

## New York City Board of Correction Splashing Report

Splashings are defined in Department of Correction (DOC) policy as “any incident wherein a person in custody intentionally causes an employee to come in contact with any fluid or fluid like substance.”<sup>1</sup> Fluid or fluid like substances range from water and milk to bodily fluids such as urine, feces, spit, and blood. Per DOC policy, people in custody who commit a splashing are charged with an assault on staff infraction and evidence is collected.<sup>2</sup> While the Department tracks and publicly reports data on assaults on staff in general, splashings as a distinct type of assault on staff are not currently tracked in a manner that easily facilitates routine reporting or review.

Correction officers and officials in jail systems comparable to New York City’s, such as the Los Angeles County and Cook County Jail systems, also track and have reported that splashings are negatively affecting staff and pose a challenge to jail management and operations. People affected by and responsible for responding to splashings in NYC and other jurisdictions have cited a range of factors they believe to be associated with and contributing to splashings (also referred to as “gassings” in other jurisdictions).<sup>3</sup>

Both nationally and locally, however, there is a dearth of research on splashings and little is known empirically about the prevalence, the conditions and contributing factors associated with this behavior, deterrence and prevention, or the physical and psychological impact on corrections officers and staff who have been splashed. As a start toward establishing a better understanding of splashings and their prevalence in New York City jails, Board of Correction (BOC) staff reviewed all occurrences of splashings reported in 2017. While preliminary, this report represents the most comprehensive public empirical analysis on splashings in the country.

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<sup>1</sup> NEW YORK CITY DEP’T OF CORRECTION, OPERATIONS ORD. NO. 19/17, SPLASHING INCIDENTS (eff. 11/10/17).

<sup>2</sup> NEW YORK PENAL LAW § 240.32, AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AND INMATE; § 195.05 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE SECOND DEGREE.

<sup>3</sup> Suspected factors associated with splashing include: perpetrators’ mental health conditions, lack of programming, the isolation and sensory deprivation of restrictive housing environments, and perpetrators’ intentional harassment of officers and gang involvement. Systemic policy changes related to reductions in staff uses of force and limits on the use of punitive segregation have also been identified by corrections officers as potential contributing factors. See Arax, M. (1999, June 1). Inmates Use 'Gassing' to Strike Back at the System. *Los Angeles Times*. Retrieved February 9, 2018, from <http://articles.latimes.com/1999/jun/01/news/mn-43122>; Phillips, N. (2017, April 11). Violence spiking inside Denver’s jails leaves sheriff’s department with questions. *Denver Post*. Retrieved February 9, 2018, from <https://www.denverpost.com/2017/04/11/crowded-denver-jails/>; Chang, C. (2014, July 10). Jail cracks down on inmates' pungent assaults on deputies. *Los Angeles Times*. Retrieved February 9, 2018, from <http://www.latimes.com/local/crime/la-me-jail-gassing-20140711-story.html>; Marin, C., & Moseley, D. (2017, November 15). Sexual Harassment in Cook County Jail: Indecent Activity Alleged By Public Defenders. *NBC 5 Chicago*. Retrieved February 9, 2018, from <https://www.nbcchicago.com/investigations/Allegations-of-Sexual-alleged-by-Public-Defenders-457850553.html>

## Key Findings

- In 2017, there was a total of 1,335 splashing incidents committed by 744 unique individuals. Two percent (2%, n=26) of splashings involved multiple perpetrators.
- Nine individuals were responsible for 13% (n=172) of all splashings, and a quarter (26%, n=197) of the 744 individuals who committed splashings committed more than one.
- Eighty-four percent (84%, n=1121) of all splashing incidents involved at least one perpetrator with mental health needs (Brad H/M designation).<sup>4</sup>
- Twenty percent (20%, n=263) of all splashing incidents occurred in the Otis Bantum Correctional Center (OBCC).
- Of the 1,335 splashing incidents in 2017, 16% (n=211) occurred in intake pens, 13% (n=177) in ESH housing areas, 12% (n=166) in general population housing areas, and 9% (n=122) in punitive segregation and restrictive housing units.
- Fifty-five percent (55%, n=750) of splashing incidents were recorded as involving unknown liquid substances, 41% (n=561) involved bodily fluids, 2% (n=24) involved food, and 1% (n=19) involved water.
- Ninety-six percent (96%, n=1,286) of all individuals splashed were correctional officers.
- Officers elected to turn in their uniforms for testing in 26% (n=347) of splashing incidents involving officers.
- Twenty-four percent (24%, n=327) of all splashing incidents were associated with a use of force, 5% (n=59) were recorded in connection with an unusual incident as defined by the Department, and all others occurred independent of other incidents and were recorded in logbook entries.

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<sup>4</sup> The Brad H/M indicator is assigned to individuals who have been incarcerated in city jails for at least 24 hours and who, during their confinement, had at least three mental health appointments.

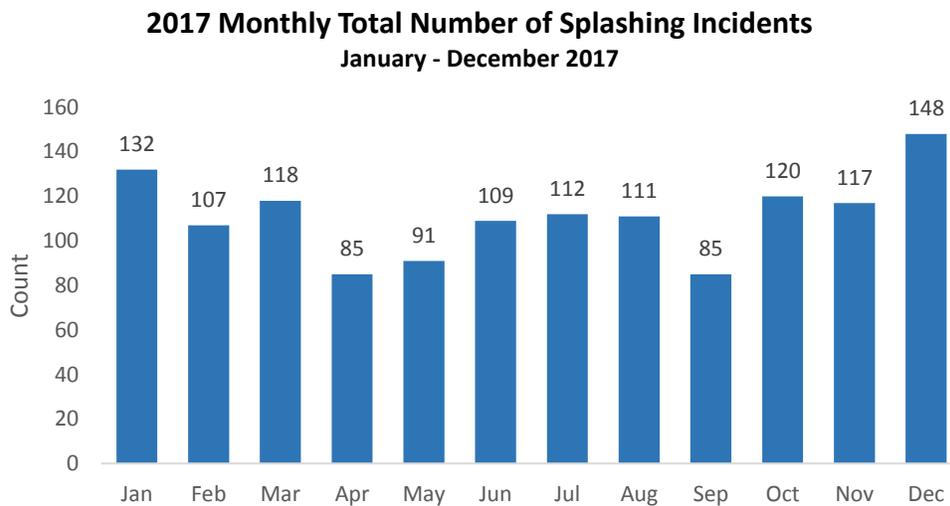
## Splashing Reporting Data and Methodology

The findings in this report are based on an analysis of incidents found in DOC’s 24-Hour Central Operations Desk (COD) Reports from January through December 2017. The data reviewed from these reports includes information reported immediately after an incident occurs. Because a distinct reporting category for splashing incidents does not exist in DOC tracking systems, in order to derive the number of splashings reported, Board staff pulled incidents from the 24-Hour COD Reports using a keyword text search.<sup>5</sup> For all incidents with at least one of the keywords, Board staff reviewed the reported information to confirm the report was in fact describing a splashing and, if so, coded the time of incident, type of splashing, substance involved, location, and individuals affected. This approach allowed the Board to determine the prevalence of splashing incidents reported in DOC facilities and additional information about these incidents. Given this methodology, it is possible the numbers presented in this report do not include all splashing incidents actually reported in 2017.

## Total Splashings

In 2017, a total of 1,335 splashing incidents were reported. Forty-eight percent (48%, n=641) of splashing incidents occurred during the 3:00 P.M. to 11:00 P.M. tour, 43% (n=572) during the 7:00 A.M. to 3:00 P.M. tour, and 9% (n=122) during the 11:00 P.M. to 7:00 A.M. tour. The number of splashings by month ranged from a minimum of 85 in April and September to maximum of 148 splashings in December 2017.

Figure 1.



SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

## Location

In 2017, the Otis Bantum Correctional Center (OBCC) was the facility with the most splashing incidents. Twenty percent (20%, n=263) of all splashings occurred in OBCC.

<sup>5</sup> Board staff searched the Department’s 24-Hour COD Report’s logbook entries, unusual incident CODs, and Use of Force reports for terms including: splash, spit, spat, liquid, fluid, urine, feces, water, coffee, milk and verified that each report related to a splashing occurrence.

Figure 2.



SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

Sixteen percent 16% (n=211) of all splashing in DOC occurred in intake pens, 13% (n=177) in ESH housing areas, 12% (n=166) in general population housing areas, and 9% (n=122) in punitive or restrictive housing areas. Ninety-one percent (91%, n=161) of the 177 splashing incidents that took place in ESH occurred in ESH level 1 housing areas where restraint desks are used during lockout hours.<sup>6</sup>

Figure 3.

Splashing by Housing Category (2017)		
Housing Category	Number of Splashing Incidents	Percent of Total
Intake	211	16%
ESH (Levels 1 & 2)	177	13%
General Population	166	12%
Punitive & Restrictive Housing (PSEG & RHU)	122	9%
Accelerated Program Unit (APU)	81	6%
Mental Observation	65	5%
General Population Escort	63	5%
Court Pen	59	4%
Restraint Unit	57	4%
Transition Repair Unit (TRU)	27	2%
Protective Custody	24	2%
Secure Unit	17	1%
Other	266	20%
<b>Total</b>	<b>1335</b>	<b>100%</b>

SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

<sup>6</sup> See also NEW YORK CITY. BOARD OF CORRECTION, AN ASSESSMENT OF ENHANCED SUPERVISION HOUSING 36 (Apr. 2017); and AN ASSESSMENT OF ENHANCED SUPERVISION HOUSING FOR YOUNG ADULTS 44 (Jul. 2017).

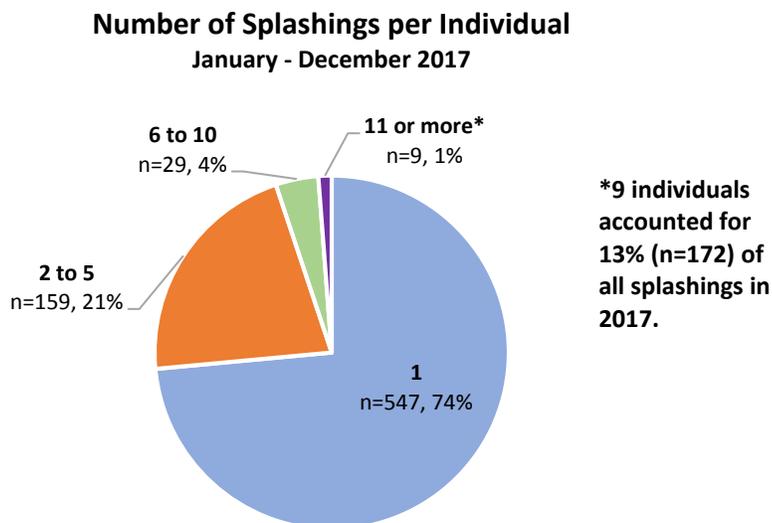
## Individuals Involved

Splashing incidents were committed by 744 unique people in DOC custody. Two percent (2%, n=26) of splashing incidents involved more than one individual.

The average age of individuals involved in splashings was 26, but ranged from 16 to 68. The median age was 25. Most splashings (70%, n=952) were committed by adults. Twenty-seven percent (27%, n=361) of splashings were committed by young adults, and 3% (n=47) were committed by adolescents.<sup>7</sup> Eighty-four percent (84%, n=1121) of all splashing incidents involved at least one perpetrator with mental health needs (Brad H/M designation).<sup>8</sup>

The number of splashings per individual ranged from 1 to 40 splashings. Nine individuals were responsible for 13% (n=172) of all splashing incidents. More than a quarter (26%, n=197) of the 744 individuals who committed splashings in 2017 committed more than one splashing – 74% (n=547) splashed only once, 21% (n=159) splashed two to five times, 4% (n=29) splashed six to ten times, and 1% (n=9) splashed 11 or more times.

Figure 4.



SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

<sup>7</sup> Some splashings involved more than one individual and individuals may be involved in more than one splashing incident. Age was calculated at the time of each incident, therefore, the total numbers by age category exceed the number of splashing incidents and unique individuals.

<sup>8</sup> The Brad H/M indicator is assigned to individuals who have been incarcerated in city jails for at least 24 hours and who, during their confinement, had at least three mental health appointments.

### Staff Affected & Substances Involved

Ninety-six percent (96%, n=1286) of all individuals splashed were correctional officers. Of the 49 splashing incidents not involving correctional officers, 42 involved Correctional Health staff,<sup>9</sup> 5 involved DOC civilians (e.g., Dietary aide, electrician, support services), and 2 involved other individuals (i.e., Judge and Legal Aid lawyer). Officers elected to turn in their uniforms for testing in 26% (n=347) of splashing incidents involving officers.

Fifty-five percent (55%, n=750) of splashing incidents were recorded as involving unknown liquid substances, 41% (n=561) involved bodily fluids, 2% (n=24) involved food, and 1% (n=19) involved water.<sup>10</sup> Forty-one percent (41%, n=551) involved the act of spitting one or more substances.<sup>11</sup>

Figure 5.

Substances Involved in Splashing Incidents (2017)		
Substance*	Count	Percent of Total
Unknown Liquid Substance	750	55%
Bodily Fluid	561	41%
Food	24	2%
Water	19	1%
Other	1	0%
Total	1355	100%

SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

### Splashing Policies and Procedures

In February 2017, the Department of Correction issued a new operations order describing procedures for responding to splashing incidents and updated this policy in November of 2017.<sup>12</sup> The procedures outlined in the policy address investigation of the incident, serology evidence collection and preservation, reporting and tracking of the incident, employee uniform replacement, and adjudication and charges for individuals who committed the splashing.

### Reported Incident Types

Per Department policy, splashing must be recorded as an “Assault on Staff Logbook Entry” and reported to the Central Operations Desk (COD).<sup>13</sup> If the splashing incident occurs in conjunction with a reported use of force incident, there is no requirement for a logbook entry to be

<sup>9</sup> In calendar year 2017, CHS staff reported 28 workplace violence reports that indicated splashing and another 28 that indicated a spitting. Splashing totals reported by CHS are based on the number of victims who chose to file a workplace violence case, not the total number of unique splashing events. The 28 CHS staff workplace violence splashing reports corresponded to 25 distinct splashing events, and the 28 CHS staff workplace violence spitting reports corresponded to 28 distinct spitting events. CHS records distinguish spitting events from splashing.

<sup>10</sup> Splashing may involve multiple substances therefore the total does not match the total number of splashing incidents.

<sup>11</sup> Some splashing incidents involved spitting and other substances.

<sup>12</sup> N.Y.C. DEP’T OF CORRECTION, OPERATIONS ORDER NO. 19/17, SPLASHING INCIDENTS (eff. 11/10/17), *superseding* N.Y.C. DEP’T OF CORRECTION, OPERATIONS ORDER NO. 3/17, SPLASHING INCIDENTS (eff. 2/15/17); TELETYPE ORDER HQ-02545-0, “SPLASHING INCIDENTS” (eff. 11/25/13); and MEMORANDUM 01-05, “SPLASHING INCIDENTS” (eff. 5/25/05).

<sup>13</sup> N.Y.C. DEP’T OF CORRECTION, OPERATIONS ORDER NO. 19/17, SPLASHING INCIDENTS (eff. 11/10/17).

documented by COD, however, the splashing must be included in the use of force description. The Department’s Operations Order is silent on how to report splashings that occur in connection with other “unusual incidents,” however Board staff found 59 splashings connected with such incidents.

Twenty-four percent (24%, n=327) of all splashing incidents were associated with a use of force (including two allegations of a use of force), 5% (n=59) were recorded in connection with an unusual incident as defined by the Department,<sup>14</sup> and all other splashings (71%, n=949) occurred independent of other incidents and were recorded as logbook entries. The unusual incident categories related to splashings were criminal acts on DOC property, conduct unbecoming, and an arrest of a visitor.<sup>15</sup>

Figure 6.

<b>Method of Reporting Splashing Incidents (2017)</b>		
<b>Reported Incident Type</b>	<b>Number of Incidents</b>	<b>Percent of Total</b>
Logbook Entry	949	71%
Use of Force*	327	24%
Unusual Incident**	59	5%
<b>Total</b>	<b>1335</b>	<b>100%</b>

SOURCE: BOC Analysis of DOC 24-Hour COD Reports (January – December 2017).

\*Use of force includes two allegations of use of force.

\*\*Unusual incidents include “Criminal Acts on DOC Property,” “Conduct Unbecoming,” and “Arrest of Visitor.”

### Next Steps

Moving forward, the Department should update its approach to tracking splashings so that the number of splashings can be more easily, accurately, and routinely reported and reviewed to address needed policy and practice improvements. DOC and CHS should work together to develop and implement behavior management plans and potential treatment options for individuals who are routinely involved in splashings.

<sup>14</sup> The Department’s policy on reporting requirements for unusual incidents defines “unusual incident” as “an event or occurrence that may affect or actually does affect the safety, security and well-being of the Department, its personnel, visitors and volunteers, as well as the inmates over whom it has custody and control.” NEW YORK CITY DEP’T OF CORRECTION, DIRECTIVE No. 5000R-A, REPORTING UNUSUAL INCIDENTS, sec. IV(C), at 4 (eff. 11/19/04).

<sup>15</sup> Criminal acts on DOC property involves incidents committed against DOC civilians or Correctional Health staff. Conduct unbecoming incidents occur when DOC staff commit acts that are not part of DOC protocol.