

# OFFICE OF THE CORRECTIONS OMBUDS

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## Investigative Report

Angee Schrader, Assistant Ombuds

April 28, 2021

The Office of the Corrections Ombuds (OCO) is established in Chapter 43.06C RCW. Duties of the office include investigations into complaints regarding the health, safety, welfare, and rights of incarcerated individuals in the Washington Department of Corrections (DOC). This report is provided pursuant to RCW 43.06C.040, which requires a public report at the conclusion of an investigation.<sup>1</sup> This report has been edited to protect confidential information. OCO investigations and underlying records are confidential pursuant to RCW 43.06C.040 and 43.06C.060. Any persons wishing to report a complaint to OCO can do so via its online complaint form at [oco.wa.gov](http://oco.wa.gov) or via its free, unmonitored hotline (360.664.4749).

## Brief Summary of Complaint

On January 21, 2021, OCO received a concern regarding a White incarcerated male at Olympic Corrections Center. The Complainant was infraacted with a 557<sup>2</sup> “Refusing to participate in an available work, training, education or other mandatory programming assignment” when he failed to show up for work. He stated he did not want to work with a specific DNR<sup>3</sup> crew where staff did not correctly wear masks. After he was found guilty of the infraction, he was placed back on the same crew. The staff member then

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<sup>1</sup> Note: All OCO investigations require a public report; however, only incidents involving critical or systemic issues receive an individual investigation report. All other investigations are publicly reported via OCO’s monthly outcome summary report, available on its website.

<sup>2</sup> 557 Class C major infraction. Refusing to participate in an available work, training education or other mandatory programming assignment.

<sup>3</sup> Department of Natural Resources.

infracted the Complainant, and he was placed in solitary confinement. This incident resulted in the Complainant's removal from DNR.

## Executive Summary of Findings and Recommendations

- OCO finds that DOC issued several 557 infractions to incarcerated individuals who reported concerns about their health and safety regarding COVID-19 due to work conditions.
- OCO finds that incarcerated persons who refused to work due to COVID concerns were not first given a minor infraction as part of graduated discipline, provided the opportunity to report the COVID issues for investigation, and that a higher level authority should have reviewed for potential accommodations.
- OCO recommends that all 557 infractions issued for COVID-19 related concerns be reviewed and possibly reduced or removed.
- OCO recommends that DOC Policy 460.000 be revised to include direction that hearing officers will reduce major infractions to lesser infractions if applicable.
- Given the COVID-19 pandemic, special consideration and/or immediate higher level review should be given to persons receiving infractions related to their personal health and safety concerns based on COVID-19.

## Statutory Authority

- Per RCW 43.06C.005, OCO was created to assist in strengthening procedures and practices that lessen the possibility of actions occurring within DOC that may adversely impact the health, safety, welfare, and rehabilitation of incarcerated individuals, and that will effectively reduce the exposure of DOC to litigation.
- Per RCW 43.06C.040, OCO has the authority to receive, investigate, and resolve complaints related to incarcerated individuals' health, safety, welfare, and rights.

## Investigative Actions

- OCO reviewed related records, including JPAY messages, recorded disciplinary hearings, and infraction paperwork.

- OCO interviewed the Complainant.
- OCO reviewed DOC policy 350.100, 460.000, and 460.135.
- OCO reviewed all 557 infractions issued from March 5, 2020 through February 1, 2021.

## Detailed Summary of Incident

On January 19, 2021, the Complainant sent a couple messages to his Counselor reporting mistreatment by DNR staff and that the DNR staff supervisor was not wearing a mask during COVID. He asked to be placed on a different DNR crew. On January 20, 2021, the Complainant refused to go on the crew and was infraacted with a 557, "Failure to Program." The following day, he was placed back on the same crew. The DNR supervisor infraacted the complainant again for reportedly "planting trees wrong," and sent him back to camp, where he was placed in solitary confinement. He was released the following day and then removed from DNR.

Incarcerated individuals found guilty of a 557 infraction lose their 50 percent eligibility and all available earned release time and privileges. It also excludes them from all re-entry programs such as Work Release, Graduated Re-entry, and Community Parenting Alternative.

OCO initiated a review of all 557 infractions issued from March 5, 2020 through February 1, 2021 related to COVID-19 safety concerns for incarcerated workers.

## Findings

- **OCO finds that DOC issued several 557 infractions to incarcerated individuals who reported concerns about their health and safety regarding COVID-19 due to work conditions.**
  - On May 20, 2020, a White incarcerated individual at Airway Heights Corrections Center received a 557 for quitting his job. He stated that he had asked to be reassigned and was denied. He reported that he had cancer and major organ removal in the past, and his job was to clean the bathrooms in the recreation building across from the Regional Care

Facility where positive COVID-19 incarcerated individuals reside. He said he was scared he would catch COVID-19 and die.

- On June 23, 2020, a White incarcerated individual at Washington State Penitentiary received a 557 infraction for quitting his job. He alleged a Corrections Officer was not wearing a mask and putting his health at risk. When he told staff about the incident, he claims the same Corrections Officer started standing close to him on purpose without a mask to make him feel uncomfortable. He wanted to work but not with DOC staff who do not adhere to the mask mandate.
- On June 29, 2020, OCO received a complaint from a Native American incarcerated individual at Airway Heights Corrections Center. The Complainant was worried about handling trash from the COVID units. He reported he has Asthma and alleged they were not given proper PPE and did not receive any hazardous training. He stated he did not feel safe and asked the staff if he could return to his unit. He was terminated from his job and issued a 557 infraction.
- On August 31, 2020, a White incarcerated individual at Washington State Penitentiary received a 557 infraction when he quit his job as a stock clerk due to unsafe COVID-19 conditions. In his infraction hearing, he stated there were over 100 cases at WSP, and he did not want to risk his life for this job.
- On October 16, 2020, a 69-year-old White incarcerated individual at Monroe Correctional Complex received a 557 infraction when he refused to wash rags and mops used to clean the unit in the same sink they wash pots and pans in; he felt it was unsafe and unsanitary. He stated in the hearing that he was terrified of COVID-19 and did not want cross-contamination. He said he still wanted to work. He also filed a hazard report. His sanction was 15 days loss of good conduct time, loss of earned time for October, 60 days loss of store, and 30 days loss of dayroom.
- On December 11, 2020, a White incarcerated individual at Washington State Penitentiary received a 557 infraction for not coming out to work. He stated they had been on quarantine and was notified that many people in the facility had COVID-19, including two people on his crew. He said he did not feel safe, and he did not feel well and thought he was sick.

- **OCO finds that incarcerated persons who refused to work due to COVID concerns were not first given a minor infraction as part of graduated discipline, provided the opportunity to report the COVID issues for investigation, and that a higher level authority should have reviewed for potential accommodations.**
  - A 557 infraction carries significant penalties, including ineligibility for Graduated Re-entry and Work Release, as well as loss of earned time and privileges.
  - DOC had other options available for graduated discipline and sanctions. Given the COVID -related concerns during a pandemic, these should have been used first.
    - DOC has a general infraction for an unauthorized absence<sup>4</sup>. The main Complainant in this concern did not refuse to program and was placed back on the same crew after he was found guilty of the 557.
    - DOC also has a general infraction for failing to perform a work, training, education, or other programming assignment as directed.<sup>5</sup>
    - In addition, DOC can sanction loss of good time, dayroom privileges, and monthly packages.
    - The individuals included in this report, except for the one reporting cancer and major organ removal, did not have a prior history of infractions for failure to report to work.
    - DOC's Policy 460.135 related to work release disciplinary procedures includes direction that hearing officers will reduce major infractions to lesser infractions, if applicable. No similar direction exists in the disciplinary procedure policy for prisons.
  - None of the cases that OCO reviewed indicated higher level concern or review was given to the incarcerated individuals based on their reported fears for their health and safety due to work conditions during a pandemic.

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<sup>4</sup> 104 general infraction. Being absent from work or any assignment, scheduled meeting, appointment or call out without authorization.

<sup>5</sup> 105 general infraction

## Recommendations

- OCO recommends that all 557 infractions issued for COVID-19 related concerns be reviewed and possibly reduced or removed.
- OCO recommends that DOC Policy 460.000 be revised to include direction that hearing officers will reduce major infractions to lesser infractions if applicable.
- Given the COVID-19 pandemic, special consideration and/or immediate higher level review should be given to persons receiving infractions related to their personal health and safety concerns based on COVID-19.



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1110

May 12, 2021

Joanna Carns  
Office of Corrections Ombuds  
2700 Evergreen Parkway NW  
Olympia, WA 98505

Dear Ms. Carns:

The Washington Department of Corrections appreciates the opportunity to respond to the Office of Corrections Ombuds' April 28 investigation report regarding an incarcerated individual who "was infraacted with a 557 Class C major infraction when he failed to show up for work [because] he did not want to work with a specific DNR crew where staff did not correctly wear masks. After he was found guilty of the infraction, he was placed back on the same crew," later "placed in solitary confinement" and eventually "removed from DNR."

<b>Recommendation</b>	<b>Response</b>
OCO recommends that all 557 infractions issued for COVID-19 related concerns be reviewed and possibly reduced or removed.	The department has agreed to and completed a review of all 557 infractions issued for COVID-19 related concerns from March 1, 2020 to March 16, 2021. Several infractions were determined as appropriate to be overturned and those are in the process of being finalized.
OCO recommends that DOC Policy 460.000 be revised to include direction that hearing officers <u>will</u> reduce major infractions to lesser infractions if applicable.	The department agrees to the recommendation to include language, such as that which is recommended, into policy 460.000 Disciplinary Process for Prisons in the upcoming policy review and revision scheduled for calendar year 2021. For the time prior to the scheduled review, Attachment A is being included with the policy for reference and enactment by hearings staff.
Given the COVID-19 pandemic, special consideration and/or immediate higher-level review should be given to persons	Through the appeal process outlined in policy 460.000 Disciplinary Process for Prisons, there are processes already in

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<p>receiving infractions related to their personal health and safety concerns based on COVID-19.</p>	<p>place for incarcerated individuals to request a review and/or appeal an infraction to a higher-level review and consideration. The higher-level appeal review process allows for consideration of health and safety concerns based on COVID-19. There is not a keyword search ability in the infraction system to find “COVID-19” among all infractions.</p>
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The information provided by the OCO was useful to ensure the Department of Corrections is doing everything it can to ensure an incarcerated person’s time in the agency’s custody is fair for all incarcerated individuals.

The department also appreciates the Ombuds Office’s understanding of the unique processes across the correctional system and the addition of policies and procedures being put in place to address them. The department is working toward proactively improving quality assurance processes throughout the department. Moving forward, the Washington Department of Corrections will continue to collaborate with the Office of the Corrections Ombuds to strengthen procedures and practices that positively impact individuals’ health, safety and welfare.

Sincerely,

Julie Martin, Acting Secretary  
Washington Department of Corrections



Attachment A



STATE OF WASHINGTON  
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May 12, 2021

**TO:** All DOC Staff

**FROM:** Robert Herzog, Assistant Secretary  
Prisons Division

A handwritten signature in blue ink, appearing to read "Robert Herzog".

**SUBJECT: DOC Policy 460.000 Disciplinary Process for Prisons**

The purpose of this memorandum is to inform you that DOC Policy 460.000 Disciplinary Process for Prisons will include a requirement that hearing officers will reduce serious infractions to lesser infractions, when applicable.

The requirement is in effect immediately and will be included in the next regular review of DOC policy 460.000 Disciplinary Process for Prisons.

cc: Julie Martin, Deputy Secretary  
Deputy Directors  
All Hearings Officers