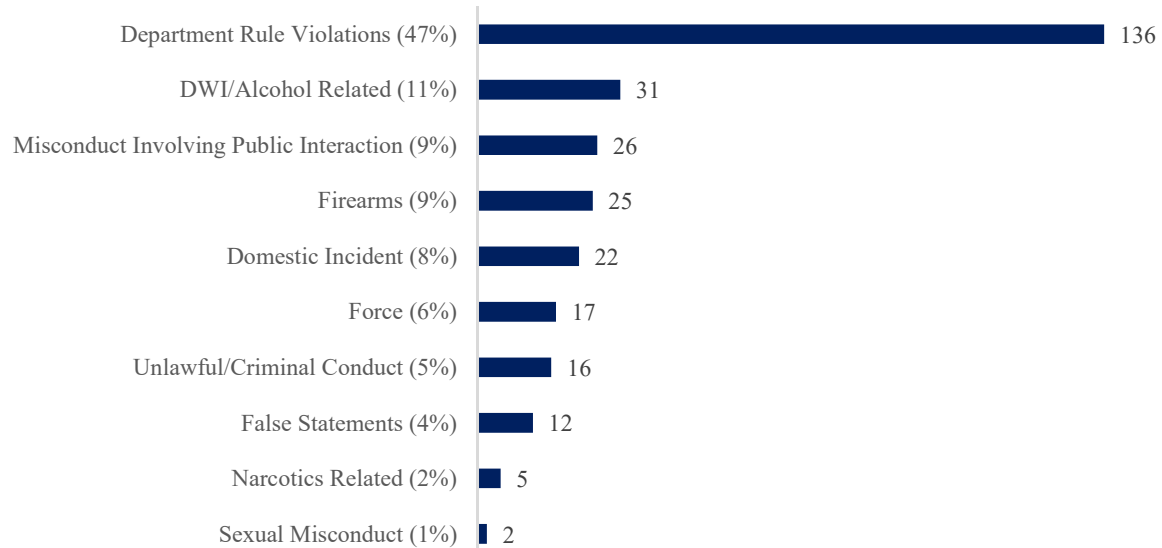
The table below shows officers whose disciplinary cases were resolved in 2018 by years of service.

Years of Service	Total	% Total
1-5 Years	59	19%
6-10 Years	90	30%
11-15 Years	82	27%
16-20 Years	42	14%
21+ Years	30	10%
Total	303	100%



- 56.8% of officers with disciplinary charges in 2018 had between six and fifteen years of service.
- Officers with six to ten years of service represent 17.5% of the Department’s total uniform personnel, while officers with 11 to 15 years of service represent 25.5% of the Department’s uniform personnel.

Graph 3: Number of Officers Who Were Found Guilty or Pled Guilty to Top Charge in 2018*



*Percentages based on total number of officers who pleaded or were found guilty of disciplinary charges.

The graph above outlines the top charges served to the 292, or 96%, of officers charged with a disciplinary case who pleaded guilty and entered into settlement agreements or were found guilty after trial. The majority of charges involved violations of department rules (136 officers) and DWI/alcohol related infractions (31 officers). Thirty-five percent of officers who pleaded guilty or were found guilty of charges had no prior disciplinary history.

Table 3: 2018 Disciplinary Charges to Penalties

2018	Total Officers	Not Guilty**	Pled / Found Guilty***	Dismissed	Forced Separation	Dismissal Probation & Penalty Days	Penalty Day	Reprimand
Department Rule Violations	140	4	136	2	8	33	92	1
Domestic Incident	23	1	22	0	2	7	13	0
DWI/Alcohol Related	31	0	31	0	4	23	4	0
False Statements	12	0	12	1	0	7	4	0
Firearms	25	0	25	1	1	2	21	0
Force	21	4	17	0	0	2	15	0
Narcotics Related	5	0	5	4	1	0	0	0
Misconduct Involving Public Interaction	28	2	26	1	0	1	24	0
Sexual Misconduct	2	0	2	2	0	0	0	0
Unlawful/Criminal Conduct	16	0	16	0	4	9	3	0
Total	303	11	292	11	20	84	176	1

**This number includes officers who were found not guilty of all charges after trial.

***This number includes officers who pled guilty and entered into settlement agreements, pled guilty and testified in mitigation of the penalty, and those who were found guilty after trial.

- 3.8% of officers who pleaded or were found guilty were dismissed from the department.
 - 72.7% of those dismissals involved narcotics (36.3%), sexual misconduct (18.2%), or department rule violations (18.2%).
- 6.8% submitted for service or vested retirement from the department. The top three charges for forced separation were department rule violations, unlawful criminal conduct, DWI/alcohol related infractions.
- 28.7% of disciplinary cases closed in 2018 resulted in dismissal probation with forfeited penalty days. The top two charges for those receiving this combination of penalties were violation of department rules and DWI/alcohol-related.
- Reprimand was used as a penalty in less than 1% of disciplinary cases closed in 2018.

Appendix A (Text of 50-a)

Civil Rights Law § 50-a

1. All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics and such personnel records under the control of the department of corrections and community supervision for individuals defined as peace officers pursuant to subdivisions twenty-three and twenty-three-a of section 2.10 of the criminal procedure law and such personnel records under the control of a probation department for individuals defined as peace officers pursuant to subdivision twenty-four of section 2.10 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic, correction officer or peace officer within the department of corrections and community supervision or probation department except as may be mandated by lawful court order.
2. Prior to issuing such court order the judge must review all such requests and give interested parties the opportunity to be heard. No such order shall issue without a clear showing of facts sufficient to warrant the judge to request records for review.
3. If, after such hearing, the judge concludes there is a sufficient basis he shall sign an order requiring that the personnel records in question be sealed and sent directly to him. He shall then review the file and make a determination as to whether the records are relevant and material in the action before him. Upon such a finding the court shall make those parts of the record found to be relevant and material available to the persons so requesting.
4. The provisions of this section shall not apply to any district attorney or his assistants, the attorney general or his deputies or assistants, a county attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputies or assistants, a village attorney or his deputies or assistants, a grand jury, or any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.

Appendix B (Text of NYC Administrative Code)

NYC Administrative Code § 14-115

- a. The commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense. All such forfeitures shall be paid forthwith into the police pension fund.
- b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination and investigation as such commissioner may, by rules and regulations, from time to time prescribe.
- c. The commissioner is also authorized and empowered in his or her discretion, to deduct and withhold salary from any member or members of the force, for or on account of absence for any cause without leave, lost time, sickness or other disability, physical or mental; provided, however, that the salary so deducted and withheld shall not, except in case of absence without leave, exceed one-half thereof for the period of such absence; and provided, further, that not more than one-half pay for three days shall be deducted on account of absence caused by sickness.
- d. Upon having found a member of the force guilty of the charges preferred against him or her, either upon such member's plea of guilty or after trial, the commissioner or the deputy examining, hearing and investigating the charges, in his or her discretion, may suspend judgment and place the member of the force so found guilty upon probation, for a period not exceeding one year; and the commissioner may impose punishment at any time during such period.