

Seven Day Waivers: Annual Review

September 1, 2015 – October 31, 2016



The New York City Board of Correction (BOC) is a nine-person, non-judicial oversight board that regulates, monitors, and inspects the correctional facilities of the City. The Board of Correction establishes and ensures compliance with Minimum Standards regulating conditions of confinement and correctional health and mental health care in all City correctional facilities.

The Board of Correction carries out independent oversight and enacts regulations to support safer, fairer, smaller, and more humane NYC jails.

Waivers Received Through October 2016

At its September 2015 Board meeting, the Board voted to approve a variance allowing the Department of Correction, “in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days.”¹ This initial variance was approved for 90 days. The variance was renewed for six months in December 2015 and again in June 2016.

At its November 15, 2016 Board meeting, the Board voted to deny the variance request. The Department may continue to grant seven day waivers through December 17, 2016 when the six month variance expires. This report reviews the Department’s use of “seven day waivers” since the Board first granted the variance.

Total Number of Seven Day Waivers Received

	Approved Waivers	Denied Waivers
September 2015	0	1
October	0	0
November	1	1
December	4	0
January 2016	4	0
February	3	1
March	2	1
April	2	1
May	0	0
June	1	1
July	0	1
August	0	0
September	1	0
October	0	0
Total	18	7

Since this variance was initially granted in September 2015, **the Department has granted 18 such waivers and denied seven.** No one individual has received more than one waiver. Twelve of the approved waivers were combined with an override, meaning that the individual had been out of punitive segregation for less than seven days when he was put back in and had also served more than 60 days in six months.

Findings

Most seven day waivers were granted for slashings. These are accounted for below as “Inmate assault”.²

	Approved Waivers	Denied Waivers
Inmate assault	8	1
Assault on staff (OTHER THAN splashing or spitting) *	6	3
Weapons contraband	2	0
Assault on staff (splashing or spitting ONLY)	1	3
Damaging DOC property and destructive behavior	1	0
Total	18	7

*Assaults on staff other than splashing and spitting included punching and hitting staff and throwing heavy objects at members of staff.

¹Record of Variance Action ree BOC Minimum Standard 1-17(d)(2), September 8, 2015, <http://www1.nyc.gov/assets/boc/downloads/pdf/punitive%20seg%20post.pdf>.

²The Department does not provide an explanation of the Chief’s decision to approve or deny a seven-day waiver.

All of the individuals sent back to punitive segregation on waivers had been assigned to high-classification or special housing units at the time of the override-triggering incident.

Housing area at time of waiver-triggering incident	Count
Administrative Segregation	3
Enhanced Restraint	6
Enhanced Supervision Housing	2
General Population – Maximum Classification	4
Punitive Segregation	1
Unhoused*	2
Total	18

* These inmates were in the intake area waiting to be housed after being discharged from punitive segregation when the waiver-triggering incident occurred.

An average of 3.5 days elapsed between an inmate’s release from a 30 consecutive day punitive segregation placement and the waiver-triggering incident. One individual received a waiver while he was in punitive segregation; he was not released at all after thirty consecutive days and was in punitive segregation for 58 consecutive days total.

Once their seven day waivers were granted, individuals served an average of 23 days in punitive segregation. The minimum time served was two days in punitive segregation after being placed back in with a waiver, while the maximum time served was thirty consecutive days.

The individuals who received seven day waivers spent extensive time in punitive segregation during their time in NYC DOC custody. On average, the 18 individuals spent 236 days in punitive segregation for their current incarceration and 328 across their NYC DOC incarcerations. On average they had been incarcerated for 612 days when they received their waiver.

Many individuals who received seven day waivers have also received 60 day overrides. Sixty day overrides allow the Chief of the Department to place an individual in punitive segregation for a period exceeding 60 days in six months in rare instances when inmates engaged in “persistent, serious acts of violence”.³ On average, the 18 individuals had received two 60 day overrides. One waiver recipient had not received any overrides while two inmates received five overrides each.

Among people who were approved for seven day waivers:

- The average age of seven-day waiver recipients is 22.7 years old. Six of the recipients were 18 or 19 at the time of the waiver.⁴ One other recipient was 20 years old.
- Fifteen of the 18 waiver recipients had three or more contacts with mental health services during their current incarcerations.⁵
- Fourteen of the 18 waiver recipients reported their races as black, three of whom also identified as Hispanic. The other four individuals identified as non-black Hispanic. All of them are male.

November 30, 2016

³BOC Minimum Standard § 1-17(d)(3), [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).
⁴The Department no longer sentences young adults to punitive segregation. The Department stopped sentencing young adults to punitive segregation in June 2016 and stopped sentencing 19-21 year olds in October 2016.
⁵Correctional health staff determine whether an inmate should be designated with an M status. In accordance with the Brad H settlement, this class of inmates are those that are in DOC custody for 24 hours or longer, and who have received, are receiving, or will receive treatment for mental illness three or more times during their incarceration. Pursuant to the settlement, “Mental Illness” is defined as an affliction with a mental disease or mental condition, which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation.

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