

New York City Department of Correction
Annual Use of Force Investigations Report
August 31, 2019

The New York City Department of Correction (“DOC” or “Department”) respectfully submits this report pursuant to Section 1 Chapter 1 Section 9-152 of the New York City Administrative Code, which requires the Department to submit regular reports regarding investigations of Use of Force incidents. This report covers Fiscal Year 2019 from July 1, 2018 through June 30, 2019. The Department’s report with respect to each paragraph of Section 9-152 is set forth below:

1. The number and rate in which the department investigated incidents.

Every Actual Use of Force incident is investigated by the Department. The Investigation Division (“ID”) conducts a Preliminary Review of every incident pursuant to Section VII, paragraph 7 of the Consent Judgment in Nunez v. City of New York, 11 Civ. 5845 (LTS)(JCF). The Preliminary Review functions as an initial investigation, requiring interviews of inmates, review of all relevant reports and documents including medical records, and review of video surveillance of the incident. Following the Preliminary Review, if further investigation is necessary, the incident will be investigated by ID.

During FY2019, there were 7,063 reported Actual Use of Force incidents. Each received some level of investigation as explained above. Of the 7,063 Uses of Force, 4,987 cases were deemed a Class “C” Use of Force meaning no staff member was injured, nor any individual in the Department’s custody.¹

During FY2019, of the 7,063 reported Uses of Force, a total of 1,336 cases have been opened for full ID investigation, which is an 18.9% opening rate for full investigation. On July 1, 2019, there were 4,421 cases in Preliminary Review. Of those 4,421 cases, 1,124 are pending supervisory review and may be opened for full ID investigation.

¹ Class A Use of Force is a classification used to describe Use of Force Incidents that require medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including those resulting in one or more of the following treatments/injuries: multiple abrasions and/or contusions, chipped or cracked tooth, loss of tooth, laceration, puncture, fracture, loss of consciousness, concussion, suture, internal injuries (e.g., ruptured spleen, perforated eardrum, etc.), or admission to a hospital.

Class B Use of Force is a classification used to describe Use of Force Incidents that do not require hospitalization or medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid (e.g., Use of Force Incidents that result in a superficial bruise, scrape, scratch, or minor swelling); or involve the forcible use of mechanical restraints in a confrontational situation that results in minor injury.

Class C Use of Force is a classification used to describe Use of Force Incidents that result in no injury to Staff Members or Inmates, including, but not limited to, Use of Force Incidents where the use of chemical agents spray results in no injury beyond irritation that can be addressed through decontamination.

2. *The number and rate of incidents for which the Department determined that staff violated a departmental rule or was otherwise subject to discipline, the type of incident that occurred, and the type of discipline recommended and actually imposed for such incidents.*

During FY2019, ID closed 182 Use of Force cases with a Memorandum of Complaint (“MOC”), i.e. recommendation of formal disciplinary charges. Of the 182, the Injury Class Type breakdown was as follows: 14 UOF Class A; 85 UOF Class B; 83 UOF Class C. Of the 182 investigations that resulted in a MOC, the Trials Division (“Trials”) closed 98 cases during FY2019.

Cases brought to Trials toward the end of the fiscal year may be processed and closed by Trials during the following fiscal year. As such, of the 318 cases closed by Trials in FY2019, the breakdown of disciplinary actions imposed is provided below:

- Administrative Filed/Deferred Prosecution: 23 cases
- Negotiated Plea Agreements (NPA): 292 cases, see chart below
- City Office of Administrative Trials and Hearings (“OATH”): 3 cases

NPA Breakdowns:

	Number of Cases	Percentage out of 292
NPA: Return to Command for Discipline	43	14.7%
NPA: Retirement/Resignation	7	2.4%
NPA: <5 Days	40	13.7%
NPA: 5-10 Days	92	31.5%
NPA: 11-20 Days	41	14%
NPA: 21-30 Days	32	10.9%
NPA: 31-40 Days	8	2.7%
NPA: 41-50 Days	9	3.1%
NPA: 51+ Days	13	4.4%
NPA: Susp. <10 Days	1	.03%
NPA: Susp. 10-20 Days	4	1.3%
NPA: Susp. 21-30 Days	2	.07%
TOTAL:	292	

3. *To the extent applicable, information regarding the entities within the Department that are responsible for conducting investigations into incidents, including the number, rate, and speed at which such entities conduct and complete investigations.*

During FY2019, 2,719 Use of Force cases were closed. Of those cases, 1,558 cases were closed as part of the Department's Statute of Limitations expedited closing project. This project, which was approved by the Federal Nunez Monitor, allowed the Department to expedite closing cases that were beyond the Statute of Limitations date. When factoring out these 1,558 cases, there were 1,161 cases closed. Of these 1,161 cases, the average time to close a case was 561 days.

4. *To the extent applicable, the number of formal proceedings that occurred, and the outcomes of such proceedings. In any case in which the outcome of a formal proceeding was a recommendation to the Commissioner for a certain type of sanction, the report shall include whether the recommended sanction was accepted, rejected or modified.*

The Department closed 3 disciplinary cases during FY2019 where the closing was due to a formal decision following trial by an administrative law judge at the City Office of Administrative Trials and Hearings ("OATH"). Of the 3, 2 resulted in guilty findings and 1 resulted in a not-guilty finding. Of the 2 that resulted in a guilty finding, the Commissioner accepted and imposed the recommended sanction. In the case that resulted in a not guilty finding, the Commissioner accepted the Court's findings.

5. *The number of investigations into incidents that were referred to a District Attorney's office, the Department of Investigations, or any similar law enforcement entity.*

ID referred 19 Use of Force incidents to the Department of Investigation and/or a District Attorney's office during FY2019.