



THE CITY OF NEW YORK

BOARD OF CORRECTION

To Members of the Board of Correction
Richard Wolf

From Ashley D’Inverno, Director of Research & Compliance

Subject Report on the status of punitive segregation reform

Date Friday, May 08, 2015

Purpose

This report serves as an update on the Department of Correction’s (DOC) implementation of the amendments to punitive segregation (PS). It includes a description of the three types of punitive segregation units and information on punitive segregation admissions and transfers. Finally, it presents a discussion of problems with punitive segregation and concluding remarks.

Summary

The total number of inmates in punitive segregation has decreased since implementation of the amendment, but there is still a large backlog, particularly of mentally-ill inmates awaiting transfer into PS.

There are more than 100 inmates who have exceeded the punitive segregation time restrictions since implementation of the reforms. Despite the new Standards requirement that it provide BOC with notice of these violations, DOC has failed to do so.

Although the number of inmates currently in punitive segregation under pre-hearing detention status is low, this appears to be a recent development and should be examined frequently.

Background

On January 13, 2015 the Board voted to amend the Minimum Standards on punitive segregation as follows:

- Punitive segregation time owed from a previous incarceration is expunged
- No inmate may be sentenced to punitive segregation for more than thirty consecutive days for any single infraction
- Any inmate who has served thirty consecutive days in punitive segregation must be released from punitive segregation for at least seven days before returning to punitive segregation

- No inmate may be held in punitive segregation longer than sixty days in a six-month period, except in instances in which the inmate continues to engage in persistent acts of violence. In such instances, the Chief of the Department must approve the extension via an “override”.¹
- Inmates with serious mental or serious physical disabilities or conditions may not be confined in punitive segregation
- Inmates under the age of 18 may not be confined in punitive segregation
- Inmates who have been found guilty of a Grade 2 or non-violent infraction may be sent only to punitive segregation lite
- Inmates who have been found guilty of a Grade 3 infraction shall not be sent to punitive segregation
- At least 25% of uniformed staff assigned to punitive segregation shall be assigned to steady posts

Description of the Three Punitive Segregation Housing Areas

Punitive Segregation

Punitive Segregation houses inmates who have been found guilty of a violent Grade 1 infraction, or inmates who have been placed in Pre-Hearing Detention status². Inmates in PS are locked in 23 hours/day except when participating in daily recreation or other mandate services. As of May 5, 2015, there are twelve PS units, seven in OBCC (i.e., 1 South, 2 South, 2 Southwest, 3 South, 3 Southwest, 4 South, and 4 Southwest)³, three in GRVC (i.e., 1B, 2B, and 12M)⁴, and two in RMSC (i.e., B12 Upper and B12 Lower A).⁵

Punitive Segregation Lite

Punitive Segregation Lite (PS Lite)⁶ was created on February 23, 2015. It is intended for inmates found guilty of Grade 2 and other non-violent infractions. PS Lite operates exactly like PS, except inmates receive 7 hours of lockout instead of the one hour provided in PS. As of May 5, 2015, there are two PS Lite units in OBCC (i.e. 5 South and 5 Southwest).⁷

Restrictive Housing Unit (RHU)

RHU was created in early 2014 to replace the Mental Health Assessment Unit for Infracted Inmates (MHAUII) as a unit for inmates who commit an infraction and also exhibit mental illness. It is jointly operated by the Department of Correction and the Department of Health and Mental Hygiene (DOHMH). Inmates can voluntarily participate in a three-level program where they earn incentives such as increased lock-out time, less restrictive restraints, and a 50% reduction in their punitive segregation

¹ Many, if not all, of the inmates noted in this report to have exceeded 60 days in punitive segregation are presumed to be such overrides, although BOC has not received notice or documentation from DOC to verify this.

² Pre-Hearing Detention status is for inmates who are under investigation for, or are being charged with a serious violation and whose behavior poses a significant threat.

³ All units have 50 beds, except 1 South which has 49 beds, 3 South which has 36 beds, and 3 Southwest which has 48 beds. As of May 5, 2015, 4 Southwest housed zero inmates.

⁴ 1B has 16 beds and 2B has 15 beds and 12M has 10 beds, but all are empty as of May 5, 2015.

⁵ B12 Upper has 22 beds; B12 Lower A has 6 beds, but is currently empty.

⁶ PS Lite is also known as Bing Lite.

⁷ 5 South has 50 beds and 5 Southwest has 49 beds.

term. A treatment team, which includes the Mental Health Provider and uniformed staff, sets goals for each inmate and evaluates the progress of each inmate on a weekly basis. Uniformed staff assists by recording observations of the inmate that are entered into the RHU behavioral logbook. Treatment consists of both individual and group sessions where inmates engage in Dialectical Behavior Therapy to foster positive behavior. A minimum of two weeks is required before progressing to the next level.

- Level Zero – All inmates enter at Level Zero which consists of standard PS housing rules along with an enhanced mental health treatment component.
- Level One – Inmates receive one hour of lock-out incentive time. Mechanical restraints on both wrists and a belt/chain affixed to a bar/ring on the bench/table are used during time out of cell.
- Level Two – Two hours lock-out time. Inmates participate in one treatment group, two integrative activities, and take medications (if necessary). Mechanical restraints on one wrist along with a belt/chain affixed to a bar/ring on the bench/table are used during time out of cell.
- Level Three – Inmates receive three hours lock-out incentive time and participate in one treatment group, all integrative activities, and take medications. A belt/chain affixed to a bar/ring on the bench/table is used during time out of cell.

After Level Three is completed, RHU inmates graduate and are transferred to non-punitive segregation housing. If the inmate is found guilty of a new infraction during the same incarceration, DOC restores the inmate's remaining punitive segregation time it held in abeyance, which runs consecutively with the new time. As of May 5, 2015, there are five RHU units -- two in GRVC (i.e., 13A and 13B), one in OBCC (i.e., 5 North), and two in RMSC (i.e., B12 Lower and B8 B).⁸

Timeline

- **January 13, 2015** The Board amended the standards on punitive segregation.
- **February 21, 2015** The new standards went into effect and the clock for the 30- and 60-day rule began. *CPSU census – 286. RHU census – 93. Total – 379.*
- **March 23, 2015** Inmates serving greater than 30 days in punitive segregation (but less than 60 days) were required to be transferred out of punitive segregation for seven days.
- **April 22, 2015** Inmates serving greater than 60 days in punitive segregation were required to be transferred out of punitive segregation and are not eligible for punitive segregation for six months unless approved by the Chief of the Department.
- **May 5, 2015** *CPSU census – 167. RHU census – 57. CPSU Lite census – 19. Total – 243.*

Punitive Segregation Backlog and Admissions

In a report to BOC, DOC stated that as of March 31, 2015 the punitive segregation backlog was 986 inmates, consisting of 146 general population inmates and 840 mental health inmates. This is a slight *increase* from 906 inmates, the backlog on February 23, 2015, two days after the reforms went into effect. Of this total, 76 were general population inmates and 830 mental health inmates. DOC reported that of the 76 general population inmates awaiting punitive segregation housing, 43 could not be moved, 4 had medical restrictions, 14 were in detox, and 4 were female. At a City Council hearing on

⁸ The RHU units in GRVC and OBCC have 35 beds each. The RHU units in RMSC have 16 beds each, but B8 B is currently empty.

May 6, 2015, Deputy Commissioner Erik Berliner stated the total punitive segregation backlog is now approximately 750 and it will take DOC 8-10 months to eliminate the backlog.⁹

Since the amendment went into effect, the total number of inmates housed in punitive segregation has decreased from 379 to 243, a 36% reduction.

The chart below shows admission information for PS inmates from February 21, 2015 to April 25, 2015.

Type of Punitive Segregation Housing	Number of Inmates Admitted to PS	Percentage of Inmates Admitted to PS
Punitive Segregation	105	42
Punitive Segregation Lite	60	24
RHU	87	35
Total number of PS admissions	252	101*

*Total does not equal 100 due to rounding.

While traditional punitive segregation is still the primary housing unit for punishment, PS Lite is being utilized. Additionally, despite concerns with how RHU operates which are described in more detail below, it continues to house infraacted inmates.

Punitive Segregation Time Limits

The punitive segregation reforms provide that an inmate may not serve more than 30 consecutive days in punitive segregation without a seven day break from punitive segregation, and an inmate may not serve more than 60 days within any six-month period in punitive segregation (which includes RHU). The 30-day punitive segregation restriction went into effect on March 23, 2015; the 60-day restriction within any six-month period went into effect on April 22, 2015.

The table below details the number of inmates who have exceeded the punitive segregation time limits, including inmates who have since been transferred out of PS as of April 17, 2015, and those who are currently housed in PS, as of May 5, 2015.

	Total Number of Inmates	Number of Inmates with M-Status	Number of Pre-Hearing Detention Inmates
Inmates exceeding 30 consecutive days in PS	58	34	0
Of those exceeding 30 days, number of inmates who remain housed in PS	12	8	0
Inmates exceeding 60 days in punitive segregation who remain housed in PS*	53	26	3

Note. BOC is unable to report on the number of inmates exceeding 60 days in punitive segregation who have since been transferred to another location because the PS discharge data DOC provided is through April 17, 2015, and the 60-day restriction went into effect April 22, 2015.

⁹ In correspondence with DOC regarding PS data provided to BOC, DOC stated the plan to reduce the backlog was always 8-10 months from implementation of PS reform. Additionally, they noted they are in the process of exploring whether other Departmental needs might alter this timeline.

*These inmates represent overrides, which require the Chief of the Department’s approval and notice to the Department of Health and Mental Hygiene and the Board of Correction.

BOC has not received any override notices from DOC for the 53 inmates who have exceeded the 60-day limit. These inmates have served an average of 178 days in punitive segregation, far exceeding the limit that was imposed to protect an inmate’s physical and psychological health.

Punitive Segregation Discharges and Transfer Locations

After completing a punitive segregation sentence or “maxing out” their time in PS, inmates are transferred to a new location. The chart below shows the transfer locations of all PS inmates from February 21, 2015 to April 17, 2015.

Transfer Facility	Number of Inmates Transferred from PS	Percentage of Inmates Transferred from PS
AMKC	41	10
BKDC	66	16
EMTC	24	6
GMDC	76	19
GRVC	58	14
MDC	22	5
NIC	29	7
OBCC	25	6
ESH	1*	<1
RMSC	3	1
RNDC	15	4
VCBC	20	5
West Facility	2	1
Discharged	21	5
Total	403	100

*This inmate was serving time in PS for an infraction that occurred while he was in ESH; after serving 20 days in PS, he was returned to ESH.

Discussion and Conclusions

DOC has created a new sentencing grid that is designed to conform to the reform’s maximum sentence of 30 days. However, Rule 101.1, assault on staff with injury or attempted injury, has a 90-day maximum. The increased maximum sentence from 30 days to 90 days for this infraction was recently proposed to the Board because DOC considers this offense type to be the most serious and seeks to create a strong disincentive for violence against staff.¹⁰

Currently, there are three inmates housed in punitive segregation on pre-hearing detention (PHD) status. However, in the group of inmates transferred out of punitive segregation from February 21, 2015 to April 17, 2015, there were 34 PHD inmates. This suggests the number of inmates in punitive segregation on PHD status on any given day prior to the reforms was significantly higher than the

¹⁰ Given the demonstrated negative effects on mental health associated with lengthy isolation, perhaps DOC should consider setting the maximum sentence for this offense at 30 days and scaling back sentences for all other infraction convictions.

current total. While the decrease in PHD inmates is promising, PHD should be monitored closely because PHD inmates are confined under the same conditions as if they have been found guilty of an infraction. Additionally, if an inmate's hearing is adjourned and he/she continues to remain isolated in punitive segregation while in PHD, it is possible for inmates to be confined in isolation for periods longer than permitted under the reforms. Also, if an inmate's hearing is adjourned because his/her witness is unavailable that day, a delay in rescheduling the hearing could cause the inmate to remain in punitive segregation for more days than a conviction sentence would call for.

The punitive segregation backlog remains troubling. BOC inquired about DOC's plans for reducing this backlog, and we were told the 8-10 month timeline for reducing the backlog includes anticipated changes to the RHU model, which are expected summer 2015. Both DOC and DOHMH are dissatisfied with the current state of RHU and its operations. Clinical staff at OBCC has reported that group sessions are often not held due to DOC staffing and/or security equipment, shortages, or lack of available space. Additionally, most individual sessions are held cell-side which makes it impossible for inmates to have confidential conversations with clinical staff, and makes it difficult for the clinician to observe the inmate and gauge his or her mood, affect, and emotions. The level system was designed to advance inmates to the next level only if the treatment team determined that the inmate made progress. However, what occurs in practice is movement through the levels regardless of an inmate's efforts or progress.

DOC and DOHMH are working to redesign RHU and its treatment component, and to adapt RHU to fit the new, shorter punitive segregation sentences.

The reduction in punitive segregation is encouraging, but alternative approaches must be developed to address the large mentally ill inmate population.¹¹

¹¹ According to the Mayor's Task Force on Behavioral Health and the Criminal Justice System Action Plan 2014, in FY2014, the percentage of people in NYC jails with a mental illness was 38%. Available at <http://www1.nyc.gov/assets/criminaljustice/downloads/pdf/annual-report-complete.pdf>