STATE OF WASHINGTON

OFFICE OF THE CORRECTIONS OMBUDS

2700 Evergreen Parkway NW • Olympia, Washington 98505 • (360) 664-4749

February 1, 2021

Steve Sinclair, Secretary
Department of Corrections (DOC)

Office of the Corrections Ombuds (OCO) Investigative Report

Attached is the official report regarding the OCO investigation into the use of emergency restraints on an incarcerated individual at Clallam Bay Corrections Center. We look forward to working with DOC to amend current policies and practices to better ensure that all incarcerated persons' health, safety, welfare, and rights are protected while they are within state confinement.

Any member of the public who wishes to report a concern to OCO is welcome to contact the office at (360) 664-4749 or at the address above. All concerns are logged into the OCO database and used as part of its overall reporting to policymakers and analysis of issues within DOC.

Sincerely,

Joanna Carns

Joanna Carns
Director

cc: Governor Inslee

OCO INVESTIGATION
INVESTIGATION CONDUCTED BY MATTHIAS GYDÉ, ASSISTANT OMBUDS – WESTERN DIVISION

Summary of Complaint/Concern

On February 6, 2020 the Office of the Corrections Ombuds (OCO) received a complaint from the individual involved that alleged the following:

- The complainant alleged that while at Clallam Bay Corrections Center (CBCC) in the Close Observation Area (COA), his clothes were cut off and he was placed in an emergency restraint chair naked. He further alleged that his privacy towel was removed, he was left in the chair naked, and a female DOC staff member stood in front of him and made jokes about him.

OCO 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 persons, 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 persons' health, safety, welfare, and rights.

OCO Investigative Actions

- As part of this investigation OCO reviewed documentation and video evidence of the incident and conducted interviews with the incarcerated person involved and leadership at CBCC.

Incident Narrative:

On October 11, 2019 mental health staff at CBCC ordered that all the complainant's items be removed from his cell as they alleged he was not upholding his end of a behavior contract he had made with them. A cell extraction team consisting of eight officers was assembled to enter the cell, secure the incarcerated man, and remove the items from his cell. During the videotaped briefing prior to the incident, the lieutenant in charge states that they will, "…order him to cuff up[1], take his items, take what he is wearing, search the cell, and put him back in the cell." The lieutenant also states, "…if he refuses to come to the cell door, the team has been told the negotiation is over, the team is going to take over, enter the cell, and use whatever force is necessary to get him into restraints."

[1] "Cuff up" is a common term used to direct an incarcerated person to turn their back to an officer and put their hands behind their back so handcuffs can be applied.

At the cell front, an officer opens the cuff port and the lieutenant directs the complainant to come to the door and cuff up. When the complainant gets to the door the lieutenant orders him to strip out[2] first. The complainant objects to this stating he has nothing to cover himself with. The lieutenant orders him three more times to take off his clothing. The complainant continues to object but turns his back to the door and places his hands behind his back at the cuff port stating, "I'll cuff up. I'm not gonna fight anybody." While the complainant is standing at the door with his back to the officers and his hands behind his back in the normal position for handcuffs to be applied, one officer opens the cell door and another officer using an electric shield[3] rushes the complainant from behind.

Using the electric shield, the officer forces the complainant to the back wall of the cell and onto the floor. While the complainant is lying face down on the floor, the officer with the shield activates the electronic function delivering a shock to the complainant. The complainant resists the officers for twenty five seconds, as evidenced by the video, and then he stops resisting. The officers finish applying cuffs to his wrists and ankles. At this point the lieutenant informs the team, "We got the scissors coming. Cut his clothes off right here." The team leader orders the other officers to keep him pinned to the floor until they have cut off his clothing. There are five officers on top of him and he is not resisting.

Once the officers have cut the complainant's clothes off, they lift him off the floor and pin him against the wall with his face to the wall. The team leader comes in with a towel to put around the complainant's waste. While trying to do this, with three officers keeping the complainant pinned against the wall and still manipulating the handcuffs, the lieutenant reenters the room and states, "…if he keeps resisting don't worry about the privacy towel. Just bring him to the door." The video shows that the complainant does not appear to be resisting at this time. The officers successfully wrap the towel around the man's waist. While backing him out of the cell, the privacy towel falls to the floor. The officers hold the complainant standing naked in the hallway outside the cell while a nurse attempts to take his blood pressure. Despite multiple requests from the complainant to cover him up again, no one makes any effort to do so. When the nurse has completed her task, the officers move the complainant back into the cell and force him to his knees. They remove the ankle restraints, close the cell door while holding the complainant's hands through the cuff port, remove the hand cuffs, and walk away from the cell. The complainant is left naked in the cell.

The use of force report indicates that after the complainant was placed back into his cell, he began pulling the rubber seal from around the window of the outer cell door. At this time, another extraction team was assembled and reported to the cell front. The use of force report indicates that the complainant initially refused to comply with directives to cuff up, but once the team began preparing to enter the cell he complied and was handcuffed. The video does not cover this portion of the incident.

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[2] "Strip out" is a common term used to direct an incarcerated person to strip naked.

[3] An electric shield is a clear plastic shield with metallic strips on it that can be used to deliver a shock of electricity to the individual it is being used upon.

The video begins again as the complainant, still naked and now handcuffed, is being backed out of the cell and placed into the emergency restraint chair. After about three minutes an officer places a towel in his lap to cover him. Once all seven of the emergency restraint chair's restraint points are secure, the complainant is wheeled into a different cell. As this is happening, someone can be heard on the video stating, "make sure we get that towel." After the complainant is placed in the new cell, he can be heard making a noise that he says was him clearing his throat. An officer exits and returns with a spit mask and places it over the man's mouth. This appears to cause the complainant great distress, as he can be heard repeatedly asking to have it removed as he has not spit on anyone, he states he cannot breathe with it on, and he states it is going to cause him to have a panic attack. Once the emergency restraint chair is secured, the officers take off the spit mask, take the towel from the complainant's lap, and exit the cell. The complainant was left naked in the emergency restraint chair for two hours and thirty minutes. This is thirty minutes longer than is allowed per policy.

OCO Findings

- OCO believes that unnecessary and excessive force was used in this incident. In discussions with CBCC, an argument was made that simply by viewing the video OCO could not be aware of what had preceded this incident, including the complainant's behavior and any negotiation that may have occurred prior to the extraction. However, regardless of what precipitated this interaction, OCO does not believe it is ever appropriate for DOC staff to charge someone from behind while their back is turned, let alone deliver an electric shock, while that person is submitting to being handcuffed.

- DOC's incident report indicates that the complainant, "…resisted staff directions and physical control during the entire incident." The video evidence of the incident does not support this claim. While the complainant may have been argumentative, he only physically resisted the officers for the twenty five seconds immediately following being charged from behind, forced to the floor, and shocked with the electric shield. After that short amount of time, it is clearly seen on video that the complainant stops resisting.

- OCO finds that there was no reason for the complainant to be deprived of even the most modest of coverings during this incident. While a strip search may have been deemed necessary to ensure all items had been removed from the cell, OCO can see no reason why it was necessary to leave him completely naked and exposed while approximately eleven people, one with a video camera, watched. The complainant expressed to OCO that the nudity involved in this incident was humiliating to him and triggered emotional distress related to past incidents of sexual exploitation. This was something the complainant also expressed to the officers as they were cutting off his clothes.

- OCO finds that DOC staff made only minimal efforts to provide the complainant with a covering while making active efforts to deprive him of a covering.

- OCO finds that DOC violated policy 420.255 Emergency Restraint Chair and Multiple Restraint Bed, by leaving the complainant in the emergency restraint chair longer than two hours, the maximum time the policy allows.

- It should be noted that throughout both incidents the complainant is continually talking to staff and asking them questions. DOC staff do not speak to the complainant or answer any of his questions other than to issue directives that allow them to restrain him. OCO believes that this is a missed opportunity by DOC to potentially deescalate the situation.

- Based upon the evidence supplied, OCO was not able to substantiate the claim that a female member of staff stood and made jokes about the complainant while he was naked and restrained.

- OCO notes that the timestamp on the handheld video is not correct and does not reflect the actual time of day the incident took place.

Additional Concerns

- This case highlights an ongoing concern for OCO regarding the use of emergency restraint chairs in general, their use for mental health reasons, and the force that is sometimes used in these incidents.

Outcomes

- This case, along with others OCO has encountered, has prompted OCO to launch a systemic review of the use of emergency restraint chairs as well as multiple restraint beds within DOC. OCO is analyzing data on every use of these implements for a one year period. In addition, the review will include interviews with incarcerated people who have experienced the use of these restraints, DOC line staff who use these restraints, as well as conversations with facility leadership and headquarters leadership. This systemic review is in collaboration with DOC leadership and is expected to yield positive outcomes related to improved documentation, improved practices including de-escalation, reduction in the number of times emergency restraints are used, reduction in total length of time spent in the emergency restraints, and more. OCO hopes and expects that this systemic review will result in more humane treatment of persons incarcerated in WA DOC.

Recommendations

- Separate from the outcomes and improvements expected from the above systemic review, OCO recommends a review by DOC Headquarters personnel of this

specific incident, that any appropriate disciplinary action is taken, and that there is consideration for changes to protocols, policies, and practices to ensure a more humane response.

- OCO recommends that DOC policies, protocols, and practices be amended to ensure the preservation of a person's dignity, particularly the covering of exposed genitals, when the person is being moved into and while in emergency restraints.

- OCO recommends that DOC policies, protocols, and practices be amended to address the appropriate use of the electric shock shield.

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

February 26, 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 OCO Report on the 'investigation into the use of emergency restraints on an incarcerated individual at Clallam Bay Corrections Center' completed by the Office of Corrections Ombuds.

The department has reviewed the Office of Corrections Ombuds report and has additionally completed an internal review of the incident and agrees this incident was an unnecessary/unreasonable use of force. However, this incident does not meet the legal definition of an excessive use of force as there are no facts to support it was carried out '*maliciously and sadistically for the very purpose of causing harm'*. Further, there are no facts to support officers acted to '*wantonly and unnecessarily inflict pain'*. The italicized language is included in the legal definition of the Constitutional standard for excessive force claims in alleged 8th Amendment violations. The department does agree with the Office of Corrections Ombuds assertion of an unnecessary use of force, and agrees this does not meet DOC policy standard as a reasonable use of force, and as such, following the review, the department has since opened an investigation and will be thoroughly investigating the entirety of the incident.

Recommendation	**Response**
Separate from the outcomes and improvements expected from the above systemic review, OCO recommends a review by DOC Headquarters personnel of this specific incident, that any appropriate disciplinary action is taken, and that there is consideration for changes to protocols, policies, and practices to ensure a more humane response.	Department leadership and use of force subject matter experts have completed a review of this incident and have since opened an investigation further into the incident. Corrective action and/or discipline is only warranted after determining allegations of inappropriate conduct and/or policy violations may exist and brought to the appointing authority's attention to

	determine if a just cause investigation is warranted. After the department's review of this incident, it is alleged the need to use force was unnecessary and unreasonable in order to secure the individual, conduct a search, and remove from the cell.
OCO recommends that DOC policies, protocols, and practices be amended to ensure the preservation of a person's dignity, particularly the covering of exposed genitals, when the person is being moved into and while in emergency restraints.	The Department agrees the need to offer a level of privacy to a naked individual is important, given the time and circumstances to offer appropriate privacy provided safety and security concerns have been mitigated. In this incident, employees attempted to cover the individual prior to removal from the cell. Although the covering fell off, and there appears to be no attempts to recover the individual, it is unknown if medical considerations and/or safety and security concerns existed to warrant medical screening and/or chair placement as the priority at the time. However, the Department agrees once the individual was safely secured in the chair, a privacy covering should have been appropriate given no other concerns to require otherwise.
OCO recommends that DOC policies, protocols, and practices be amended to address the appropriate use of the electric shock shield.	DOC policy and training already address the authorization and appropriate use of electronic control devices which include the shield. The Department will ensure that the initial activation will be reviewed as a part of the opened investigation.

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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 facilities is a fair and safe space for all incarcerated individuals.

We also appreciate your team's understanding of the unique processes across facilities and the addition of policies and procedures being put in place to address them. We are working towards proactivity and improving quality assurance processes throughout the department. Moving forward, Washington Department of Corrections will continue to collaborate with the Office of the Corrections Ombuds to implement additional policies, procedures, and security measures to continue to improve the facility operations.

Sincerely,

Steve Sinclair, Secretary
Washington Department of Corrections