



NEW YORK CITY BOARD OF CORRECTION

Punitive Segregation: 60-Day Overrides & 60-Day Sentences

In January 2015, the New York City Board of Correction (“Board”) amended its Minimum Standards (“amendments”) to include provisions limiting the use of punitive segregation.¹ These reforms have contributed to a dramatic decrease in the punitive segregation population in City jails. On June 30, 2019, there were 119 people in punitive segregation, down from 580 people in punitive segregation on June 30, 2014, a 79% decrease.² This report summarizes data on the 60-Day Overrides and 60-Day Sentences imposed by the Department of Correction through June 30, 2019.

60-Day Overrides Requested and Received Through June 2019

The 2015 amendments impose limits on the amount of time individuals may be housed in punitive segregation but allow for targeted operational flexibility — i.e., overrides — in the rare instances when individuals in DOC custody engage in “persistent, serious acts of violence.”³ On such occasions, the Chief of Department (“Chief”) may grant an override to place the individual in punitive segregation for more than 60 days in a six month period, one of the limits set by the Standards.⁴ The following is an analysis of the override requests reviewed by the Chief over a period of one fiscal year, from **July 1, 2018 through June 30, 2019**. As required by the Standards, all override approvals are provided to the Board of Correction.⁵

Table 1: Override Requests Received April 2015 - June 2019

| Quarter | Total Requested | Total Approved | Approved % | Denied | Denied % |
|----------------|-----------------|----------------|------------|--------|----------|
| Apr-June 2015 | 9 | 6 | 67% | 3 | 33% |
| July-Sept 2015 | 50 | 42 | 84% | 8 | 16% |
| Oct-Dec 2015 | 55 | 46 | 84% | 9 | 16% |
| Jan-Mar 2016 | 29 | 27 | 93% | 2 | 7% |
| Apr-June 2016 | 34 | 26 | 76% | 8 | 24% |
| July-Sept 2016 | 20 | 18 | 90% | 2 | 10% |
| Oct-Dec 2016 | 25 | 23 | 92% | 2 | 8% |
| Jan-Mar 2017 | 18 | 16 | 89% | 2 | 11% |
| Apr-June 2017 | 17 | 17 | 100% | 0 | 0% |

¹ For more information on the amendments and their implementation, see the Board’s previous reports on punitive segregation exceptions at <http://www1.nyc.gov/site/boc/reports/BOC-Reports/punitive-segregation-reports.page>.

² Between July 1, 2018 and June 30, 2019, 1,455 people spent any time in punitive segregation, down 4% from 1,509 the previous year. On June 30, 2019, the total punitive segregation population was 119, comparable to June 30, 2018 (n=120).

³ NYC Board of Correction, Correctional Facilities, Limitations on Punitive Segregation, § 1-17(d)(3), available at [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)

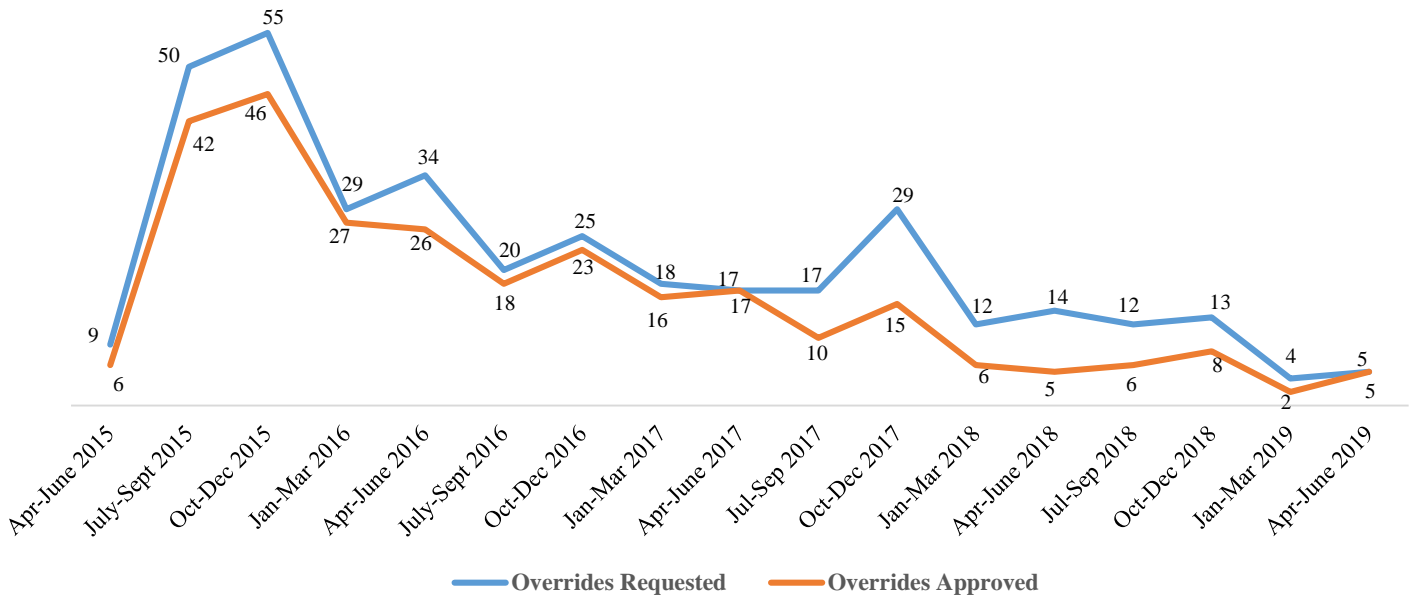
⁴ § 1-17(d)(3) and (d)(4).

⁵ § 1-17(d)(3)(iii).

| | | | | | |
|----------------------|------------|------------|------------|-----------|------------|
| Jul-Sep 2017 | 17 | 10 | 59% | 7 | 41% |
| Oct-Dec 2017 | 29 | 15 | 52% | 14 | 48% |
| Jan-Mar 2018 | 12 | 6 | 50% | 6 | 50% |
| Apr-June 2018 | 14 | 5 | 36% | 9 | 64% |
| Jul-Sep 2018 | 12 | 6 | 50% | 6 | 50% |
| Oct-Dec 2018 | 13 | 8 | 62% | 5 | 38% |
| Jan-Mar 2019 | 4 | 2 | 50% | 2 | 50% |
| Apr-June 2019 | 5 | 5 | 100% | 0 | 0% |
| Totals | 363 | 278 | 77% | 85 | 23% |

Since the amendments to the Board’s Minimum Standards took effect, the number of 60-day overrides requested and approved has decreased substantially. From FY 2016 to FY 2019, the number of overrides requested declined by 80%, from 168 to 34 requests. In the last year, from FY 2018 to FY 2019, there was a 53% decrease, from 72 to 34 requests. In the first quarter of 2019, the Department approved only 2 override requests, its lowest number since it started using overrides.

60-Day Overrides Requested and Approved Per Quarter, April 2015 - June 2019



Source: DOC Punitive Segregation 60-day Override notifications

The Chief approved the majority of override requests. There were 34 override requests involving 33 unique individuals in FY 2019. Of the 34 overrides requested in the FY 2019 review period, the Chief approved 21 overrides (62%), involving 21 unique individuals. She denied 13 overrides (38%), involving 13 unique individuals.

Assaults on Staff triggered the greatest number of overrides. Fourteen of the 34 override requests (38%) were the result of assaults on staff that did not include a spitting/splashing.⁶ Assaults on people in custody that involved slashing/stabbings (n=9, 26%) and assaults on staff that involved a spitting/splashing (n=9, 26%) triggered the second-most override requests. These categories of incidents were the top three reasons for both Fiscal Year 2018 and Fiscal Year 2019. See Table 2 and Table 3.

⁶ For requests listing more than one incident in support of the override, the most recent incident that lead to the request is used for this analysis.

Table 2: Categories of Incidents Triggering Override Requests July 2018 - June 2019

| Incident Category | Total | Approved | Approved % | Denied | Denied % |
|--|-----------|-----------|------------|-----------|------------|
| Assault on Staff - Other | 14 | 7 | 50% | 7 | 50% |
| Assault on Staff- Splashing/Spitting | 9 | 4 | 44% | 5 | 56% |
| Assault on Person in Custody - Slashing/Stabbing | 9 | 9 | 100% | 0 | 0% |
| Assault on Person in Custody - Other | 1 | 0 | 0% | 1 | 100% |
| Other ⁷ | 1 | 1 | 100% | 0 | 0% |
| Total | 34 | 21 | 62% | 13 | 38% |

Table 3: Categories of Incidents Triggering Override Requests by Fiscal Year

| Incident Category | FY 2018 | FY 2019 | Grand Total |
|--|-----------|-----------|-------------|
| Assault on Staff - Other | 31 | 14 | 45 |
| Assault on Staff- Splashing/Spitting | 17 | 9 | 26 |
| Assault on Person in Custody - Slashing/Stabbing | 7 | 9 | 16 |
| Use of Force | 7 | 0 | 7 |
| Assault on Person in Custody - Other | 4 | 1 | 5 |
| Other | 3 | 1 | 4 |
| Weapon Found | 3 | 0 | 3 |
| Grand Total | 72 | 34 | 106 |

Half of the incidents triggering override requests (n=17, 50%) occurred outside of punitive segregation and less than two weeks after an individual’s release from punitive segregation. Between July 2018 and June 2019, thirty override requests were submitted in response to incidents occurring outside of PSEG, and an average of 25 days and a median of eight days elapsed between an individual’s release from punitive segregation and the override-triggering incident. This is a significant decrease from FY 2018, when an average of 36 days elapsed between release from punitive segregation and incidents triggering override requests.

Four override requests (12%) were submitted before the individuals in question had completed 60 days in punitive segregation in a six-month period. In these four cases, the triggering incident occurred while the person was in punitive segregation.

Most of the override requests came from one of three facilities: Otis Bantum Correction Center (n=10, 29%), Anna M. Kross Center (n=6, 18%), and the North Infirmery Command (n=4, 12%).

The majority of individuals approved for overrides were housed in either Enhanced Supervision Housing (ESH) or punitive segregation at the time of the override-triggering incident.⁸ Twenty-nine percent (29%, n=6) of triggering incidents occurred in ESH, and 14% (n=3) occurred in Punitive Segregation. The other areas where individuals were housed at the time of the override-triggering incident include: General Population (n=3), General

⁷ Refusing to obey orders, repeated destruction of DOC property. The individual in question had previously been involved in violent incidents.

⁸ Enhanced Supervision Housing is a non-punitive housing unit for people in custody, who present a credible threat to the safety and security of the facility. Individuals housed in ESH shall have access to programming aimed at promoting rehabilitation, good behavior, and psychological and physical well-being.

Population Accelerated Program Unit (n=3), Maximum Security (n=2), Centrally Monitored (n=1), Enhanced Restraint housing (n=1), Rover Unit (n=1), and New Admission (n=1⁹).

Individuals approved for overrides had relatively long lengths of stay in City jails, though total length of stay was down relative to the previous reporting period. The 21 people approved for overrides had been in custody for an average of 372 days (down from 504 in FY 2018) and a median of 377 days at the time they were approved to be returned or remain in punitive segregation. In contrast, the average time in custody for all people in DOC custody in FY 2019 was 75 days.¹⁰ The minimum length of stay for those individuals approved for overrides was 158 days, and the maximum was 1,110 days.

Individuals sent back to punitive segregation on overrides in FY 2019 spent extensive time in punitive segregation during their current incarceration. The 21 people approved for overrides spent an average of 125 days, or 29% of their most recent incarceration, in punitive segregation.¹¹ The minimum number of days spent in punitive segregation was 70 days and the maximum number of days spent was 224 days. The median time in punitive segregation was 116 days, or 29% of the current incarceration.

As of July 30, 2019, 48% (n=10) of the 21 people approved for overrides had been discharged and 52% (n=11) were still in DOC custody. Of the 10 individuals discharged from DOC custody, 3 were discharged directly from PSEG—a significant decline from the last reporting period, when 20 individuals were discharged from custody directly from PSEG.

The 21 individuals who received overrides in FY 2019 share a number of additional characteristics.

- Nearly all were pretrial detainees. Twenty of the 21 people approved for overrides were pre-trial detainees at the time of override and one individual was city sentenced.
- Twenty of the 21 individuals (95%) were men and one was a woman (n=1, 5%). Eight individuals (n=8, 38%) were African American, eleven (n=11, 52%) were listed as Other, one (n=1, 5%) was White, and one (n=1, 5%) was unknown. The average age at the time of override request was 27 years old.
- 67% (n=14) had three or more contacts with mental health services during their incarcerations, down from 75% in the previous reporting period.¹²
- 62% (n=13) of the people approved for overrides were designated as Enhanced Restraint status¹³.
- 52% of the people approved for overrides were designated as Red ID status¹⁴ (n=11).
- They had been involved in an average of 22 reportable incidents¹⁵ while in Department custody, compared to an average of 32 incidents for those approved in the previous reporting period.¹⁶ The minimum number of reportable incidents was five, and the maximum was 92. The median number of reportable incidents for this population was 17.

⁹ Person in custody was not a new admission to DOC, but was moved to a new admission unit after being discharged from punitive segregation.

¹⁰ See DOC at a Glance, August 2019: https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At_Glance_FY2019_072319.pdf

¹¹ This data includes time served in punitive segregation from the start of the person in custody's current incarceration through July 30, 2019.

¹² Individuals with a serious mental illness (SMI) are prohibited from placement in punitive segregation. §1-17(b)(iii). The Department designates people as "M status" in compliance with the Brad H. settlement in which the Court designated class members as people who have received, are receiving, or will receive treatment for mental illness three or more times during their incarceration.

¹³ "Enhanced Restraint status inmate: Any inmate who, having either exhibited violent behavior during his/her current incarceration or exhibited violent behavior during a prior incarceration within the last five (5) years." See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE No. 4518R-C, RED ID AND ENHANCED RESTRAINT STATUS INMATES, sec. III(B), at 2 (eff. Sept. 28, 2016)

¹⁴ "Red ID status inmate: An inmate who, because of his/her use and/or possession of a weapon or dangerous instrument while in Department custody, is issued an identification card with a red background and placed into one of [several] risk code designations." See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE No. 4518R-C, RED ID AND ENHANCED RESTRAINT STATUS INMATES, sec. III(A), at 2 (eff. Sept. 28, 2016)

¹⁵ "Reportable incident" 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 splashings and spitting are also considered reportable incidents in the override requests.

¹⁶ This includes reportable incidents from previous incarcerations starting in 2007.

60-Day Sentences for Assaults on Staff

Since January 2016, people in custody sentenced to punitive segregation for an assault on staff that causes staff to suffer one or more serious injuries, as listed under the Department's definition of "A" Use of Force Incidents, have been eligible to receive a punitive segregation sentence of up to sixty (60) days for that single infraction.¹⁷

From July 2018 through June 2019, the Department imposed twelve 60-day sentences to twelve unique individuals. All twelve 60-day sentences met the Board's criteria of involving an assault on staff with serious injury. Two individuals received a 60-day sentence which resulted in them spending more than 60 days in a six-month period in punitive segregation, and the Board received override notifications from the Department for both.

The amendments further require:

[w]here an inmate's punitive segregation sentence for a serious assault on staff exceeds forty-five (45) days, the Chief of Department or a designee shall complete a review of the sentence forty-five (45) days after its commencement to determine whether the inmate could safely be placed in an available alternative housing unit for the remainder of the sentence. The decision, and the reasoning supporting it, shall be stated in writing and immediately sent to the inmate, the Board, and the relevant Correctional Health Authority.¹⁸

All of the individuals with a 60-day sentence who were not discharged from punitive segregation or DOC custody before 45 days received the required 45-day review. None of the 45-day reviews resulted in an alternative placement for the remainder of the sentence. *See Table 4*

Table 4: 60-Day Sentences, January 2016-June 2019

| Number of Approved 60-Day Sentences | | | | |
|--|-------------|-------------|-------------|-------------|
| Month | 2016 | 2017 | 2018 | 2019 |
| January | 0 | 2 | 1 | 0 |
| February | 1 | 1 | 0 | 3 |
| March | 1 | 0 | 1 | 0 |
| April | 0 | 0 | 1 | 0 |
| May | 1 | 0 | 2 | 1 |
| June | 1 | 0 | 0 | 0 |
| July | 1 | 1 | 1 | - |
| August | 4 | 1 | 1 | - |
| September | 0 | 1 | 2 | - |
| October | 3 | 3 | 1 | - |
| November | 6 | 2 | 1 | - |
| December | 1 | 6 | 2 | - |
| Total | 19 | 17 | 13 | 4 |

¹⁷ § 1-17(d)(4).

¹⁸ § 1-17(d)(4)(iii).