

New York City Department of Correction
Annual Use of Force Investigations Report

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 2020 from July 1, 2019 through June 30, 2020. 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 incident that occurs. Previously, upon the report of a Use to the Department’s Investigation Division (“ID”), ID conducted 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), followed by an additional investigation where warranted. Though intended to be an initial investigation, in practice the Preliminary Review encompassed a fairly intensive investigation, requiring interviews of inmates, a review of all relevant reports and documents including medical records, and review of video surveillance of the incident. In this report, the term “Preliminary Review” has since changed to “Intake Investigation”, and these processes have changed to avoid duplicate investigations and speed up case processing times, as explained below.

In an effort to speed up case processing times and take swifter action on decision-making related to UOFs, in February 2020, the Department created the “Intake Squad,” made up of investigators, attorneys and supervisors whose sole responsibility is to investigate Use of Force incidents immediately after they occur. Contrary to the cumbersome Preliminary Review process, the structure of the Intake Squad allows for a much more efficient and effective UOF investigation process. Through this process, immediate action can now be taken on cases with clear misconduct or cases that clearly do not warrant any discipline, allowing investigators to more thoroughly review cases which require full ID investigation.

During FY2020, there were 7,047 reported Use of Force incidents, comprised of 6,806 Actual UOFs and 241 Alleged UOFs (by comparison, in FY2019, there were 7,063 Actual uses of force). Of the 7,047 Uses of Force, 5,551 cases were deemed a Class “C” Use of Force meaning no staff member was injured, nor any individual in the Department’s custody.¹

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.

In FY2020, of the 7,047 reported Uses of Force, a total of 1,349 cases have been opened for full ID investigation, which is a 19.1% opening rate for full investigation.

In FY2020, there were 3,118 cases pending in Preliminary Review/Intake Investigation status. Of those 3,118 cases, 2,470 Preliminary Review/Intake Investigations are pending supervisory review and may be deemed full ID investigations.

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 FY2020, ID closed 673 Use of Force cases with a Memorandum of Complaint (“MOC”), i.e. recommendation of formal disciplinary charges. Of the 673, the Injury Class Type breakdown was as follows: 71 UOF Class A; 277 UOF Class B; 325 UOF Class. Of the 673 investigations that resulted in an MOC, the Trials Division (“Trials”) closed 172 cases during FY2020.

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 357 cases closed by Trials in FY2020, the breakdown of disciplinary actions imposed is provided below:

- Administrative Filed/Deferred Prosecution: 59 cases
- Negotiated Plea Agreements (NPA): 291 cases, see chart below
- City Office of Administrative Trials and Hearings (“OATH”): 5 cases
- Terminated due to Public Officer Law: 2

NPA Breakdowns:

	Number of Cases	Percentage out of 291 cases
NPA: Return to Command for Discipline with days ≤ 5	68	23.4%
NPA: Retirement/Resignation	8	2.7%
NPA: <5 Days	6	2.1%
NPA: 5-10 Days	37	12.7%
NPA: 11-20 Days	76	26.1%

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.

NPA: 21-30 Days	33	11.3%
NPA: 31-40 Days	28	9.6%
NPA: 41-50 Days	5	1.7%
NPA: 51+ Days	17	5.8%
NPA: Susp. <10 Days	3	1%
NPA: Susp. 10-20 Days	7	2.4%
NPA: Susp. 21-30 Days	3	1%
TOTAL:	291	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.*

In FY2020, 3,362 Use of Force cases were closed. On April 8, 2020 the Department's "Drop Anchor" closing project began. This project, which was approved by the Federal Monitor, allows the Department to expedite the closing of cases which are beyond the Statute of Limitations date as well as the required closing time set forth by the Consent Decree. Of these 3,362 cases, the average time to close a case was 426 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 5 disciplinary cases in FY2020 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 5, all resulted in a not-guilty finding and 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 17 UOF incidents to the Department of Investigation and/or a District Attorney's office in FY2020.