



THE CITY OF NEW YORK BOARD OF CORRECTION

Sixty-day Punitive Segregation Overrides: September 12, 2015 Through December 31, 2015

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, amended again on December 16, 2015, prohibits the New York City Department of Correction (referred to as the Department henceforth) from holding inmates in punitive segregation for more than 60 days in a six-month period, except in cases where the inmate continues to engage in “persistent, serious acts of violence.”¹ On such occasions, the Chief of Department (referred to as Chief henceforth) is authorized to grant an override of the provision, extending the inmate’s placement in punitive segregation.²

On September 8, 2015, the Board voted to approve a limited, 90-day variance allowing the Department, in circumstances presenting exceptional safety and security concerns, to waive the requirement that inmates be released from punitive segregation for seven days after they have been held for 30 consecutive days.³ Then, on December 16, 2015, the Board approved a limited variance which grants the Department the same authority for six months.⁴

Senior Department staff – often the jail wardens or commanding officers – request the overrides and waivers in writing, and the Field Operations Unit forwards the requests to the Chief. Once the Chief acts on a request, the Department sends the request to Board staff along with a brief statement explaining whether the override and/or waiver request was approved or denied. This analysis is a review of the 66 override requests⁵ and five seven-day waiver requests that the Chief received from September 12, 2015 to December 31, 2015⁶.

¹ See 40 NYCRR §1-17(d)(3) (Dec. 16, 2015). Available at: http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/201512/Final%20Rule%20to%20be%20posted%2012.22.15.pdf#page=10

² See *id.*

³ The September Record of Variance Action is available at: http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20150914/Punitive%20seg%20post.pdf. The rule requiring that inmates be removed from punitive segregation for seven days following thirty days in punitive segregation is available at: http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf%20-%20page=13

⁴ 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)

⁵ In preparation for this report the Department realized that they had not sent four override requests to Board staff. The Department has since provided us these notices. All four were notices of approved overrides – two were approved in November and two in December. These four overrides are not included in the report.

⁶ The Board of Correction published a report on November 24, 2015 which covered overrides received since the Minimum Standard amendments went into effect through September 11, 2015. This report is available at http://www.nyc.gov/html/boc/downloads/pdf/reports/PS_overrides_final_w_appendix1119.pdf.

FINDINGS

1. The Chief approved the majority of override requests.

The Chief approved 54 of 66 (82%) override requests from September 12, 2015 through December 31, 2015. Some inmates received multiple overrides; consequently, the 54 approved overrides impacted 42 inmates. Two inmates were approved for three overrides each in this period. Eight inmates received two overrides each in this period.

Since the Department began granting overrides, two inmates have been approved for four overrides each, three inmates have been approved for three overrides each and 18 inmates have been approved for two overrides each.

The number of override requests per month as well as the approval rate has remained fairly constant since the last report was published in November 2015. The number of override rejections has also remained steady over the last seven months, with two to four per month since June 2015. See *Table 1*⁷.

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%
May	4	3	75%	1	25%
June	5	3	60%	2	40%
July	18	16	89%	2	11%
August	14	12	86%	2	14%
September	17	14	82%	3	18%
October	18	14	78%	4	22%
November	22	19	86%	3	14%
December	13	11	85%	2	15%
SUM	111	92	83%	19	17%

The Chief denied twelve override requests during the period covered in this report. Five requests were for inmates fighting other inmates, two were for assaults on staff (including pushing an entrance gate into an officer and biting an officer's thumb), and the others included: being disruptive during a search, splashing, having a "propensity for violence," and possessing contraband. Two inmates accounted for four of the denials. One of these individuals did not have any overrides approved during this period while the other was approved for one override.

2. Involvement in assaults on staff and attempted assaults on staff triggered the greatest number of approved overrides.

Assaults or attempted assaults on staff triggered 46% (n=25) of the 54 overrides compared with 83% (n=25) in our previous report. The overrides for assaults on staff from September 12, 2015 to December 31, 2015 included actions such as slapping, punching, pushing, scratching, and slashing staff; throwing chairs at staff; resisting the facility-based response team; lunging at officers; and threatening staff with a weapon. Some of these assaults resulted in serious injury to uniformed staff including lacerations, abrasions, bruising, and swelling. EMS transported staff to the hospital in some of these situations.⁸

Splashing accounted for two approved overrides. One of these occurred when an inmate threw milk on a captain and one involved an inmate who splashed an officer and a captain with an unknown liquid. In the

⁷ Board staff received eight approval notices from June and July 2015 in October 2015. These overrides are not included in the in-depth analysis of this report but are included in this chart as well as the total numbers of overrides. Consequently, when comparing data from this report to the previous report these eight overrides will not be included in analysis.

⁸ Currently injuries to staff are not consistently referenced in the override paperwork. Consequently specific data on severe injuries to staff in these override incidents are not available.

report on overrides from April through September 11, 2015, splashing or spitting accounted for 20% (n=6) of the overrides. There were no overrides for spitting in the period reviewed for this report.

Inmate-on-inmate assaults prompted 33% (n=18) of the 54 approved overrides. Thirteen of the 18 inmate-on-inmate assaults involved slashings. Three of these were from the same incident in which seven inmates attacked and slashed two other inmates.

Four overrides were approved for inmate possession of weapons contraband in this period, compared to zero in the previous report. Three of these incidents occurred after officers searched the inmates' cells and found weapons (including a scalpel, sharpened Plexiglas, and sharpened metal). In the other incident the inmate refused to lock in and pulled out a sharpened piece of metal when officers approached him. *See Table 2.*

Table 2. Categories of incidents triggering override requests

	Count	Percentage
Assault or attempted assault on staff (OTHER THAN splashing or spitting)	25	46%
Assault on staff (splashing or spitting ONLY)	2	4%
Inmate Assault	18	33%
Weapons Contraband	4	7%
Refusing to lock-in	2	4%
Other ⁹	3	6%

3. Very few of the override-triggering incidents occurred within seven days of the inmates' release from punitive segregation.

Only 7% (n=4) of the 54 overrides were based on incidents that occurred within seven days of the inmates' release from punitive segregation compared to 23% (n=7) in the previous report. More than half of these incidents took place within 49 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	Cumulative Count	Cumulative Sum
0-7	4	7%	4	7%
8-14	2	4%	6	11%
15-21	10	19%	16	30%
22-28	6	11%	22	41%
29-35	0	0	22	41%
36-42	4	7%	26	48%
43-49	2	4%	28	52%
50-56	3	6%	31	57%
57-63	2	4%	33	61%
64+	21	39%	54	100%
SUM	54	100%	54	100%

Among the 54 overrides, on average, 57 days elapsed between each inmate's release from punitive segregation and the override-triggering incident. This is a significant increase from the previous report in which the average was 32.5 days. For this reporting period the minimum time period was one day and the maximum was 174 days.

⁹ These included incidents in which an inmate started a fire in his cell, an inmate kicked and threw expensive DOC property, and an inmate crawled into the ceiling requiring a team to retrieve him and resulting in injury to the officers who extracted him.

4. All 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.¹⁰ See Table 4.

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

Housing Area Type	Count 9/12/15 to 12/31/15	% of incidents	Count through 9/11/15	% of incidents
Administrative Segregation (AS)	13	24%	4	13%
Accelerated Program Unit (APU)	1	2%	0	0%
Enhanced Restraint (ERS)	24	44%	12	40%
Enhanced Supervision Housing (ESH)	6	11%	6	20%
General Population Maximum Custody (GP Max)	7	13%	7	23%
Isolation	1	2%	0	0%
Protective Custody (PC)	2	4%	1	3%
	54		30	

5. Approximately half of the inmates receiving overrides have been involved in slashings or stabbings.

Just over half of the 42 inmates had been identified as perpetrators, co-conspirators, or victims in slashing or stabbing incidents at some point in their New York City incarceration history. Of the 42 inmates, 29% (n=12) had been involved in one slashing or stabbing incident and 17% (n=7) in two slashings or stabbings.¹¹ See Table 5.

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

Involvement in slashings or stabbings	Count	Percentage
Never involved	20	48%
One slashing or stabbing	12	29%
Two slashings or stabbings	7	17%
Three slashings or stabbings	2	4%
Four slashings or stabbings	1	2%
SUM	42	100%

Of the 52% (n=22) of inmates who had been involved in slashing or stabbing incidents, 82% (n=18) had been involved only as perpetrators, one only as victim, and another three had been involved as victims and perpetrator or co-conspirator across two or more incidents.

6. Inmates sent back to punitive segregation on overrides had relatively long lengths of stay in New York City jails.

On average, the 42 inmates had been in Department custody for 534.8 days (approximately 1.5 years) when the Chief's override approval sent them back to punitive segregation. One inmate had already been

¹⁰ Nine of the ten inmates who received multiple overrides were in the same type of housing area at the time of the second (or third) override-triggering incident. Only one inmate moved housing areas after his first release from punitive segregation. That inmate was in GP Max at the time of the first incident and Enhanced Restraints at the time of the second.

¹¹ The level of involvement varies among inmates considered here to be perpetrators. Sometimes the assault involved so many inmates that officers were unsure who cut the victim and who participated in other ways.

in Department custody for 1,851 consecutive days when the Department requested and approved the override. The median, minimum, and maximum were 449.5, 11¹², and 1,851 days, respectively. In comparison, the average time in custody for all inmates in Department custody is 176.5 days¹³.

7. Inmates sent back to punitive segregation on overrides had spent extensive time in punitive segregation during their current incarceration and previous incarcerations.

On average, the 42 inmates had spent 281.9 days in punitive segregation for all incarcerations¹⁴ and 234.3 days in punitive segregation during their current incarceration¹⁵. Notably, one inmate had spent 1,177 days in punitive segregation in his current incarceration over more than five years.

8. Almost half of all inmates who were sent to punitive segregation on overrides were young adults.

Forty-eight percent (n=20) of the 42 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 the oldest inmate was 36. Ninety percent (n=9) of the ten inmates who received multiple overrides in this reporting period were young adults. The one inmate who is not considered a young adult was 23. The average age for the ten inmates who were approved for multiple overrides is 19.6.

Meanwhile, young adults accounted for two of the ten inmates for whom punitive segregation overrides were not approved.

9. Additional Findings.

- Ninety-five percent (n=40) of the inmates sent back to punitive segregation were identified as gang affiliated.
- Ninety percent (n=38) of the inmates had three or more contacts with mental health services during their incarcerations.¹⁶
- Approximately half of the overrides corresponded with an inmate who has been designated as Red ID¹⁷ status (52%, n=22) and/or Enhanced Restraint¹⁸ status (52%, n=22).
- On average, these 42 individuals were each involved in 15.2 reportable incidents¹⁹ while in Department custody. Three inmates had only four reportable incidents each on their records while one had 62.

¹² This inmate had been released from DOC custody and then re-incarcerated. In his previous incarceration he had been in punitive segregation numerous times.

¹³ At the Board meeting on May 12, 2015, Commissioner Joseph Ponte presented a slideshow with an analysis showing 176.5 days as the in custody average length of stay in NYC jails. This number represents the average current tenure of inmates in custody at one point in time. It is not the average length of stay of all inmates who have been discharged from custody.

¹⁴ This data only includes punitive segregation time served from January 1st, 2012 through December 31st, 2015.

¹⁵ This data includes time served in punitive segregation from the start of the current incarceration through December 31, 2015.

¹⁶ None of these inmates have been diagnosed with a serious mental illness (SMI). Inmates with an SMI are prohibited from placement in punitive segregation.

¹⁷ 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, the inmate is restrained with handcuffs, security mitts, and waist chains.

¹⁸ 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.

¹⁹ "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 force. Logbook entries such as splashing and spitting are also considered reportable incidents in the override requests.

10. Seven Day Waivers

The Chief approved five seven day waivers between September 12 and December 31, 2015. One was approved in late November and the others were approved in December. Two of these waivers were combined with 60 day overrides. The corresponding data are included in the preceding analysis.²⁰ The other three waivers were approved for inmates who had not exceeded the 60 day limit in punitive segregation.

Three of the waivers were approved for inmate participation in a slashing. One occurred after an inmate kicked a magnetometer, threw a television and damaged other property. The other waiver was granted after an inmate, refusing to leave his cell, threw urine and feces at the extraction team.

All five waiver recipients have been identified as gang- or security risk group-affiliated and have been incarcerated in New York City jails longer than average (ranging from 265-732 days).

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²⁰ We believe that in some cases the Department requested overrides for inmates when they were not necessary, meaning that some inmates included in this analysis had not been in punitive segregation for sixty days in the last six months when they were approved for overrides. The two inmates counted here who received both overrides and waivers are among the override recipients that fall into this category.