

Background and Summary of Complaints

The Office of the Corrections Ombuds (OCO) frequently receives claims from incarcerated individuals alleging retaliation by staff of the Department of Corrections (DOC). Allegations of retaliation are extremely difficult to prove to a high degree of certainty, making staff accountability limited, except in the most egregious of circumstances.

**OCO Investigations with Allegations of Retaliation
 Top Three Facilities in 2022* and 2021**

2022	
Facilities	Investigations
Stafford Creek Corrections Center	16
Monroe Corrections Center	13
Airway Heights Corrections Center	13
Total Statewide	68
2021	
Facilities	Investigations
Monroe Corrections Center	23
Washington State Penitentiary	14
Stafford Creek Corrections Center	10
Total Statewide	76

* January 1- July 31, 2022

Substantiating a claim of retaliation is challenging, the OCO must be able to prove that a negative action from a DOC staff member is not only linked close in time to an incarcerated individual’s protected action but there must be evidence of a clear relationship between the two acts.

Clear and consistent policies and procedures are vital to the safety and security of the people who live and work in the state of Washington’s corrections facilities. DOC staff must hold themselves to the highest ethical standard possible and fairly administer and enforce policies not through the interpretation or discretion of individual staff but through clear and consistent application of the policies. When an individual staff member is allowed to enforce punishment at will, or without review, those staff may abuse their discretion or misunderstand the policy and incorrectly act.

Investigative Actions of the OCO

The OCO took the following actions in furtherance of this report:

- Reviewed complaints of retaliation filed with the OCO
- Reviewed grievances filed by each complainant alleging retaliation and DOC responses
- Reviewed available documentation such as disciplinary materials, behavioral observation entries (BOEs), and kites exchanged between complainants and DOC staff
- Viewed video evidence
- Interviewed multiple complainants
- Interviewed involved DOC staff members
- Discussed concerns and preliminary findings with DOC administration over the course of several months
- Analyzed other states' policies prohibiting retaliation in prison, including sister states Oregon and Idaho
- Reviewed DOC Resolution Program Manual
- Reviewed applicable legal authorities, including:
 - RCW 43.06C.070 Civil Immunity—Retaliatory Actions
 - RCW 49.60 Discrimination—Human Rights Commission
 - DOC 100.500 Non-Discrimination for Individuals
 - DOC 450.100 Mail for Individuals in Prison
 - DOC 550.100 Resolution Program
 - DOC 800.010 Ethics
 - DOC 810.005 Equity, Diversity, Inclusion, Respect, and Anti-Racism
 - DOC 850.625 Discrimination and Harassment

Negotiated Outcomes

Incarcerated Individuals must be able to efficiently and effectively communicate their needs and concerns to DOC staff. When an allegation of retaliation is reported through the DOC resolution program, the reporter is not guaranteed a satisfactory outcome. Thus, not only is it important for incarcerated people to have fair and efficient opportunities to communicate allegations of retaliation to the OCO, the DOC is obligated to take appropriate action to respond once informed. Beginning in late 2021, the OCO and the DOC engaged in negotiations related to allegations of retaliation. On November 29, 2021, the OCO received the following DOC responses to three OCO recommendations.

OCO Recommendation #1: DOC Policy 550.100 should be updated to include the following language:

Retaliation or the communicated threat of retaliation against anyone for their good faith participation in the resolution program, filing a lawsuit, making a complaint, or other legally protected action or their involvement in any investigation or review is prohibited, and will result in disciplinary action if a staff person has been found to have:

1. Engaged in retaliation
2. Failed to report retaliation by another staff person
3. Failed to take immediate steps to prevent retaliation

Allegations of retaliation should be made through the resolution program by first filing a Level 0 grievance. If a Resolution Specialist finds that the complaint has merit or could result in disciplinary action against the individual, they will elevate it to the relevant Appointing Authority and notify the involved incarcerated individual. The Appointing Authority/ designee will take appropriate measures to investigate the allegation of retaliation. If additional investigation is pursued, the complaint will be removed from the resolution program and accepted as a staff conduct investigation.

Indicators of retaliation may include, but are not limited to:

1. Disciplinary infractions
2. Housing changes and reassignments, including administrative segregation placement
3. Job or other program changes
4. Behavioral Observation Entries (BOE)
5. Healthcare changes or denials
6. Staff mishandling of mail or property

If retaliation is substantiated through DOC investigation, the retaliatory action will be voided unless there is a separate, reasonable justification for the action that is not pretextual.

DOC Response to Recommendation #1: The department acknowledges and concurs with the recommendation that policy language should be updated to include more specificity around addressing the important issue of retaliation. The department also acknowledges the intent of the specific policy language the Ombuds has provided and will undertake a review of the involved policies through the policy update process. The process involves stakeholder input and will include protections from retaliation, a process by which to hold staff accountable for engaging in retaliation, failing to report retaliation and failure to take immediate steps to prevent retaliation. In the spirit of the process, the department will review applicable existing policy and, if needed, create new policies to address these issues contained within Recommendation #1.

The department has identified several key policies it will update as noted below:

DOC 850.010 Administrative Investigations – “Substantiated allegations of retaliation toward any individual will be reviewed by the appointing authority/designee to address through corrective/ disciplinary actions, as appropriate.”

DOC 880.100 Corrections Training and Development – “Supervisor will educate employee on forms of retaliation and establish expectations to refrain from acts or

appearance of retaliation towards incarcerated individuals, their families or other employees.”

DOC 550.100 Resolution Program – Directive – “Ensure the appointing authority/designee is notified when there is evidence of any negative employee conduct or retaliation, per the Resolution Program Manual.”

OCO Recommendation #2: DOC should expand any existing training specific to recognizing and understanding retaliation, including addressing the topic within both CORE and annual in-service training, as well as create more in-depth training for persons who may be assigned to investigate retaliation. This training could mirror the OCO’s internal training on investigating retaliation.

DOC Response to Recommendation #2: The department concurs with the recommendation and will integrate a focus on the retaliation within trainings of new employee orientation (NEO), core, and annual in-service training. The department’s annual in-service training would start including it in calendar year 2023.

A memo from Assistant Secretary Obenland will be sent to all prisons staff explaining the retaliation definition and the plans, as an agency, to provide training on retaliation. (Attachment A)

OCO Recommendation #3: DOC should create procedural safeguards to prevent staff from using retaliatory infractions, BOEs, or other negative actions against incarcerated individuals after a staff member becomes the subject of a complaint or lawsuit. This could include adding a step to current procedures that would allow incarcerated individuals to lift up a retaliation concern at the time of the negative action (such as during the disciplinary hearing) prior to completion of the negative action.

DOC Response to Recommendation #3: The department will facilitate and communicate increased education pertaining to retaliation and the appeal process in addition to the existing procedural safeguards of appeals processes. Currently, the department has the appeal tools posted in the resolution program manuals that address retaliation in the facilities. The department will also specifically address retaliation within its code of ethics of conduct.

DOC Policy Updates

The most recent revision of DOC 100.500 Non Discrimination for Individuals, published on April 5, 2022, includes multiple additions of the word retaliation and a responsibility and reporting section. The OCO supports the recent revisions and is hopeful that this improved language will be experienced by all the people who live and work in WA DOC.

Unresolved Concerns with the DOC Resolution Program

Since January 1, 2022, the OCO has received 87 complaints related to the DOC’s resolution program, with most complaints alleging delayed, denied, or no response to requests for assistance.

OCO Investigations with Complaints About the Resolution Program Top Three Facilities

2022*	
Facilities	Investigations
Stafford Creek Corrections Center	21
Monroe Corrections Center	17
Airway Heights Corrections Center	14
Total Statewide	87

* January 1- July 31, 2022

While the OCO recognizes many advances made by the DOC to improve the resolution program, opportunities for significant improvement remain. The process to obtain meaningful resolution is unnecessarily hard to navigate and often the incarcerated population must use the OCO as their only means to push paperwork forward. The OCO Hotline repeatedly receives complaints related to administratively withdrawn resolution requests for staff misconduct, failure to complete requests by the stated deadlines, unreasonable extension requests, and unwarranted re-write demands. Therefore, the OCO insists that improvements to the resolution program are not only warranted but are mandatory for the overall safety and security of all people who live and work in Washington Department of Corrections.

Attachment A



STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

P.O. Box 41100 • Olympia, Washington 98504-1100

DATE: November 4, 2021
TO: Appointing Authorities
FROM: Assistant Secretary Mike Obenland
SUBJECT: Retaliation update to DOC Policy 550.100

The Washington State Department of Corrections (DOC) has been working to improve the process for handling alleged staff retaliation concerns. Retaliation is described as “an adverse action taken against a person because of that person's engagement in a legally protected activity.” Retaliation can sometimes be blatant but can also be concealed with an appearance of legitimacy. This is the reason why an investigation is important to further examine the circumstances.

In March 2021, the department revised policy 550.100 Resolution Program and updated the resolution program manual to include retaliation under staff conduct. It is now clearly outlined that if concerns of retaliation are found to have merit and could result in disciplinary action against staff, the appointing authority will be notified immediately and determine if an administrative review will be initiated outside of the resolution program.

Additional actions going forward:

The department will be adding new language to policy 550.100 Resolution Program to reflect the necessary immediacy of reporting any retaliation when determined to have merit.

The department will update the resolution program manual to clearly define the responsibility of the resolution specialist when it comes to retaliation allegations and expand retaliation as part of the employee conduct section.

The department will be developing and incorporating resolution training into New Employee Orientation (NEO), the Correctional Worker Core Academy, and annual in-service training. Due to the learning and training cycle, addition of such training within the annual in-service training would start in calendar year 2023.

The department will be adding retaliation information to incarcerated individual rights, facilitate and communicate education pertaining to retaliation and the appeal process, and address retaliation in its code of ethics of conduct.

Providing and maintaining a professional environment that encourages the operation of a safe and humane corrections system is the responsibility of us all. Within each day we are provided an opportunity to cultivate integrity and trust through personal accountability. The outlined steps within this memo furthers our efforts to achieving our mission and values.

“Working Together for SAFER Communities”