

Police Reform Recruitment Working Group
Meeting Minutes
November 5, 2020

Mayor Whaley and Judge Parker welcomed everyone. Ofc. Salli Jones joined the group for the first time and introduced herself as the new recruitment officer.

Torey Hollingsworth gave an overview of the Commission's responses to Oversight's recommendations related to citizen complaints.

Ken Couch gave an overview of police discipline.

All discipline and procedures related to discipline are bargained under the FOP contract.

Dayton uses a progressive constructive discipline process. The focus is on changing behavior, not in being punitive.

Under the FOP contract, Dayton Police have the right to know they are under investigation, right to an attorney (often supplied by the FOP), the right to an appeal, and the right to discovery of evidence. They also are required to be given a minimum of 24 hours notice for an interview, with an exception for interviews that occur at the scene.

Most discipline within Dayton Police is self-referred, ie, comes from within the Dayton Police Department – not from citizen complaints.

Progressive discipline escalates the discipline:

First level, done within DPD without HR intervention:

- Counseling
- Oral reprimand
- Written reprimand

Second level, involving HR

- 1 day suspension
- 5 day suspension
- 10 day suspension
- Demotion (if at rank of lieutenant or sergeant)
- Dismissal

Records retention policy aligns with the level of discipline for further discipline. But ALL records are held for 4 years for public records purposes.

- All at the first level, records are held for two years
- One and five day suspensions, held for 3 years
- 10 day suspension, held for 4 years

Additionally, an officer can be placed on restricted duty. They can use vacation time during a suspension, unless they are given a suspension without pay – but that only happens when there is an expectation that the person will be fired.

To dismiss, serve the officer with an S93 – “specs & charges” document. Falsification or lying always results in dismissal. The city has never lost an appeal for a dismissal over lying.

The city can use a polygraph if they believe there has been a criminal violation, however that comes with a “Garrity warning,” meaning it cannot be passed on to a prosecutor.

In the entire city organization of 1900 people, there are typically about 100 suspensions per year.

The city also has the option, which is rarely used, to do a “last chance agreement.” The employee must agree to a 10 day suspension, but they can remain employed if they do not do a similar offense within the next four years. Otherwise, they are fired without the option for appeal.

A person who is fired for specs and charges is kept on file, meaning those records could be released to a future employer.

The city has the option to enter into a separation agreement, which is also rare. In that case, the city agrees not to speak poorly of a former employee, but will give out any public records that are requested.

Sgt. Heyob gave an overview of investigations and discipline. There are certain steps to all investigations, some of which are conducted by a supervisor, some of which must go through the Professional Standards Bureau (PSB).

- Excessive force, improper firearm discharge all go to PSB. Any criminal investigation would also go through PSB.
- In an investigation that does not go through PSB, the supervisor acts like a detective and command staff make the determination based on the evidence the supervisor brings. In something cut and dry, a Major will typically make the final determination.
- The Department Advocate will make the recommendation as to the actual discipline to be meted out.

Other high-risk occupations have policies to correct risky behavior before it escalates into something high level. For example, the aviation industry uses a program called ASAP (Aviation Safety Action Program).

Police use the code of conduct to determine many of the issues related to discipline. It includes a duty to report and lays out that an officer can be disciplined for not reporting misconduct they see another officer doing something wrong.

Susan Souther asked about what the City says if there is a separation agreement in place and a prospective employer or someone else reaches out about the employee. Ken Couch said that they are responsive to the request -usually, an HR person will ask for any public disciplinary records, which the City will always hand over. Ofc. Brown said that DPD will ask for any disciplinary files or evaluations for someone who worked at another jurisdiction.

Susan also asked if they look at social media in a background check – Ofc. Brown said they did not use to, but they are starting to now.

Ellis Jacobs asked why falsification is the easiest way to get fired? How is excessive force, for instance, treated differently? Ken Couch said that lying is the only immediately fire-able offense for the whole city organization. He also said that it is usually easier to catch a lie than it is to catch the underlying offense. Sgt. Heyob said that in his experience, it is usually easier to win on an appeal with a lie than with a use of force, because proving the force was not justified is not as cut and dry.

Allegations of excessive force all go to PSB, and it is usually found that the force was justified.

Discipline is the result of policy violations or misdemeanors in private life. Criminal issues will result in a PSB investigation and usually result in separation.

Chrisondra Goodwine asked about issues related to race or respect – behavior that may not be a policy violation. What happens then?

- Sgt. Heyob said that those issues are probably covered through the code of conduct. The common issue in this regard is not what you said, but how you said it. Often, those kinds of issues will go to mediation, but the person involved has the option to make a complaint to open an investigation.
- Chris asked if there could be a standard process for following up with the officer. She said she believed it was important to communicate that the city took citizens' feelings seriously
- Heyob said that sometimes people get sent to bias or communications trainings based off of incidents

Ellis asked for more information on the duty to report/intervene.

- Sgt. Heyob said if someone does not report or intervene in misconduct, it will result in an investigation like any violation of the code of conduct. There is a precedent for demotion of a failure to investigate a complaint. Ken Couch said the duty to report actually extends to all city employees.
- Heyob said the new order is more related to a duty to intervene, and will resend.

Cornell Trammel shared an experience he had while walking home from work, wearing a uniform, when he was stopped by police because he fit the description of a suspect. He asked how discipline occurs in these situations?

- Sgt. Heyob said that this is challenging, because descriptions of suspects are often vague. He said that the person who is detained should be treated with respect, though, and that they can file a complaint if they are not. It is tough for police to rebuild the relationship after that.

- Cornell said he liked that people were disciplined for not investigating

Rev. Rockney Carter asked a question about discipline when armed people are killed. Sgt. Heyob said that question is tough to answer, because it depends on whether or not the action was criminal in nature and whether or not they violated policy in killing an unarmed person.

Rev. Fox asked for data on black officers that had been hired and fired. HR will pull the data together.

Will work to have PSB in the next meeting to go deeper into questions about investigations. Sgt. Heyob will also work on getting the discipline flow chart.

The mayor asked people to share their thoughts via email about what else they wanted to know/explore. Polygraphs and the rule of one are still on the table to be addressed, as well as the issues around discipline.