

New York City Department of Correction Annual Use of Force Investigation Report Fiscal Year 2023

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 2023 from July 1, 2022, through June 30, 2023.

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.*

The Department remains committed to investigating every Use of Force (“UOF”) that occurs. Upon the report of an actual or alleged UOF, the Department’s Investigation Division (“ID”), conducts an “Intake Investigation” 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), followed by further investigation where warranted. Intake investigations, which are mandated to conclude within 25-business days of the event itself, involve a fairly extensive investigation, requiring interviews, a review of all relevant reports, and review of video surveillance of the incident. This process has proven to successfully accelerate case processing times, as explained below.

During FY23, there were 7,197 reported Use of Force incidents, comprised of 7,003 Actual Uses of Force and 194 Alleged Uses of Force (by comparison, in FY22, there were 7,079 Actual Uses of Force and 209 Alleged Uses of Force). Of the 7,197 Uses of Force, 6,270 cases were deemed a “Class C” Use of Force meaning no one involved in the Use of Force sustained any injury.¹

In FY23, of the 7,197 reported Uses of Force, a total of 527 cases (7.3%) have been referred for further investigation, which means that the case could not be resolved after 25 business days, because the incident required compelled interviews, additional investigative actions to resolve identified concerns, or due to the mandated full

¹ “Class A” 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” 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., 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” is a classification used to describe Use of Force incidents that result in no injury to anyone involved. This includes incidents where the use of chemical agents results in no injury beyond irritation that can be addressed through decontamination.

investigation criteria enumerated within the Nunez Consent Decree.

At the close of FY23, there were 547 cases still pending. A determination for these cases will be made at the conclusion of the Intake Investigation.

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.*

In FY23, The Trials & Litigation Division closed 1,496 Use of Force cases. Of these, 343 (22.9%) were opened and closed in FY23 with an average time to close of 97.6 days, and 64% completed in less than 100 days. 1,153 (77.1%) were opened prior to FY23 and were closed after an average of 581 days. The vast majority of those opened in previous fiscal years, 1,042 (90.3%), were closed in the last half of 2022 as part of a massive effort to clear the backlog. All cases disposed in FY23 were as follows:

- Administrative Filed/Deferred Prosecution: 236 cases.
- Negotiated Plea Agreements (NPA): 1,202 cases, see chart below.
- Resulted in a guilty verdict at trial before the Office of Administrative Trials and Hearings (OATH): 43
- Resulted in a not guilty verdict at trial before the Office of Administrative Trials and Hearings (OATH): 1

NPA Breakdowns:

	Number of Cases	Percentage out of 1,202 cases
NPA: Return to Command for Discipline with days \leq 10	406	33.8%
NPA: Retirement/Resignation	20	1.7%
NPA: 1-5 Days	31	2.6%
NPA: 6-10 Days	242	20.1%
NPA: 11-20 Days	209	17.4%
NPA: 21-30 Days	110	9.2%
NPA: 31-40 Days	52	4.3%
NPA: 41-50 Days	38	3.2%
NPA: \geq51 Days	94	7.8%
Total:	1,202	100%

- 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.*

Investigations into all Use of Force (UOF) incidents are the sole responsibility of the Investigation Division (ID). These investigations are handled in a two-step approach. ID's Intake Squad conducts an initial Intake Investigation of all UOF incidents. The majority of UOF cases are disposed of during this intake process within 25 business days. If a case requires additional investigative steps, it is referred for Full ID Investigation.

In FY23, 7,055 UOF Intake Investigation cases were closed by ID within the 25-business day deadline. However, 146 incidents exceeded the 25-day closing deadline in FY23. ID management has undertaken a review of the Intake process and steps are being taken to improve the efficiency of the unit to allow for full compliance with the mandated closing timeframes.

An additional 200 UOF cases were closed by ID after further investigative work. All cases were referred from the Intake Squad for Full ID investigation and closed within an average of 77 days. While the average closing timeframe for Full ID investigations has improved, additional steps are being taken to achieve compliance with the 120-business day closing timeframe mandated by the current consent decree.

- 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.*

In FY23, the Trials Division brought 23 members of service to trial before OATH for cases involving UOF. 22 of the 23 members of service were found guilty. Of the 22 guilty individuals: 9 were recommended for termination and 13 were recommended for suspension (ranging from 7 days to 60 days). All OATH recommendations were accepted by the Commissioner, except for two suspensions which were modified from 40 days to 30 days, and from 30 days to 15 days, respectively.

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

The Department of Investigation (DOI) reviews all Class "A" UOF incidents prior to clearing ID to proceed with our investigation. In FY23, there were 286 Class "A" UOF incidents, 285 of which were reviewed and cleared for administrative investigation by DOI. ID has referred 9 cases to DOI for criminal investigation (including the one A UOF incident noted above that is still under DOI investigation).