



THE CITY OF NEW YORK BOARD OF CORRECTION

Sixty-day Punitive Segregation Override Notices Received Through September 11, 2015 from the Department of Correction

INTRODUCTION AND BACKGROUND

On January 13, 2015, the Board amended the Minimum Standards to include provisions limiting the use of punitive segregation. One such provision prohibits the Department of Correction from holding incarcerated persons in punitive segregation for more than 60 days in a six-month period, except in cases where the inmate continues to engage in “persistent acts of violence.”¹ On such rare occasions, the Chief of the Department is authorized to extend the inmate’s placement in punitive segregation by granting an override.²

In practice, senior Department staff – often the jail wardens or commanding officers – request the overrides in writing, and the requests (hereinafter “override requests”) are then forwarded to the Chief of Department by the Commanding Officer of the Field Operations Unit. Once the Chief acts on a request, the Department sends the override request to Board staff along with a brief statement explaining whether the Chief had approved or rejected the override request.

This report is a review of the 37 override requests that the Chief has acted upon since the amendments to the Minimum Standards went into effect.³

¹ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, Limitations on the Use of Punitive Segregation, §1-17(d)(3) (Jan. 13, 2015). In relevant part, the amendment provides:

An inmate may not be held in punitive segregation for more than a total of sixty (60) days within any six (6) month period, unless, upon completion of the sixty (60) days, the inmate continues to engage in persistent acts of violence, other than self-harm, such that placement in enhanced supervision housing, provided for in section 1-16 of this chapter, would endanger inmates or staff. In such instances, the Chief of Department must approve extension of the inmate’s punitive segregation placement, and the Department must provide the Board and the Department of Health and Mental Hygiene with immediate notification containing an explanation of the security concerns presented by the inmate.

Id.

² See *id.*

³ Since October 2015, when this report was initially prepared, Board staff has learned that the number is 46, not 37. The Department has since provided us these notices. All nine were notices of approved overrides, and the majority date back to July 2015. In the coming weeks, we will update the report with this new information.

FINDINGS⁴

1. The Chief of Department approved the majority of override requests.

Since implementation of the amended Minimum Standards, the Chief of the Department has approved 30 of 37 (81.1%) override requests affecting 29 inmates. One of the 29 inmates accounted for two of the 30 overrides.

Twelve of the 30 overrides (40%) were approved in August, alone. Another nine (30%) were approved in July. While this suggests that the rate of approvals has increased, it is important to note that there has also been a corresponding increase in the number of override requests over time. *See Table 1.* Meanwhile, the number of override request rejections has remained consistent over the last three months, with two per month since June 2015. *See Table 1.*

Table 1. Punitive segregation override requests since implementation of the amendments to the Minimum Standards in 2015.

	Received	Approved	% Approved	Rejected	% Rejected
April	0	0	0.0%	0	0.0%
May	4	3	75.0%	1	25.0%
June	4	2	50.0%	2	50.0%
July	11	9	81.8%	2	18.2%
August	14	12	85.7%	2	14.3%
September (through 9/11/2015)	4	4	100.0%	0	0.0%
SUM	37	30	81.1%	7	18.9%

2. For the majority of inmates whose placement in punitive segregation was extended, the overrides were triggered by their involvement in assaults or attempted assaults on staff.

Of the 30 overrides, 83.3% (n=25) were triggered by assaults or attempted assaults on staff. Of these, 40.0% (n=12) involved inmates who punched, head-butted, or otherwise physically hit officers, sometimes causing the officers serious injuries. Meanwhile, 23.3% (n=7) were triggered by attempted assaults on staff, involving inmates who “advanced toward” officers, presumably in a menacing manner, and those who threw bottles, buckets, or other small items towards staff. In addition, 20% (n=6) of these overrides were triggered by assaults on staff where inmates had spat on officers or splashed them with unknown liquid substances.⁵ Only 16.7% (n=5) were initiated following inmate-on-inmate assaults. Two of these five incidents were slashings. *See Table 2.*

Table 2. Categories of incidents triggering override requests

	Count	Percentage
Assault on staff (OTHER THAN splashing or spitting)	12	40.0%
Attempted assault on staff	7	23.3%
Assault on staff (splashing or spitting ONLY)	6	20.0%
Inmate assault - 2 (40%) of which were slashings	5	16.7%
SUM	30	100.0%

Among the six inmates who were sent back to punitive segregation for splashing or spitting on officers, the average total number of days spent in punitive segregation by each inmate during his current

⁴ The findings are based on information current through September 11, 2015.

⁵ Of these inmates involved in these six splashing or spitting incidents that triggered the overrides, only one involved an inmate with a history of slashing inmates.

incarceration was 245.3 days – 30.7% higher than the corresponding figure (187.7 days) for overrides triggered by any other incident category.⁶

As for the seven override requests that the Chief denied, at least one was for a splashing and three were for various other acts of inmate misconduct. In one incident, an inmate refused to lock-in and incited others not to lock in as well, which led to a use of force. In another incident, while a female officer ran her hand along the young adult’s waistline, as part of a pat-frisk, the inmate moved his body causing her to feel his erect penis. In another incident, a young adult grabbed the MK9 canister from a captain and ran down the tier, away from staff.

3. Less than a quarter of the override-triggering incidents occurred within 7 days of the inmates’ release from punitive segregation.

Only 23.3% (n=7) of the 30 overrides were based on incidents that occurred within seven days of the inmates’ release from punitive segregation. Meanwhile, more than half of these incidents took place within 28 days of the inmates’ release from punitive segregation. See Table 3.

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

Days	Count	Percentage	Days	Count	Cumulative sum
0 - 7	7	23.3%	0 - 7	7	23.3%
8 - 14	4	13.3%	0 - 14	11	36.7%
15 - 21	3	10.0%	0 - 21	14	46.7%
22 - 28	2	6.7%	0 - 28	16	53.3%
29 - 36	2	6.7%	0 - 36	18	60.0%
37 - 42	2	6.7%	0 - 42	20	66.7%
43 - 49	4	13.3%	0 - 49	24	80.0%
50 - 56	1	3.3%	0 - 56	25	83.3%
57 - 63	1	3.3%	0 - 63	26	86.7%
63+	4	13.3%	63+	30	100.0%
SUM	30	100.0%			

Across the 30 overrides, on average, 32.5 days elapsed between each inmate’s release from punitive segregation and the override-triggering incident. The minimum was one day and maximum 116 days.

4. Inmates sent back to punitive segregation on overrides had long lengths of stay.

On average, the 29 inmates had been in Department custody for 387.9 days when Department staff requested that they be sent back to punitive segregation on overrides. One inmate, in particular, had already been in Department custody for 1,126 consecutive days when the Department requested and approved the override. The median, minimum, and maximum were 341, 133, and 1,126 days, respectively.

⁶ These calculations are based on snapshot figures of September 11, 2015.

5. More than a third of all inmates who were sent to punitive segregation on overrides were young adults.

Approximately 34.5% (n=10) of the 29 inmates who were sent back to punitive segregation were young adults, ages 18 through 21 years old. The average age of those approved for overrides was 23 years old and all but one were under 30 years old.

Meanwhile, young adults accounted for 57.1% (n=4) of the seven inmates for whom punitive segregation overrides were not approved.

6. The majority of inmates sent back to punitive segregation on overrides had been assigned to high-classification or special housing units at the time of the override-triggering incidents.

All of the overrides involved inmates who were already in high classification or special housing at the time of the override-triggering incident. Of these, 40.0% (n=12) of the incidents involved inmates assigned to Enhanced Restraint housing, while 23.3% (n=7) of the incidents involved inmates assigned to General Population Maximum Custody. Meanwhile, the corresponding figure for Enhanced Supervision Housing (ESH) was 20.0% (n=6). Others were assigned to Administrative Segregation (13.3%) and Protective Custody (3.3%). See Table 4.

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

Housing area type	Count	% of all incidents
Administrative Segregation (AS)	4	13.3%
Enhanced Restraint (ERS)	12	40.0%
Enhanced Supervision Housing (ESH)	6	20.0%
General Population Maximum Custody (GP Max)	7	23.3%
Protective Custody (PC)	1	3.3%
SUM	30	100.0%

7. A significant majority of inmates who were sent back to punitive segregation on overrides were gang-affiliated, known to mental health, and had been involved in a significant number of incidents while in Department custody.

Of the 29 inmates who were sent back to punitive segregation on 30 overrides, 86.2% (n=25) were identified as gang- or security risk group-affiliated and 89.7% (n=26) had three or more contacts with mental health services during their incarceration. On average, these 29 individuals were each involved in 15.8 reportable incidents⁷ while in Department custody.⁸ Three had as few as four reportable incidents each on their records while one, in particular, had 111.

Just under half of these 29 inmates had been identified as perpetrators, co-conspirators, or victims in slashing incidents at some point in their incarceration history. Of the 29 inmates, 27.6% (n=8) had been

⁷ Reportable incidents include contraband discovery, destruction of Department property, serious injuries, slashings, and uses of force. In its response to this report, DOC noted that assaults on staff are not reportable incidents. Logbook entries such as splashings and spitting—which are often parenthetically characterized as assaults on staff—are reportable incidents and are included in these figures.

⁸ The reportable incident figures provided here are based on data available for 28 of the 29 inmates who were returned to punitive segregation on overrides. Information on one of the inmates was unavailable at the time this report was prepared.

involved in one slashing incident, 13.8% (n=4) in two slashings, and 3.4% (n=1) had been involved in three slashings. See Table 5.

The now 25-year-old inmate who had been involved in three slashings was the victim in the first two slashings and a perpetrator in the third. These happened over the course of two incarcerations.

Meanwhile, of the 44.8% (n=13) of inmates who had been involved in slashing incidents, 69.2% (n=9) had been involved only as perpetrators, 15.4% (n=2) only as victims, and another 15.4% (n=2) had been involved as victims and perpetrator or co-conspirator across two or more incidents. See Table 6.

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

Involvement in slashings	Count	Percentage
Never involved	16	55.2%
One slashing	8	27.6%
Two slashings	4	13.8%
Three slashings	1	3.4%
SUM	29	100.0%

Table 6. Nature of inmates' involvement in slashing incidents across all incarcerations.

Nature of involvement in slashing incidents	Count	Percentage
Victim only	2	15.4%
Perpetrator only	9	69.2%
Both as victim and perpetrator/co-conspirator	2	15.4%
SUM	13	100.0%

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Updated on November 9, 2015

APPENDIX

Department of Correction Feedback re “Sixty-day Punitive Segregation Override Notices Received Through September 11, 2015 from the Department of Correction”

Sent to Board of Correction on November 5, 2015

1. The term “length of stay” should not be used to represent the In Custody ALOS, or snapshot data. If a datum is the In Custody ALOS, it should be referred to as such each time the term is used. ALOS has a specific definition, so using the In Custody ALOS should always be clarified.
2. Footnote 7 includes assaults on staff as a reportable incident. Assaults on staff are not reportable incidents, so this should be removed.