



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 repeat the misconduct 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 re-categorized 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....”¹ 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).

Why would Austin tie the hands of the Chief when he needs to address repeat misconduct?

- There are no examples in the past three years of a 1- to 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 other kinds of sustained misconduct.
- The Chief should be able to take all prior sustained misconduct into account.

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 proposed change to the contract has no impact on the current use of this procedure.

We found that:

- 1- to 3-day suspensions are 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 misconduct² that resulted in a 1- to 3-day suspension from January 1, 2014, to the present. We included only “first offense” acts (sometimes a single suspension relates 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.

- Assisted another officer in a search that violated APD policy; failed to conduct a threat assessment, and insufficient communication among officers (Manley, 7/13/17)
- Failed 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 a pedestrian walking in the crosswalk with his patrol car (Acevedo, 9/16/16)
- Frequent tardiness (Acevedo, 6/20/16)
- While on-call, failed 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; failed 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 but did not 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; failed 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 firearm 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 firearm discharge (Acevedo, 5/27/14)
- Accidental firearm discharge (Acevedo, 4/23/14)
- Accidental firearm discharge (Acevedo, 2/17/14)
- Failed to show up for work (Acevedo, 2/12/14)
- Accidental firearm 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 firearm discharges. More recently, 1- to 3-day suspensions are rarer and generally appear to be related to exactly the kind of misconduct that the Chief should be able to review and consider 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 an accidental firearm discharge and most traffic accidents to a written reprimand in the first instance. To check our theory, we reviewed all suspension memos for 2017 to determine 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 are now being generally reserved for more serious infractions.

Year	Serious ³	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 1- to 3-day suspension violations would be automatically reduced and the Chief could no longer consider them if the officer does not commit substantially the same act of misconduct again in two or three years. If the officer commits a different violation, it would have to be considered as if it was the first misconduct by that officer.

For more information

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¹ Tentative Agreement Between the City of Austin and the Austin Police Association, signed 10/24/17, p. 71.
² 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.
³ 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 individuals are violated, failure to show up in court or for DWI license revocation hearings, failure to appropriately handle evidence, and failure to report incidents when other law enforcement were called to an officer’s home.