



NEW YORK CITY **BOARD OF CORRECTION**

Seven Day Waivers **September 1, 2015 – June 28, 2017**

Waivers Received Through June 2017

At its September 2015 Board meeting, the Board voted to approve a variance allowing the New York City Department of Correction (NYC DOC), “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.”² This initial variance was approved for 90 days. The variance was renewed for six months in December 2015 and again in June 2016.

At its November 15, 2016 Board meeting, the Board voted to deny the variance request though the Department continued to have the ability to grant seven day waivers through December 17, 2016 when the six month variance expired. At the January 10, 2017 Board meeting, the Board voted to approve the variance request, reinstating the Department’s ability to grant these waivers. This report reviews the Department’s use of “seven day waivers” since the Board first granted the variance.

Total Number of Seven Day Waivers Received

Since this variance was initially granted in September 2015, **the Department has granted 22 such waivers and denied eight.** No one individual has received more than one waiver. Sixteen of the approved waivers were

	Approved Waivers	Denied Waivers
September 2015	0	1
October 2015	0	0
November 2015	1	1
December 2015	4	0
January 2016	4	0
February 2016	3	1
March 2016	2	1
April 2016	2	1
May 2016	0	0
June 2016	1	1
July 2016	0 ¹	1
August 2016	0	0
September 2016	1	0
October 2016	0	0
November 2016	1	0
December 2016	0	0
January 2017	0	0
February 2017	1	0
March 2017	1	0
April 2017	1	1
May 2017	0	0
June 2017	0	0
Total	22	8

¹ On July 10, 2017 the Department sent the Board a waiver from July 27, 2016 that was mistakenly not provided timely. This waiver was approved for an individual who had previously received another waiver in January 2016. From the beginning of his incarceration until the end of the reporting period, this person served 234 days in punitive segregation, 35% of his time in NYC DOC custody. In addition to the two seven-day waivers, he has also received four punitive segregation overrides which allowed the Department to keep him in punitive segregation for over sixty days in a six-month period. Due to the timing of receiving this waiver, the rest of the report does not contain analysis of it but Board staff will update the report to include it in the coming weeks.

² Record of Variance Action ree BOC Minimum Standard 1-17(d)(2), September 8, 2015, <http://www1.nyc.gov/assets/boc/downloads/pdf/punitive%20seg%20post.pdf>.

combined with an 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

There have been four waivers granted and one denied since the last report was issued. One of the approved waivers was for a newly incarcerated, sentenced individual who assaulted staff and then showed them a box cutter in his possession. He was incarcerated for 119 days total and was in punitive segregation for 71% of that stay (84 days). He was discharged to the community directly from punitive segregation.

Two of the other three approved waivers were granted for slashings and one was approved after splashing a staff member. These waivers were approved for people with much longer jail stays who were detainees on felony charges. All three of those individuals were in the West Facility³ before their time in punitive segregation. The waiver that was denied during this period was also for a splashing.

Findings

Most seven day waivers were granted for slashings. These are accounted for below as “Inmate Assault”.⁴

	Approved Waivers	Denied Waivers	
Inmate assault	10	1	*Assaults on staff other than splashing and spitting included punching and hitting staff and throwing heavy objects at members of staff.
Assault on staff (OTHER THAN splashing or spitting) *	6	3	
Weapons contraband	3	0	
Assault on staff (splashing or spitting ONLY)	2	4	
Damaging DOC property and destructive behavior	1	0	
Total	22	8	

All 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 override-triggering incident.

Housing area at time of waiver-triggering incident	Count
Enhanced Restraint	7
General Population – Maximum Classification	4
Administrative Segregation	3
Unhoused*	3
Enhanced Supervision Housing	2
Punitive Segregation	1
West Facility	1
Restrictive Housing Unit (RHU) ⁵	1
Total	22

³ 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 enhanced restraint 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.

⁴ The Department does not provide an explanation of the Chief’s decision to approve or deny a seven-day waiver.

⁵ 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.

* These inmates were in the intake area waiting to be housed after being discharged from punitive segregation when the waiver-triggering incident occurred.

An average of 3 days elapsed between an inmate'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.

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 22 individuals spent 223 days in punitive segregation for their current incarceration and 336 across their NYC DOC incarcerations. On average they had been incarcerated for 566 days when they received their waiver.

Most individuals who received seven day waivers have also received 60 day overrides (n=20, 91%). 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".⁶ On average, the 22 individuals had received two 60 day overrides. Two waiver recipients had not received any overrides while three inmates received five overrides each.

Among people who were approved for seven day waivers:

- The average age of seven-day waiver recipients is 23.3 years old. Six of the recipients were 18 or 19 at the time of the waiver.⁷ Another recipient was 20 years old.
- Nineteen of the 22 waiver recipients had three or more contacts with mental health services during their current incarcerations.⁸
- Seventeen of the 22 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.⁹

July 7, 2017

⁶ 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).

⁷ 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.

⁸ The Department designates inmates as "M status" in compliance with the Brad H. settlement in which the Court designated class members as inmates who have received, are receiving, or will receive treatment for mental illness three or more times during their incarceration.

⁹ No studies or reports were done about individuals' gender identities. The Department of Correction housed people placed in Secure as men, but it is possible that there are individuals in these units that identify as women or as gender non-binary.