STATE OF WASHINGTON

OFFICE OF THE CORRECTIONS OMBUDS

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

February 11, 2021

Steve Sinclair, Secretary
Department of Corrections (DOC)

Office of the Corrections Ombuds (OCO) Investigative Report

Enclosed is an investigation report on a use of force on a Black man at Stafford Creek Corrections Center. This is a companion report to a simultaneously published investigation report regarding two additional uses of force on Black men also at Stafford Creek Corrections Center, which is also available on OCO's website.

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, EDITED BY JOANNA CARNS, DIRECTOR

Summary of Complaint/Concern

On June 23, 2020 the Office of the Corrections Ombuds (OCO) received a complaint from a concerned community member which alleged the following:

- The complainant alleged that on June 22, 2020 an incarcerated person housed at Stafford Creek Corrections Center (SCCC) was beaten by corrections officers for not wearing a mask while walking to and from the lavatory. It was further alleged that there were racial slurs used by corrections staff during the incident.

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, the incarcerated individual's medical records relating to the treatment of his injuries from the incident, his complete mental health history within DOC, DOC policy 410.200 Use of Force, as well as evidence from the subsequent infraction hearing. OCO also conducted interviews with the incarcerated person involved, the staff involved, associate superintendents, and the facility superintendent. Additionally, OCO conducted interviews with other incarcerated individuals who were housed most closely to the incident as well as other incarcerated persons who were in the area. OCO also had discussions with DOC Headquarters staff regarding the incident.

Timeline of Events

6/22/2020 3:48 AM: The incarcerated individual leaves his cell heading to the lavatory passing the officer station.

3:49 AM: The officer at the station exits the station and walks to the side closest to where the incarcerated man walked past, and waits for the incarcerated man to return.

3:50 AM: The incarcerated man passes the officer on his way back to his cell. The officer can be seen talking to him and pointing toward the cell. After the incarcerated man passes the officer, the officer appears to make a call on his radio. The incarcerated man is back in his cell within this same minute.

3:52 AM: The three person QRST team arrives at the cell and opens the door. A few moments later the incarcerated man exits the cell, turns his back to the officers and puts his hands behind his back.

3:53 AM: One officer begins to put handcuffs on the incarcerated man. Before the handcuffs are fully applied the incarcerated man turns to face the officers and a fight ensues. It is not visible in the video evidence, but it is reported by the officers involved that a short burst of Oleoresin Capsicum (OC) spray is dispersed toward the beginning of the altercation, reportedly after the complainant struck one of the officers.

3:54 AM: A fourth officer arrives and joins the other officers struggling with the man on the floor. It is at this time that three "hammer fist strikes" are delivered to the incarcerated person's head.

3:55 AM: The struggle appears to end but the incarcerated man remains on the floor with two of the officers on top of him.

3:56 AM: Two more officers arrive and stand by.

3:58 AM: The man is lifted off the floor and taken away as two more officers arrive.

10:51 AM: The incarcerated man is sent to the hospital for medical assessment.

1:45 PM: The incarcerated man returns from the hospital.

2:38 PM: The incarcerated man is transferred from SCCC to Washington Corrections Center and is placed in the IMU.

Summary of Event

On June 22, 2020 at 3:48AM, the incarcerated person involved exited his cell and walked to the lavatory and back to his cell. He was out of his cell for two minutes. He was not wearing a face mask as required. According to the video evidence, he did not come within six feet of anyone while he was out of his cell.

It is reported to OCO by DOC staff that the officer on duty directed him to return to his cell and retrieve his mask. The incarcerated man involved reports not hearing this directive and continues with his trip to the lavatory and back. The officer on duty places a radio call claiming that the incarcerated man is failing to disperse as directed and a Quick Response Strike Team (QRST) consisting of three officers is assembled and deployed to remove the man from his cell. What can be seen from the video evidence is that the officers open the cell door and after a few moments the incarcerated man exits his cell and turns his back to the officers so handcuffs can be applied. At this point the incarcerated man turns around to face the officers and a struggle ensues, resulting in harm to at least one of the officers involved. The incarcerated person is brought to the ground through the use of an unauthorized tactic of a head lock. While he is on the ground and all parties are still struggling, a fourth officer arrives and gets on the ground toward the incarcerated man's head. The video shows the fourth officer striking the incarcerated man. It is revealed in incident reports that these were three hammer fist strikes delivered directly to the incarcerated man's head. It is at this point that the struggle stops, more officers arrive, and the incarcerated man is eventually lifted off the floor and taken away.

OCO's investigation and findings raise several concerns related to the instigation of the incident by staff, the use of unauthorized tactics, the lack of quality video evidence by which to evaluate the incident, and concerns regarding the subsequent treatment of the incarcerated person after the incident.

OCO Findings

OCO finds that this incident was avoidable and better addressed through a verbal intervention and de-escalation techniques at the cell front, or even left until later in the morning once normal daily operations had commenced.

- SCCC staff reports that they previously created an Incident Action Plan (IAP)[1] governing how to address noncompliance with mask mandates by the incarcerated population. It states, "Noncompliance with the use of face coverings should be addressed through an educational discussion on the need for and proper use."

- The complainant exited his cell at 3:48 AM and walked to the lavatory and back to his cell. He was not wearing a face mask as required. According to the video evidence, he did not come within six feet of anyone while he was out of his cell. He returned to his cell within two minutes, without presenting an obvious danger or risk to any other person.

- The officer on the housing unit placed a radio call also at 3:48 AM for failure to disperse. The Shift Lieutenant dispatched a Quick Response Strike Team (QRST) consisting of three officers to remove the complainant from his cell and take him

[1] DOC was not able to provide the exact date that the IAP was published.

to segregation. There was no reported attempt to engage in an "educational discussion" prior to this action.

- Staff reported that they gave him a directive to disperse during the two minutes that he was out of his cell, presumably prior to the radio call. However, not only does the complainant state that he does not remember such a directive, the only interaction observable via the video evidence occurs when the complainant is already on his way back to his cell at 3:50 AM.

    - DOC's internal post-action review of the use of force incident also found that the incarcerated person's "refusal to immediately comply with lawful orders did not create an immediate security risk to the safety, security, and operation of the facility or any person…The decision to move [the incarcerated person] from his cell to a holding cell with 3 officers, no camera, and no supervisor on scene after [he] initially refused to exit the cell should have been avoided."

OCO finds that the QRST officers used one unauthorized use of force tactic and one tactic that exceeded the amount of force reasonably necessary to respond to the threat posed by the complainant.

- At 3:52 AM, the QRST officers open the cell door and after a few moments of discussion, the complainant exits his cell and turns his back to the officers so handcuffs can be applied. He then turns toward the officers and at this point, a struggle ensues, with the complainant appearing to turn quickly and swinging an elbow.

    - According to the complainant's statement, he heard one of the officers tell him to turn around, and he does so. Video evidence does not have audio and OCO cannot substantiate this statement.
    - According to DOC staff, the complainant turned around with the intent of fighting the officers and hit one of the officers in the side of the head possibly with his arm or elbow. However, it is not possible to determine the intent of the incarcerated person based on the video evidence.

- The struggle continues between the QRST officers and the complainant and he is ultimately brought to the ground through the use of an unauthorized head lock. The utilization of a head lock is not taught within DOC as a means of control.

    - DOC's internal review of the incident concluded that the use of the head lock was justified as the officer executing it realized he needed to release it once the incarcerated man was on the floor and reverted back to other control tactics. DOC points out that policy 410.200 allows an officer to use techniques outside of what is taught by the department if there is a threat of imminent death or harm to self or others. OCO does not see that

such a threat existed and if one did, it was caused by DOC's instigation of the incident.

- While the complainant is on the ground, all three QRST officers are holding him down; however, all parties appear to still be engaged in a struggle. In this moment, a fourth officer runs over and gets on the ground toward the incarcerated man's head. The video shows the fourth officer delivering three "hammer fist strikes" directly to the complainant's head.

    - While hammer fist strikes are taught within DOC as an "impedance tactic," the head is not intended to be the first and primary target of the strikes. Impedance tactics are a step up, in terms of force, from control tactics and the DOC internal review of the incident states, "The head is considered a tertiary target and should only be targeted when the officer believes the offender to be a threat of serious bodily injury or death." As the complainant was already on the ground with three officers on him, OCO questions if the perceived threat justifies breaching protocol and delivering hammer strikes directly to the head before attempting their use elsewhere on the body.

    - DOC's internal review found the hammer fist strikes to be justified by the officer's explanation that he felt they were losing control and his concern that other incarcerated persons might come and get involved.[2] The DOC internal review report states, with regard to the officer's justification of the strikes, "Given this state of mind and the circumstances being faced the hammer strikes used in this incident though not preferred can be justified." OCO does not agree with this finding, as the incident occurred in the middle of the night while the other incarcerated people on the unit were in their cells, no other incarcerated persons came anywhere near the incident, and as already stated, the head was the only target for the "impedance tactics."

    - It was reported to OCO by several incarcerated individuals housed in the immediate vicinity of the incident that vibrations from the hammer fist strikes could be felt through the floor of their cells.

    - OCO notes that the fourth officer in this incident is the spouse of one of the QRST officers who was hurt. It is not known how this personal relationship may have impacted the officer's level of force and decisions that he made, but it is difficult to see how it would *not* have heightened the level of emotion and his perspective of the incident and the force necessary to control it. In short, rather than a fourth person assisting to deescalate the situation, the emotional connection likely only escalated it.

[2] As noted in a subsequent paragraph, this officer's perspective may have been shaped by his concern for his spouse and potential anger at the complainant who had hurt her; therefore, his perspective must be called into question for potential bias.

- OCO questions whether other tactics, including additional use of OC spray, the use of verbal de-escalation tactics, or even staff stepping back from the incarcerated individual momentarily, would have been a better decision than a fourth officer adding to the number of individuals struggling on the ground, causing harm to both the incarcerated person and potentially the staff themselves. In a follow-up discussion with DOC HQ staff, OCO questioned whether once a use of force incident began, staff ever disengaged from the incarcerated person and let the situation decompress; HQ stated that this was not an option, that once a use of force incident commenced, it would continue until the incarcerated person was fully subdued.

- DOC's use of force policy dictates that the level of force used should be, "…directly related to the level of resistance and/or level of perceived threat presented…only the amount of force reasonably necessary to resolve an incident will be used." OCO does not believe that this DOC policy statement was met.

OCO finds that there is a lack of quality video evidence to properly review the incident.

- DOC policy does not mandate the use of a video recorder in an unplanned use of force. However, policy does encourage it, and there is no dispute within the facility leadership or the internal investigations, that DOC staff should have used a video recorder to document the incident.

- DOC staff reported that on this day, one of the video cameras on hand had a full memory card and the other video camera available had no memory card. As a result, no handheld video was taken. DOC staff should have taken the time to locate a working video recorder before instigating this incident.

- The only other video evidence relied upon by both OCO and DOC's internal investigation is from a camera across the housing unit; the picture is grainy, and the motion is not fluid. Determining exactly what happened in this incident, particularly during the struggle, is difficult if not impossible, and the use of the handheld camera would have vastly improved the review by both entities.

    - OCO notes that even during its discussion with DOC HQ during which the video was used, HQ staff attempted to point out the moment at which the incarcerated individual struck the officer, and that moment was different than what was identified in the internal use of force review.

OCO was unable to locate any individuals who would substantiate the claim that the incident was racially motivated or that racial slurs had been used toward the incarcerated individual involved.

- OCO interviewed nineteen individuals who were involved in or were near the incident, including both staff and incarcerated individuals. None of the individuals interviewed, including the complainant, stated they felt that the incident was racially motivated, nor did any of them report hearing racial slurs being used during the incident. As noted above, the only video evidence available was from the housing unit cameras, and these do not include audio. OCO wishes to acknowledge that although there is an absence of individuals who would substantiate this allegation, the possibility of the incident being racially motivated cannot be completely dismissed. People of color are often conditioned to tolerate, and not object to, instances of racism when they are encountered. OCO understands that this conditioning may be amplified in a correctional setting and those who are most vulnerable in a setting such as this may be reluctant to speak out.

OCO finds that following the use of force incident, DOC held the incarcerated person in IMU for an extended period of time.

- Following the above use of force incident, the individual was placed in IMU under administrative segregation for an extended period of time.

- On March 6, 2020, DOC's policy change regarding administrative segregation went into effect. This change decreased the amount of time an individual could be kept in administrative segregation pending investigations, hearings, and other administrative processes from 47 days to 30 days. This policy change is part of DOC's work with the Vera Institute and stated intention to reduce the amount of time that individuals spend in administrative segregation.

- In this case, eleven time extensions were filed and approved, in a 63 day period, to allow DOC to retain the complainant in segregation until a final placement decision was handed down from headquarters. From the time of his initial placement in IMU on the date of the incident, to the receipt of the final decision from the MAX committee at headquarters, 93 days had passed. The extensions are as follows:

    - July 22 – The initial 30 day administrative hold time is up, and an extension is granted pending the finalization of DOC's investigation. The investigation was initially due on July 7.

    - July 29 – The investigation is completed this day and an extension is granted pending the infraction hearing.

    - August 5 – Another extension is granted pending the infraction hearing.

- August 12 – The infraction hearing has been completed and another extension is granted pending a Facility Risk Management Team (FRMT) review and a classification decision.

- August 19 – The FRMT is conducted and recommends placement in MAX custody and refers the matter to the MAX custody committee at headquarters. Another extension is granted on this day pending MAX committee review at headquarters.

- Between August 19th and September 25th when the final decision from the MAX committee is received, five more extensions are granted allowing the final placement and custody decision to be made 93 days after the complainant's initial placement in the IMU.

- OCO has further concerns regarding the impact this extended waiting time in IMU could have on the mental health of the complainant.

Additional Concerns

- OCO remains concerned for the condition of the complainant's vision in his left eye as a result of the incident as he continues to report that his vision in that eye has improved but remains blurry. However, OCO also notes that he was taken to the local ER for evaluation and treatment approximately six hours after the incident. No further treatment was indicated upon leaving the ER; he has subsequently been assessed by additional medical staff, including an ophthalmologist, and no further care has been indicated other than glasses, which he does not currently meet DOC's policy to receive at state cost.

- The complainant has since been infracted for a staff assault and recommended for maximum custody placement. Given that the incident was instigated by DOC staff, OCO finds it unfortunate that DOC policy allows for punishment of the incarcerated individual with no consideration given to DOC's role in the incident. Additionally, had handheld video been taken, it is possible the hearings officer could have been presented with better evidence that may have impacted the outcome.

- OCO is concerned that no disciplinary action was taken against any of the staff involved in the incident. Rather, DOC's only corrective action was to hold an "Appraisal Corrective Action and Performance Goals Debrief" consisting of a conversation with the staff involved to explain how the incident should have been handled and refresh them on DOC practices and policies.

- OCO has serious concerns regarding the incarcerated individual's mental health now that he has long-term placement in the Intensive Management Unit (IMU) having been found guilty of staff assault. This incarcerated individual has a well-documented history of mental health needs within DOC. OCO is concerned that

these needs will increase, and his symptoms may worsen, in the maximum custody setting.

- OCO is also concerned that throughout its interviews with the incarcerated population, it was reported to OCO that the corrections officer who placed the radio call is consistently rude and confrontational and is a staff member that they try to avoid.

Outcomes

Following this incident, DOC took the following actions:

- SCCC issued a directive that the handheld video cameras are to be verified to be in working order every shift.[3]

- SCCC issued a post order to all custody supervisors that states the following, "Before staff attempt to remove any agitated/escalated Incarcerated Individual from his cell, a Sergeant should be requested. Once on site the Sergeant will direct the interaction/removing of the Individual. Prior to the interaction a camera should be deployed when time permits."

- An Appraisal Corrective Action and Performance Goals Debrief was created and reviewed with all staff involved in the incident.

- Following OCO's request for use of force data from all institutions, including racial breakdown of the persons involved, DOC Research and Data Analytics unit initiated an analysis of racial disparity in DOC uses of force.

Recommendations

- DOC should consider initiating a further administrative investigation into the actions of staff who do not follow directives, such as an IAP, particularly when harm to individuals has resulted. OCO does not believe that reviewing the information with them is a sufficient deterrent to prevent future transgressions. Further, their failure to follow their own directives has resulted in discipline for the incarcerated person, but for none of the staff.

- DOC should consider reviewing its use of force training and tactics, including ensuring that all staff understand the serious potential consequences associated with striking tertiary targets.

- DOC should implement a department wide policy that all handheld video equipment be checked for functionality at the beginning of every shift.

[3] As noted in the companion report about uses of force that occurred six months after this one, this directive does not appear to have been followed.

    - DOC should also consider the potential benefits of utilizing body cameras.

- DOC should retrain all custody staff department wide on the means by which individuals are to be removed from their cells in non-emergent situations and mandate that a supervisor be present to direct the incident.

- DOC should make every effort to ensure that the new 30 day administrative segregation hold time is adhered to and that extensions are not overused to extend this timeframe.

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

March 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 OCO Investigation Report on the 'use of force on a Black man at Stafford Creek Corrections Center' completed by the Office of Corrections Ombuds.

Recommendation	Response
DOC should consider initiating a further administrative investigation into the actions of staff who do not follow directives, such as an IAP, particularly when harm to individuals has resulted. OCO does not believe that reviewing the information with them is a sufficient deterrent to prevent future transgressions. Further, their failure to follow their own directives has resulted in discipline for the incarcerated person, but for none of the staff.	Events, such as these are reviewed to identify areas of opportunities for staff training and policy adjustments. When it comes to allegations of not enough action in particular areas, the department conducted a thorough review and identified those areas that required improvement, developed a corrective action plan, and conducted a debrief and training with involved employees, with the belief that these efforts will prevent future similar actions involving these staff. The Department takes lessons learned from situations and incorporates them into curriculum when teaching de-escalation and use of force best practices across the system.
DOC should consider reviewing its use of force training and tactics, including ensuring that all staff understand the serious potential consequences associated with striking tertiary targets.	The department policy and training emphasize the potential risks of striking tertiary targets. Policy and training define tertiary targets, the risks involved, and provide limited exceptions for appropriate use. The department will place greater emphasis on this topic in use of force training after the annual curriculum review in calendar year 2021.
DOC should implement a department wide policy that all handheld video equipment be	Although post orders, on-shift training, and on-the-job training (OJT) require employees

checked for functionality at the beginning of every shift. • DOC should also consider the potential benefits of utilizing body cameras.	to ensure all assigned equipment is present and in working order DOC agrees to reemphasize this expected practice to employees with responsibility specific to cameras. DOC has determined body cameras are cost prohibitive without additional budget allocations.
DOC should retrain all custody staff department wide on the means by which individuals are to be removed from their cells in non-emergent situations and mandate that a supervisor be present to direct the incident.	When employees are met with resistant/aggressive behavior and ongoing de-escalation techniques fail to resolve the situation, unless an emergent need to intervene is present, employees shall call for supervisory presence before taking any additional action. The Assistant Secretary for Prisons will message this expectation/reminder to all prison employees in a written directive. The department shares the belief that conflict avoidance, de-escalation tactics and trauma informed methods are preferred method of engaging with those in its custody and preventing protentional use of force situations. As such, the department agrees additional emphasis on these skills should be created and/or enhanced for employees in multiple training and learning environments.
DOC should make every effort to ensure that the new 30-day administrative segregation hold time is adhered to and that extensions are not overused to extend this timeframe.	The department agrees with this recommendation.

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. The Department takes seriously allegations of racial injustice and will address any substantiated allegations with appropriate measures.

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,

on behalf of
Steve Sinclair, Secretary
Washington Department of Corrections