



July 9, 2018

## NEW YORK CITY BOARD OF CORRECTION

### Seven Day Waivers September 1, 2015 – June 30, 2018

The Board of Correction allows, via a variance from the Minimum Standards, the New York City Department of Correction (NYC DOC or Department), “in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days.”<sup>3</sup> This variance remains in effect.

Six Month Period	Approved Waivers	Denied Waivers
September – December 2015	5	2
January – June 2016	12	4
July – December 2016	3 <sup>1</sup>	1
January – June 2017	3	1
July – December 2017	4	1
January – June 2018	0	1
<b>Total</b>	<b>27</b>	<b>10<sup>2</sup></b>

As a condition of the variance, the Board required that the highest ranking uniformed DOC staff member, the Chief of Department, approve all “seven day waivers” in writing and state why placement in a less restrictive setting is not a safe option. The Chief must also specify her reason for granting the request. All decisions and supporting documentation must be sent to the Board.<sup>4</sup>

This report reviews the Department’s use of seven day waivers since the Board first granted the variance in September 2015. On June 9, 2017, Chief Murphy retired and Chief Jennings assumed responsibility for reviewing all seven day waiver requests.

---

<sup>1</sup> In July 2017, the Department sent the Board a waiver from July 2016 that was mistakenly not provided for inclusion in the previous report’s findings. Analysis of this waiver is included in this report.

<sup>2</sup> Two waivers counted here as denied were technically neither approved nor denied. These individuals did not return to Punitive Segregation within seven days.

<sup>3</sup> Record of Variance Action re: BOC Minimum Standard 1-17(d)(2), September 8, 2015, <http://www1.nyc.gov/assets/boc/downloads/pdf/punitive%20seg%20post.pdf>. The Board voted to renew the variance four times subsequently: in December 2015, June 2016, January 2017, and July 2017. The Board denied the variance request in November 2016 which went into effect on December 17, 2016. Consequently, the Department did not have the authority to grant waivers from December 17, 2016 to January 10, 2017.

<sup>4</sup> The Department has consistently provided the Board notice of waivers granted or denied by the Chief, however, to date, the notice has not included: the Chief’s decision in writing; her explanation of why placement in a less restrictive setting is not a safe option; or her reason for granting the request. The Department has committed to providing this information going forward.

### **Total Number of Seven Day Waivers Received**

Since this variance was initially granted in September 2015, **the Department has granted 27 such waivers and denied ten.** Twenty-five unique individuals received waivers. Two individuals received two waivers each. Eighteen of the approved waivers (66%) were combined with a punitive segregation override, meaning that the individual had been out of punitive segregation for less than seven days when he was put back in and had also served more than 60 days in six months.

### **Waivers Granted Since the Board's Last Report**

The Department approved zero waivers and denied one waiver between January 1 and June 30, 2018. This is a decrease from the previous six months, from July 1 to December 30, 2017, during which the Department approved four waivers. The waiver denied by the Department during this period involved an assault on staff (other than a splashing or spitting).

<b>Reason for Waiver Request</b>	<b>Approved Waivers</b>	<b>Denied Waivers</b>
Inmate assault	14	1
Assault on staff (OTHER THAN splashing or spitting) *	7	5
Weapons contraband	3	0
Assault on staff (splashing or spitting ONLY)	2	4
Damaging DOC property and destructive behavior	1	0
<b>Total</b>	<b>27</b>	<b>10</b>

\*Assaults on staff other than splashing and spitting included punching and hitting staff and throwing heavy objects at members of staff.

### **Findings**

With the Department approving zero waivers in the last six months, the findings below remain unchanged from the last 7 day waiver report published by the Board on January 4, 2018.<sup>5</sup>

**Most seven day waivers were granted for slashings.** Thirteen of the 14 waiver triggering “Inmate Assaults” in the table above were slashings. The other was for a gang assault resulting in serious injury.

**The individuals who received seven day waivers spent extensive time in punitive segregation during their time in NYC DOC custody and had long lengths of stay in custody.** On average, the 25 individuals (of the 27 waivers) spent 202 days in punitive segregation for their current incarceration and 351 days across their NYC DOC incarcerations. On average they had been incarcerated for 517 days in their current incarceration when they received their waiver.

**An average of three days elapsed between a person's release from a 30 consecutive day punitive segregation placement and the waiver-triggering incident.** Two individuals received a waiver while they were in punitive segregation; they were not released at all after thirty consecutive days. They were in punitive segregation for 58 and 59 consecutive days total.

**Once their seven day waivers were granted, individuals served an average of 24 days in punitive segregation.** The minimum time served was two days in punitive segregation after being placed back in with a waiver, while the maximum time served was thirty consecutive days.

<sup>5</sup> See N.Y.C. BD. OF CORR., [Seven Day Waivers September 1, 2015 – December 31, 2017](#) (Jan. 2018).

**Most of the individuals sent back to punitive segregation on waivers had been assigned to high-classification or special housing units at the time of the waiver-triggering incident.**

Housing area at time of waiver-triggering incident	Count*
Enhanced Restraint	7
General Population – Maximum Classification	5
Unhoused	4
Administrative Segregation	3
Enhanced Supervision Housing	3
General Population – Medium Classification	1
Mental Observation Unit	1
Punitive Segregation	1
Restrictive Housing Unit (RHU) <sup>6</sup>	1
West Facility <sup>7</sup>	1
Total	27

\*Approved Waivers.

**Most individuals who received seven day waivers have also received 60 day overrides (n=21, 84%).** Sixty day overrides allow the Chief of the Department to place an individual in punitive segregation for a period exceeding 60 days in six months in rare instances when incarcerated people engaged in “persistent, serious acts of violence.”<sup>8</sup> On average, the 25 individuals had each received two 60 day overrides. Four waiver recipients had not received any overrides while three people received five overrides each.

**Among people who were approved for seven day waivers:**

- The average age of seven-day waiver recipients is 23.6 years old. Six of the recipients were 18 or 19 at the time of the waiver.<sup>9</sup> Another recipient was 20 years old.
- Twenty-one of the 25 waiver recipients had three or more contacts with mental health services during their current incarcerations.<sup>10</sup>
- Twenty of the 25 waiver recipients reported their race as black, three of whom also identified as Hispanic. The other five individuals identified as non-black Hispanic. All of them are male.<sup>11</sup>

<sup>6</sup> The RHU program is for incarcerated people who have been sentenced to punitive segregation and are mentally ill, have a history of suicidal gestures/attempts, or are at risk for suicidal behavior or decompensation if placed in a traditional punitive segregation unit.

<sup>7</sup> The West Facility is a series of sprung that houses incarcerated people with contagious diseases in some sprung and people who are violent or require extensive protective custody housing in the others. The Board sent a Notice of Violation of Minimum Standards on September 29, 2016 regarding its operation of West. It is classified as general population escort housing by DOC but is more restrictive than enhanced restraint housing areas given that each person has their own self-contained space and there are fewer opportunities for co-mingling.

<sup>8</sup> BOC Minimum Standard § 1-17(d)(3), [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny\\$anc=JD\\_T40C001\\_1-17](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C001_1-17).

<sup>9</sup> The Department no longer sentences young adults to punitive segregation. The Department stopped sentencing 18 year olds to punitive segregation in June 2016 and stopped sentencing 19-21 year olds in October 2016.

<sup>10</sup> The Department designates people as “M status” in compliance with the Brad H. settlement in which the Court designated class members as people who have received, are receiving, or will receive treatment for mental illness three or more times during their incarceration.

<sup>11</sup> No studies or reports were done about individuals’ gender identities. The Department of Correction housed people placed in punitive segregation on waivers in the men’s punitive segregation facility, but it is possible that there are individuals in these units that identify as women or as gender non-binary.