



New Report Finds Short Police Suspensions Critical to History of Misconduct

October 30, 2017 – Austin, TX: Austin’s proposed new police contract leaves intact the automatic downgrade of short suspensions to written reprimands that cannot be referenced in any way by the Chief in the event of subsequent misconduct. The new contract includes one change, excluding from this system any short suspensions related to excessive force or racial profiling.

To determine if the new limits on this process will have any real impact on accountability for officers with repeat misconduct, the Texas Criminal Justice Coalition reviewed every suspension memo since January 1, 2014. Our report answers some key questions about this process and the impact of contract changes.

- There have been no 1- to 3-day suspensions for excessive force or racial profiling. Therefore the new language excluding those policy violations will have no impact on the current process.
- Short suspensions in 2014 were largely meted out in response to auto accidents or accidental discharge of a weapon. By 2017, there were far fewer short suspensions, and all were for violations of individuals’ rights or serious failures of duty, not for accidents.
- A review of all suspensions for 2017 indicates that they are no longer used at all in response to accidents, and likely the Chief now issues written reprimands or some other consequence for accidents violating policy.

“No private sector employer or HR department would agree that a boss should not be able to consider an employee’s past serious misconduct if that employee violates the rules again later,” said Kathy Mitchell of the Texas Criminal Justice Coalition and the report’s author. “That’s exactly what is being proposed in this contract and it must end.”

“The two sides have both said they addressed our concerns with this part of the contract by excluding suspensions related to use of force and racial profiling,” said Chas Moore of the Austin Justice Coalition. “Instead, they made a change that amounts to no change at all, and that is not how we are going to end institutional racism and make Austin the kind of city we believe we can be.”

“This is a perfect example of a contract ‘reform’ that actually does nothing,” said Chris Harris of Grassroots Leadership. “We are tired of being treated like we can’t see the same old systems of oppression being reconstructed before our eyes. A few changes at the margins will not reduce police violence in our communities. It is time for something completely different, and that means we must say no to the package we’re about to be given.”



Brief: Austin's Proposed Contract with Police Fails to Give Chief Adequate Oversight

Certain Past Misconduct Cannot be Considered by the Chief when New Misconduct Occurs

Austin's proposed new agreement with the Austin Police Association includes – once again – a provision to *automatically* reduce suspensions of 1, 2 or 3 days to a written reprimand if the officer does not do the same thing again in a two or three year period. This automatic reduction will occur even if the officer commits other misconduct during that two or three year window.

Once the suspension is recategorized as a written reprimand, it disappears into the non-public 143.089g personnel file and the Chief cannot consider it in the event of subsequent misconduct or appeals. Specifically, these incidents of misconduct "shall not be introduced, cited, or used in any manner in subsequent disciplinary suspensions or appeals as to that Officer...." This means the officer's next misconduct must be treated as his or her first instance, and the Chief cannot consider the misconduct as part of the promotional bypass process (and expect to survive an appeal).

The new contract excludes misconduct related to excessive force under Policy #200 and racial profiling under Policy #328. The Texas Criminal Justice Coalition reviewed every 1 to 3 day suspension memo issued by Austin's police Chief from 2014 to the present, and determined that none of them were related to misconduct under these two policies. Therefore, this change to the contract has no impact on the current use of this procedure.

We found that:

- 1 to 3 day suspensions are currently meted out for certain serious misconduct, ranging from failure to investigate to improper search/seizure, use of a dangerous vehicle maneuver against policy and directive and much more.
- In past years, short suspensions were also issued for incidents that are clearly accidental in nature, mostly accidental firearm discharge and traffic accidents, but this appears to no longer be departmental practice.

The following is a list of each specific act of misconduct¹ that resulted in a 1 to 3 day suspension, Jan. 1, 2014 to the present. We included only "first offense" acts (sometimes there is a single suspension related to multiple acts and we included these) because we assume that if the suspension discusses substantially similar prior acts for which the officer was previously suspended, then the suspension will not automatically reduce.

- Assisting another officer in a search that violated APD policy, failing to conduct a threat assessment and insufficient communication among officers (Manley, 7/13/17)

Why would Austin tie the hands of the chief when addressing officers with repeat misconduct?

- There are no examples in the past three years of a 1 – 3 day suspension for sustained excessive force, so the agreed "fix" simply has no impact at all on officer misconduct.
- Officers get short suspensions for important other kinds of sustained misconduct.
- The Chief should be able to take all prior sustained misconduct into account.

- Failure to appear on three separate occasions when subpoenaed for an Administrative License Revocation Hearing (the drivers' license hearing for people facing DWI charges) (Manley, 12/27/16)
- Twice in a one week period used a dangerous maneuver (Precision Immobilization Technique, PIT) to terminate a vehicle pursuit in violation of a directive and written policy; (Manley, 12/1/16)
- Struck with his patrol car a pedestrian walking in the crosswalk; (Acevedo, 9/16/16)
- Frequent tardiness; (Acevedo, 6/20/16)
- While on-call, failure to respond to a call for the Crisis Intervention Negotiating Team (CINT), supervisor had to come to his residence to get the CINT equipment, should have told supervisor in advance of reason; (Acevedo, 2/22/16)
- Other police agency called twice in quick succession to family violence disturbances at officer's home, failure to notify supervisor of these incidents; (Acevedo, 12/14/15)
- Rear-ended motorist, was third at-fault auto accident in 18 month period (Acevedo, 8/11/15)
- Single vehicle accident, did not inform supervisor at scene, 5th incident in past year where supervisor was not called from the scene. (Acevedo, 7/15/15)
- Unintentional firearm discharge, second incident (Acevedo, 5/19/15)
- Unintentional firearm discharge (Acevedo, 3/20/15)
- Vehicle accident during attempted traffic stop (Acevedo, 3/6/15)
- Unintentional firearm discharge in a patrol car (Acevedo, 2/12/15)
- Checked out a patrol car to work secondary employment without prior authorization, got into a car accident (Acevedo, 2/3/15)
- Dispatch related to commercial burglar alarm, went to the scene but failed to investigate, cleared the call, left the scene, turned out it was not a false alarm and the business had been burglarized (Acevedo, 1/21/15)
- Unintentional firearm discharge (Acevedo, 1/16/15)
- Unintentional firearm discharge (Acevedo, 1/15/15)
- Unprofessional conduct caught on video, posted to YouTube, included "can't unrape you" comments and other similarly off color remarks (Acevedo, 11/19/14)
- Confiscated subject's backpack and then didn't turn it in or return it for a month (Acevedo, 11/14/14)
- Traffic accident (Acevedo, 11/14/14)
- Inappropriate comments about another officer (Acevedo, 11/13/14)
- Traffic accident (Acevedo, 11/10/14)
- Officer involved in an incident that resulted in a response from another law enforcement agency, failure to report (Acevedo, 10/29/14)
- Single car accident (Acevedo, 9/18/17)
- Off duty altercation with a business owner over parking, on-duty officers called to scene (Acevedo, 8/15/14)
- Accidental discharge inside patrol car (Acevedo, 7/28/14)
- Vehicle pursuit without appropriate communications (Acevedo, 7/9/14)
- Unprofessional communication with fellow officer (Acevedo, 6/25/14)
- Accidental discharge (Acevedo, 5/27/14)
- Accidental discharge (Acevedo, 4/23/14)
- Accidental discharge (Acevedo, 2/17/14)
- Failure to show up for work (Acevedo, 2/12/14)
- Accidental discharge (Acevedo, 1/21/14)
- Lost apparent drug evidence collected at a traffic stop (Acevedo, 1/7/14)

The nature of the incidents drawing down 1 to 3 day suspensions changed over the course of our review

period. In 2014, Chief Acevedo gave 1 to 3 day suspensions more frequently than he did in later years. Most were related to auto accidents and accidental fire arm discharge. More recently, 1 to 3 day suspensions are more rare and generally appear to be related to exactly the kind of misconduct that the Chief should be able to look back at in the event of future misconduct.

We theorized that the current administration has reduced the number of 1 to 3 day suspensions by reducing the consequence for accidental firearm discharge and most traffic accidents to written reprimand in the first instance. To check our theory, we reviewed all suspension memos for 2017 to find out if auto accidents and accidental firearm discharges are now leading to longer suspensions. We found no suspensions for these causes. Since it is unlikely that officers have entirely stopped getting into auto accidents or accidentally discharging a firearm, it appears that suspensions generally are now being reserved for more serious infractions.

Year	Serious ⁱⁱⁱ	Car accident	Accidental discharge	Time and attendance	Unprofessional conduct
2014	4	3	5	1	4
2015	2	4	5	0	0
2016	3	0	0	1	0
2017	2	0	0	0	0

Under the proposed contract, all the 1 to 3 day suspension violations would be automatically reduced and the Chief could no longer consider them if the officer doesn't do substantially the same act of misconduct again in two or three years. If the officer did something different, it would have to be considered as if it was the first misconduct by that officer.

For more information
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ⁱ Tentative Agreement Between the City of Austin and the Austin Police Association, signed 10/24/17, p. 71.

ⁱⁱ Suspension memos for 1 to 3 day suspensions were downloaded from the OPM website. Each memo is referenced by the name of the Chief that issued it and the date. Copies of all 1 to 3 day suspension memos are available upon request.

ⁱⁱⁱ We have defined "serious" misconduct (related to these short suspensions) as non-accidental policy violations that could have resulted in injury to others, search and seizure violations where the rights of citizens are violated, failure to show up in court or for DWI license revocation hearings, failure to appropriately handle evidence, failure to report incidents when other law enforcement was called to officer's home.