Denver Sheriff Department

Discipline Task Force Recommendations
October 2, 2014

Discipline Task Force

- The task force assessed the effectiveness of the conduct principles and disciplinary guidelines; reviewed statistics, trends and patterns to identify opportunities for improvement; and developed comparisons to other similarly situated Sheriff Departments to evaluate norms and processes. Example: The impact of Career Service Rules on the Denver Sheriff Department’s Disciplinary Matrix.

- Meetings Held: 22

- Participants: 21
  - Stephanie O’Malley, Department of Safety
  - Christopher Lujan, Department of Safety
  - Jess Vigil, Department of Safety
  - Shannon Elwell, Department of Safety
  - Rose Ceja-Aragon, Department of Safety
  - Nick Mitchell, Independent Monitor’s Office
  - Reverend Terrance Hughes, Greater Denver Ministerial Alliance
  - Alfonso Suazo, Colorado Latino Forum
  - Anthony Thomas, Denver Resident
  - Lisa Hulla, Office of Human Resources
  - Al LaCabe, Former Manager of Safety
  - Joe Sandoval, Professor of Criminal Justice, Metropolitan State College
  - Jennifer Jacobson, City Attorney’s Office
  - Luis Lipchak, Denver Sheriff Conduct Review Office
  - Deputy Mike Jackson, Fraternal Order of Police
  - Captain William Thomas, Denver Sheriff Department
  - Major Mike Horner, Denver Sheriff Department
  - Sheriff Elias Diggins, Denver Sheriff Department
  - Division Chief Gary Wilson, Denver Sheriff Department
  - Captain Connie Coyle, Denver Sheriff Department
  - Deputy Phillip Swift, Denver Sheriff Department

- Recommendations: 32
  - Amend the DSD Department Mission, Vision, and Guiding Principles to more effectively reflect that the DSD’s primary duty requires treating inmates with dignity and respect in the performance of DSD’s legitimate duties.
  - Reassign DSO’s Rule and Regulation 300.22, Inappropriate Force, from Conduct Categories D thru F to Conduct Categories E thru F (the conduct categories for the most egregious types of misconduct).
  - Amend the definitions of misconduct that falls into Conduct Categories D, E, and F on the DSD Disciplinary Matrix so that the most serious violations of DSD’s use of force policies are assigned to Conduct Category F, which has a presumptive penalty of termination. The Task Force considers the most serious violations to be those:
    - which foreseeably result in death or serious bodily injury; or regardless of the resulting injury, if any force; or
    - which constitute a willful and wanton disregard of Department Guiding Principles; or
which demonstrate a serious lack of the integrity, ethics, or character related to a deputy’s fitness to hold his or her position; or

which involve serious or abusive conduct, including abuse of authority, substantially contrary to the standards of conduct reasonably expected or one whose duty is to uphold the law and to provide for the care and custody of detainees in a professional, dignified, and respectful manner; or

which involve a level of force significantly disproportionate to the threat posed by the inmate under the circumstances; or

where the totality of the circumstances indicates the force was used, at least in part, for reasons other than legitimate correctional objectives. Such reasons would include, but not be limited to, punishment, retaliation, discrimination, coercion, infliction of pain, or other improper reason.

Require any reviewer to consider the factors set forth in DSD Disciplinary Handbook § 25.0, Special Circumstances, to determine whether a deputy who is determined to have engaged in an inappropriate use of force that falls into Conduct Category E should receive a suspension, demotion, or dismissal (regardless of the presumptive penalty for Conduct Category E) depending upon the totality of the circumstances with respect to:

- the particular case being considered; and/or
- the particular officer being disciplined.

The DSD Disciplinary Task Force recommends changing language in the conduct categories to reflect the mission and function of the DSD to treat inmates with dignity and respect in the performance of their duties.

Change DSD’s Rule and Regulation 400.6, Abuse of Prisoners, to Conduct Category F, which, as noted above, has a presumptive penalty of termination.

Specifications in the RR-400 series: The consensus of the group is to review for possible language changes to provide for more clarity and to make the noted changes/additions.

- **RR-400.2 – Discrimination, Harassment or Retaliation against Prisoners**
  The recommendation is to divide RR-400.2 into the following two rules:
  - RR-400.2 – Discrimination, Harassment, or Retaliation against Prisoners due to Recognized Status (which would be assigned to a Conduct Category F); and add
  - RR-400._ – Extending Favors, Liberties, or Privileges to Prisoners (which would be to Conduct Categories D thru F).

- **RR-400.4.1 – Cruel and Unusual Treatment of Prisoners**
  The recommendation is to change the title to: Prohibiting Humiliating or Cruel Treatment against Prisoners; and add two new rules:
  - RR-400.4._ – Preventing Humiliating or Cruel Treatment against Prisoners by Other Prisoners (which would be assigned to Conduct Categories E and F); and
  - RR-400.4._ – Reporting of Humiliating or Cruel Treatment against Prisoners by Deputy Sheriffs or Employees (which would be assigned to Conduct Categories E and F).

- **RR-400.4.4 – Erroneous Release**
  The recommendation is to change the assigned Conduct Categories from B thru D to C thru E and change to “shall not erroneously release a prisoner.”

- **RR-400.5 – Harassment of Prisoners**
  The recommendation is to change the title and add a new rule:
  - RR-400.5 – Harassment against Prisoners; and add
  - RR-400._ – Reporting Harassment against Prisoners (which would be assigned to Conduct Categories E and F).

- **RR-400.7 – Protecting Constitutional Rights of Prisoners**
The recommendation is to delete this rule and create new policies and/or directives advising of specific constitutional rights retained by inmates that should not be violated, to the extent not already covered by existing rules.

- **RR-400.8.1 – Protecting Prisoners from Physical Harm**
  The recommendation is to change the title and add a new rule:
  - RR-400.8.1 – Protecting Prisoners from Harming Themselves or Other Prisoners (which would be assigned to Conduct Categories E and F); and add
  - RR-400.8._ – Protecting Prisoners from Unnecessary Substantial Risk of Serious Bodily Injury or Death Caused by Deputies and Employees (which would be assigned to Conduct Categories E and F).

- **RR-400.8.2 – Failure to Make Require Rounds**
  The recommendation is to change the Conduct Categories from D thru F to E and F.
  - These specifications are currently in Conduct Categories C thru F in the disciplinary matrix and should now be in Conduct Categories D thru F:
    - RR-200.11 – Sleeping on Post
    - RR-200.12 – Abandoning Post
  - A specification needs to be added pertaining to the dimming of lights and it should also be in Conduct Categories D thru F.
  - These specifications are currently in Conduct Categories D thru F in the disciplinary matrix and should be elevated to a Conduct Category F:
    - RR-400.2 – Discrimination, Harassment or Retaliation Against Prisoners
    - RR-400.4.1 – Cruel and Unusual Treatment of Prisoners (recommended change to Prohibiting Humiliating or Cruel Treatment against Prisoners)
    - RR-400.5 – Harassment of Prisoners
  - Commensurate with the categorical shift in RR-300.22, Inappropriate Force, DSD’s Rule and Regulation 200.2, Use of Force Reporting, should also be reassigned from Conduct Categories A thru F to an E thru F violation.
  - Change language of DSD Rule and Regulations involving Misleading and Inaccurate Statements to only include the mens rea element “knowing,” and clarify that any such statement is subject to the rule (not just “material” statements), due to issues raised with prior Career and Civil Service appeals.
  - Implement training for deputies in drafting Use of Force reports, and training for supervisors in reviewing those reports.
  - With respect to Inappropriate Force, Appendix C of the DSD Discipline Handbook needs to be revised so as to provide more specific guidance to reviewers on how to apply the definitions of the conduct categories and recognize the types of misconduct that should be considered Conduct Category F violations and, therefore, carry a presumptive penalty of termination.
  - With respect to Inappropriate Force, Appendix C needs to include stronger language that addresses the distinction between the standard of proof in the administrative discipline review versus that in a criminal or civil liability context.
  - With respect to Inappropriate Force, Appendix C needs to include a strong policy statement that reflects the values supporting a shift of Inappropriate Force from Conduct Categories D thru F to Categories E thru F. Similarly, it should also address the values supporting an increase in the penalties for Abuse of Prisoners, Discrimination, Harassment, and Retaliation Against Prisoners, Preventing Humiliating or Cruel Treatment Against Prisoners, Harassment Against Prisoners, and Use of Force Reporting.
  - Appendix C needs to emphasize the specific purposes and importance of discipline for inappropriate use of force.
  - With respect to Inappropriate Force, Appendix C needs to emphasize that the community expects and that DSD requires that deputies use only the amount of force necessary to perform their duties, as viewed from an objective standard.
Appendix B, History of the Guiding Principles, should be updated to reflect the current review of the DSD disciplinary process.

There should be a comprehensive review of DSD’s use of force policies, the DSD Discipline Handbook and discipline matrix, and use of force training to ensure compliance with C.R.S. § 18-8-804, which requires:

- public entities employing peace officers to adopt policies governing the use of force; and
- peace officers to comply with those policies.

Among the points on which the comprehensive review should focus are:

- Emphasizing the DSD’s and community’s expectations for deputies to use only the amount of force necessary to perform duties, as viewed from an objective standard;
- stressing that DSD’s expectations are higher than those required by state criminal law on use of force and federal civil law on use of excessive force; and
- clarifying how much force may be used to maintain order and discipline, as it pertains specifically to DSD’s duties.

For deputies that are disciplined but not terminated for inappropriate uses of force, remedial training shall be required in addition to the discipline imposed, but not as a condition of discipline imposed. Such remedial training will ideally occur upon the deputy’s return to work, but shall occur as soon as practicable.

When circumstances show that supervisors have not satisfactorily performed their duties with respect to uses of force or reporting of such uses, those supervisors shall be subject to disciplinary action commensurate with their offense. If retained as employees of the DSD, these supervisors will be remedially trained separate and apart from the disciplinary action. Such remedial training will ideally occur upon the supervisor’s return to work, but shall occur as soon as practicable.

The Department of Safety shall provide notice in some manner to all deputies of disciplinary decisions, without identifying the disciplined deputy by name, that inform deputies of the types of conduct that management has determined to be unacceptable and of the possible disciplinary consequences of such misconduct. This will also serve to increase accountability and transparency in the application of discipline.

In furtherance of the goal of increasing accountability and transparency in the disciplinary process, the Department of Safety will also publicly provide a list of the nature of pending allegations, without identifying the deputy against whom the allegations are made.

The Department of Safety shall analyze, on a continuing basis, final determinations of discipline so as to decide whether changes need to be made to the policies, practices, and training of the DSD.

Language should be submitted to the Office of Human Resources for inclusion in the Career Service Rules, requiring CSA Hearing Officers to consider and apply the DSD Disciplinary Handbook and Matrix at appeal.

The City and County of Denver should consider the merits of moving the DSD out of the Career Service system and into the Civil Service system.

There is a need to increase the quality and speed of the DSD Internal Affairs process, giving priority to those cases in which inappropriate force, other inmate treatment issues, or deceptive conduct is alleged.

Change DSD’s Rule and Regulation 200.15.1 – Respect for Fellow Deputies and Employees, from Conduct Category B to Conduct Categories B and C. Broaden the definition to include others (i.e., service providers) or create new rule.

Change DSD’s Rule and Regulation 200.15.2 – Abuse of Fellow Deputies and Employees, from Conduct Category C to Conduct Categories D thru F. Broaden the definition to include others (i.e., service providers) or create a new rule.

Review and amend the entire DSD Disciplinary Handbook as necessary to effectuate all of the changes recommended above.