



# THE CITY OF NEW YORK BOARD OF CORRECTION

## Punitive Segregation Reforms and Exceptions: Recent Results

### BACKGROUND

In January of 2015, the New York City Board of Correction (“Board”) amended its Minimum Standards (“amendments”) to include provisions limiting the use of punitive segregation:<sup>1</sup>

- Elimination of punitive segregation for adolescents and young adults ages 16-21<sup>2</sup>
- Elimination of punitive segregation for individuals with serious mental or physical disabilities<sup>3</sup>
- Reduction in the maximum punitive segregation sentence from 90 days to 30 days per infraction (except in rare cases)<sup>4</sup>
- Elimination of punitive segregation for “time owed” received in a previous incarceration<sup>5</sup>
- Establishment of Punitive Segregation 2 (“PS2”) for non-violent and some lower grade offenses in which inmates are allowed at least seven out-of-cell hours daily<sup>6</sup>
- Capping time in punitive segregation at 60 days in six months (except in rare cases)<sup>7</sup>
- Creation of a 7-day break from punitive segregation after 30 days<sup>8</sup>

Since these amendments took effect, the punitive segregation population in city jails has plummeted. For example, on December 31, 2014, the number of people in punitive segregation was 414, as compared to the same day in 2015, when the population was 181 — a 56% decline. On April 1, 2016, the total punitive segregation population was 193, 26 of whom were housed in PS2 where individuals receive at least seven out-of-cell hours daily.

As noted above, the amendments allow for targeted operational flexibility — i.e., overrides — in the rare instances when inmates engage in “persistent, serious acts of violence”.<sup>9</sup> On such occasions, the Chief of Department (“Chief”) may grant an override to place the individual in punitive segregation for a period exceeding 60 days in six months.<sup>10</sup>

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<sup>1</sup> Unless otherwise noted, the amendments are set forth in 40 NYCRR § 1-17 (Dec. 16, 2015), available at:

[http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/therulesofthecityofnewyork?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/therulesofthecityofnewyork?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny)

<sup>2</sup> In 2014, prior to enactment of the amendments, the Department of Correction had voluntarily eliminated punitive segregation for 16 and 17 year olds. § 1-17(b)(1)(i).

<sup>3</sup> In 2013, prior to enactment of the amendments, the Department of Correction had voluntarily eliminated punitive segregation for people with serious mental illness. § 1-17(b)(1)(iii).

<sup>4</sup> § 1-17(d)(1), (d)(2) and (d)(4).

<sup>5</sup> § 1-17(g).

<sup>6</sup> The amendment prohibited punitive segregation sentences for the lowest grade offenses. § 1-17(b)(4) and § 1-17(e).

<sup>7</sup> § 1-17(d)(3).

<sup>8</sup> § 1-17(d)(2).

<sup>9</sup> § 1-17(d)(3).

<sup>10</sup> § 1-17(d)(3) and (d)(4).

In September 2015, the Board voted to approve a 90-day variance from Minimum Standard § 1-17(d)(2), to permit the Department of Correction (“Department”), in circumstances presenting exceptional safety and security concerns, to waive the requirement that individuals be released from punitive segregation for seven days after they have been held for 30 consecutive days.<sup>11</sup> Subsequently in December, the Board granted the Department the same authority for an additional six months on condition that, by June 1, 2016, the Department submit a report to the Board on options to reduce violence committed by inmates during or upon their release from punitive segregation other than to extend their length of stay there.<sup>12</sup>

Since January 2016, the Department may grant a punitive segregation sentence of up to 60 days for a single infraction if someone assaults a staff member resulting in injuries.<sup>13</sup> To date, there have been two such sentences. In the first incident, the individual was discharged from Department custody three weeks into his punitive segregation sentence. In the second incident, the person punched an officer resulting in stitches. He began serving his sentence in March and is scheduled for release from punitive segregation in early May 2016. Board staff received the 45-day review required to determine whether the individual could be placed in alternative housing for the remainder of the sentence.<sup>14</sup>

Following are the Board’s findings concerning the impact of the amendments on the use of punitive segregation in the city jails and an analysis of the 28 overrides and nine 7-day waivers approved by the Chief during the three-month period January 1, 2016 through March 31, 2016 (or “3-month period”).<sup>15</sup>

## **FINDINGS**

**The population of punitive segregation has decreased significantly.** In 2014, the average number of individuals in punitive segregation at any given point was 567, as compared to 2015, when the average number dropped to 235 (of whom 13, on average, were in in PS2). In 2016, the average number of individuals in punitive segregation at any given point was 195 (of whom 17, on average, were in PS2). The average sentence in punitive segregation is now 15 days.

**The number of override requests has steadily decreased since November 2015.** As reflected on Table 1, the number of override requests per month has decreased since the Board published its last report in February 2016.<sup>16</sup>

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<sup>11</sup> The September Record of Variance Action is available at:  
[http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Documents/20150914/Punitive%20seg%20post.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20150914/Punitive%20seg%20post.pdf)

<sup>12</sup> The December Record of Variance Action is available at:  
[http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Documents/201512/Record%20of%20Variance%20Action%20\(30%20Day%20Override\).pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/201512/Record%20of%20Variance%20Action%20(30%20Day%20Override).pdf).

<sup>13</sup> § 1-17(d)(4)

<sup>14</sup> § 1-17(d)(4)

<sup>15</sup> Since the amendments went into effect, the Board has published two reports covering overrides received through December 31, 2015, available at:  
<http://www.nyc.gov/html/boc/html/reports/reports.shtml>.

<sup>16</sup> In October 2015, Board staff received notice of eight (8) overrides that the Department had approved in June and July of 2015. These overrides are not analyzed in this report, but are reflected in the monthly and summary override totals in Table 1 above. Consequently, this report’s comparison of overrides to those in the Board’s previous report does not include these eight overrides.

**Table 1: Punitive Segregation Override Requests**

	Received	Approved	Approved	Rejected	Rejected
April	0	0	0%	0	0%
May	4	3	75%	1	25%
June	5	3	60%	2	40%
July	18	16	89%	2	11%
August	15	12	80%	3	20%
September	17	14	82%	3	18%
October	18	14	78%	4	22%
November	22	19	86%	3	14%
December	15	13	87%	2	13%
January	13	13	100%	0	0%
February	10	9	90%	1	10%
March	6	5	83%	1	17%
SUM	143	121	85%		

**The Chief approved the majority of override requests.** The Chief approved 28 of 30 (93%) override requests during the period January 1, 2016 through March 31, 2016.

- 28 approved overrides impacted 22 individuals, since some received multiple overrides.
- Six individuals each received two overrides.
- 23 of the 28 override requests concerned individuals housed in George Motchan Detention Center (GMDC), George R. Vierno Center (GRVC), Manhattan Detention Complex (MDC), and Otis Bantum Correction Center (OBCC).
- Two override requests were rejected: one for spitting at a Captain, and the other for refusing to comply with instructions and attempting to kick, spit and bite staff.
- Overall, since the amendments took effect, the Chief denied 15% of override requests.

**Assaults or attempted assaults on staff triggered the greatest number of approved overrides.** As reflected on Table 2, assaults or attempted assaults on staff triggered 56% (n=15) of the 28 overrides compared with 46% (n=25) in the Board’s report for the period September 12, 2015 through December 31, 2015, and 83% (n=25) in the report for the preceding period .

The overrides for assaults on staff during this period included actions such as biting, headbutting, and punching staff; throwing chairs at staff; resisting the facility-based response team; and pushing the cell door into an officer. Some of these assaults resulted in serious injury to uniformed staff including lacerations, numbness, and swelling. EMS transported staff to the hospital in at least four of these situations.<sup>17</sup> Splashing accounted for two approved overrides: one when an inmate threw urine and feces at an officer and the other when an inmate splashed an officer with an unknown liquid. *See Table 2.*

Inmate-on-inmate assaults prompted 32% (n=9) of the 28 approved overrides, seven of which involved slashings. Of the remaining two, one involved the throwing of hot water on an inmate who suffered second-degree burns, while the other involved a fight in which the victim sustained abrasions, swelling, and an eye hemorrhage.

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<sup>17</sup> Injuries to staff are not consistently referenced in the override paperwork; consequently, specific data on severe injuries incurred by staff during these override incidents are not available.

**Table 2: Categories of Incidents Triggering Override Requests**

	Count	Percentage
Assault or attempted assault on staff (splashing or spitting <b>ONLY</b> )	2	7%
Assault or attempted assault on staff ( <b>OTHER THAN</b> splashing or spitting)	15	54%
Inmate Assault	9	32%
Weapons Contraband	1	4%
Other <sup>1</sup>	1	4%

One override was approved for possession of weapons contraband (a scalpel blade wrapped in electrical tape was discovered in the individual's undergarments) as compared to four such incidents during the prior period ending December 31, 2015 and no such incidents in the period ending September 11, 2015.

**Less than one third of the override-triggering incidents occurred within seven days of the inmates' release from punitive segregation.** As reflected on Table 3, below, 31% (n=8) of the 26<sup>18</sup> overrides were based on incidents that occurred within seven days of the inmates' release from punitive segregation, as compared to 7% (n=4) in the period ending December 31, 2015. More than half of these incidents took place within 21 days of the inmates' release from punitive segregation.

**Table 3. Days between release from punitive segregation to the override-triggering incident.**

Days	Incidents	Percentage of 28 overrides
0-7	8	31%
3-14	3	12%
15-21	5	19%
22-28	0	0%
29-35	1	4%
36-42	2	8%
43-49	3	12%
50-56	3	12%
57-63	0	0%
64+	1	4%
SUM	26	100%

An average of 24 days elapsed between each individual's release from punitive segregation and the override-triggering incident. This is a significant decrease from the reporting period ending December 31, 2015 in which the average was 57 days and less than the preceding reporting period (ending September 11, 2015) in which the average was 32.5 days. For this reporting period, the time period between the individual's release from punitive segregation and the override request ranged from zero to 74 days.

<sup>18</sup> Two override-triggering incidents occurred in punitive segregation and, thus, are not counted in this total.

**Most individuals sent back to punitive segregation on overrides had been assigned to high-classification or special housing units at the time of the override-triggering incident.<sup>19</sup> See Table 4.**

**Table 4. Inmates' assigned housing units at the time of the override-triggering incidents.**

Housing Area Type	Count 1/1/2016 to 3/31/16	% of incidents	Count 9/12/15 to 12/31/15	% of incidents	Count through 9/11/15	% of incidents
Admin Seg	10	36%	13	24%	4	13%
APU	0	0%	1	2%	0	0%
Infirmary (CMC) <sup>20</sup>	1	4%	0	0%	0	0%
Enhanced Restraint	10	36%	24	44%	12	40%
ESHU	1	4%	6	11%	6	20%
GP Max	1	4%	7	13%	7	23%
GP Med	1	4%	0	0%	0	0%
Isolation	1	4%	1	2%	0	0%
Punitive Segregation	2	7%	0	0%	0	0%
Protective Custody	0	0%	2	4%	1	3%
Unhoused	1	4%	0	0%	0	0%
	28		54		30	

**More than half of the individuals who received overrides were involved in previous slashings or stabbings.<sup>21</sup>** Of the 22 individuals who received overrides, 13 or 59% had been identified as perpetrators, co-conspirators, or victims in earlier slashing or stabbing incidents at some point during their incarceration in the city jails.

- 36% (n=8) of these 22 individuals had been involved in one slashing or stabbing incident.
- One such person had been involved with five earlier slashings or stabbings.<sup>22</sup> See Table 5.
- In the previous reporting period (ending December 31, 2015), 48% (n=20) had been involved in an earlier slashing or stabbing incident.

Of the 13 individuals who had been involved in earlier slashing or stabbing incidents, six were perpetrators, two were victims, and five were both victims and perpetrator or co-conspirator across two or more incidents.

<sup>19</sup> Three of the six individuals who received multiple overrides were in the same type of housing area at the time of the second override-triggering incident.

<sup>20</sup> “CMC” (Centrally Monitored Cases) is a designation by which inmates are monitored so that the agency is continually aware of the housing, transport, and case status of such inmates.

<sup>21</sup> Although there were 28 overrides, this information pertains to the 22 individuals they effect.

<sup>22</sup> The level of involvement varies among perpetrators. Sometimes the assault involved many inmates such that officers were unsure who had slashed or stabbed the victim and who had participated in other ways.

**Table 5. Inmates' involvement in slashing incidents across all incarcerations (since 1994) - as perpetrator, co-conspirator, or victim.**

<b>Involvement in slashings or stabbings</b>	<b>Count</b>	<b>Percentage</b>
Never Involved	9	41%
One slashing or stabbing	8	36%
Two slashings or stabbings	2	9%
Three slashings or stabbings	1	5%
Four slashings or stabbings	1	5%
Five slashings or stabbings	1	5%
SUM	22	

**Individuals sent back to punitive segregation on overrides had relatively long lengths of stay in City jails.** The 22 override recipients had been in custody for an average of 477 days at the time they were returned to punitive segregation. One of these individuals had resided in custody for 1,998 consecutive days at the time of his override. In contrast, the average time in custody for all people in Department custody is 176.5 days.<sup>23</sup>

**Individuals sent back to punitive segregation on overrides have spent extensive time in punitive segregation during their current and previous incarcerations.** On average, the 22 people had spent a total of 276 days in punitive segregation over the course of their current and previous incarcerations<sup>24</sup> and 219 days during their current incarceration.<sup>25</sup> Notably, one person had spent 969 days in punitive segregation over five years in his current incarceration.

**More than one third of individuals who were sent to punitive segregation on overrides were young adults.** 39% (n=9) of the 22 individuals are young adults, ages 18 through 21. The average age of the 22 individuals is 24 years old, and the oldest is 32. Half of the six people who received multiple overrides are young adults, while the other half range in age from 23 to 27. The average age for the six individuals who were approved for multiple overrides is 21.8. The Department plans to end punitive segregation for young adults by June 1, 2016 per Board regulations.<sup>26</sup>

**The individuals who received overrides share a number of additional characteristics.**

- Two of the 22 individuals are sentenced while 20 are detainees.
- 86% (n=19) were identified as gang affiliated.

<sup>23</sup> At the Board meeting on May 12, 2015, Commissioner Ponte presented an analysis showing 176.5 days as the average length of stay in City jails. This number represents the average length of stay as of a given point in time. It is not the average length of stay of all inmates who have been discharged from custody.

<sup>24</sup> This data includes time served in punitive segregation from January 1, 2012 through March 31, 2016.

<sup>25</sup> This data includes time served in punitive segregation from the start of the inmate's current incarceration through March 31, 2016.

<sup>26</sup> See Variance to Minimum Standard § 1-17(b)(1)(ii) available at: [http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Documents/20160112/POST%2001.2016%20%20Record%20of%20Variance%20Action%20-%201-17\(b\)\(1\)\(ii\)%20-%20Exclusion%20from%20PSEG.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/POST%2001.2016%20%20Record%20of%20Variance%20Action%20-%201-17(b)(1)(ii)%20-%20Exclusion%20from%20PSEG.pdf).

- 77% (n=17) had three or more contacts with mental health services during their incarcerations.<sup>27</sup>
- Approximately half of the overrides correspond with an inmate who has been designated as Red ID<sup>28</sup> status (55%, n=12) and/or Enhanced Restraint<sup>29</sup> status (59%, n=13).
- On average, the 22 individuals were each involved in 23.3 reportable incidents while in Department custody, a significant increase as compared to the average of 15.2 in the previous report (ending December 31, 2015). One person had only two reportable incidents on his record while one had 75.
- Twenty of the 22 individuals reported their race as black. Three identified as Hispanic, one of whom also identified as black.<sup>30</sup> All of them are male.

**The Board has carefully monitored individuals for whom the Department has sought multiple overrides.** Since the Department began granting overrides in April 2015:

- One (1) person has been approved for five overrides.
- Four (4) people have been approved for four overrides each.
- Five (5) people have been approved for three overrides each.
- Nineteen (19) people have been approved for two overrides each.

There are five individuals who have received four or five overrides each since the Department began granting them in April 2015. Of these five men:

- Three have received a seven day waiver
- All are considered gang affiliated and have had three or more contacts with mental health services during their incarcerations
- All are charged with felonies, and are held on bail (at least \$30,000) or remanded
- Before being sent back to punitive segregation, all were housed in either administrative segregation or enhanced restraint housing units
- They range in age from 19 to 24 (with the average age being 21)
- Three of the five men were perpetrators or co-conspirators in slashings

On average, they have spent 431 days in punitive segregation over the course of their incarcerations in City jails and 278 days during their current incarceration. They have also been in Department custody more than three times longer — 566 days or approximately 1.5 years — than the average inmate. In addition, they have received more infractions than the rest of the override population (27.2 versus 18) and incurred more “reportable incidents”<sup>31</sup> (29.4 versus 21.2).

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<sup>27</sup> None of these individuals have been diagnosed with a serious mental illness (SMI). Inmates with an SMI are prohibited from placement in punitive segregation.

<sup>28</sup> Red ID status refers to a status the Department gives an inmate who has been found in possession of, or has used, a weapon. When a Red ID inmate is moved to and from a facility, he is restrained with handcuffs, security mitts, and waist chains.

<sup>29</sup> Enhanced Restraint refers to a status the Department gives an inmate who exhibits violent behavior or is found in possession of a scalpel, hobby knife, razor blade, or other dangerous instrument. When an Enhanced Restraint inmate is moved within the facility or to and from a facility, the inmate is restrained with handcuffs, security mitts, leg irons, and waist chains.

<sup>30</sup> This information is taken from the Inmate Information System in which inmates self-report race and whether one is Hispanic.

<sup>31</sup> “Reportable incidents” is a Department category included in the override paperwork. These incidents include: contraband discovery, destruction of Department property, serious injuries, slashings, and uses of

**The Chief approved nine 7-day waivers between January 1 and March 31.** Waivers allow the Department to put someone back in punitive segregation within seven days of his release from a 30- day sentence. Seven of these waivers were combined with 60-day overrides.<sup>32</sup>

- Three of the waivers were approved following participation in a slashing.
- Two occurred after individuals were discovered with weapon contraband.
- The other four waivers were granted for assaults on staff, including two punching incidents and two instances where individuals threw large objects at staff.

The waiver recipients had spent extensive time in punitive segregation (an average of 235 days, during their current incarceration). Moreover, these individuals' length of stay in Department custody — 631 days or almost two years — is much greater than the average length of stay for all in custody on any given day (176.5). The Chief denied two 7-day waivers during this reporting period.

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force. Logbook entries such as splashing and spitting are also considered reportable incidents in the override requests.

<sup>32</sup> The previous report (ending December 31, 2015) noted that some of the overrides requests were not in fact necessary. We have not come across the same issue in this reporting period.