



STATE OF WASHINGTON

OFFICE OF THE CORRECTIONS OMBUDS

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Feedback from Incarcerated Tier Representatives

June 30, 2020

Summary Report Prepared by Zachary Kinneman

Background

On May 1, 2020 a letter consisting of six questions was mailed by the Office of the Corrections Ombuds (OCO) to incarcerated tier representatives in the 12 corrections facilities and camps operated by the Washington Department of Corrections (DOC). A “tier representative” is an incarcerated person who is elected or appointed to serve as the representative of the prison tier, who can attend meetings with facility leadership to raise concerns and bring back information to the other people on the tier. The purpose of the OCO letter was to obtain the incarcerated population’s insight on concerns and suggestions for improvement for a number of systemic issues that OCO was working on for 2020. The responses and information received will be included in OCO systemic reports, analyses, and recommendations for improvement.

Each letter asked the tier representatives to respond to six questions on behalf of themselves and those they represent, to list concerns and suggestions regarding: the *Disciplinary Process*; *Property Loss/Mishandling*; *Access to Education*; and *Mental Health Services and Treatment*. Respondents were also asked to identify their *Three top priorities for the OCO’s systemic work for 2021* and their concerns and comments regarding the *DOC’s response to the Covid-19* pandemic.

Responses

Facility Responses	Total Number of Responses
	As of June 11, 2020
AHCC	11
CCCC	3
CBCC	3
CRCC	17
LCC	1
MCCW	2
MCC-SOU	3
MCC-TRU	7

MCC-WSR	10
OCC	3
SCCC	10
WCC	1
WCCW	7
WSP	12
Total Responses	90

Question 1. What concerns do you have regarding the disciplinary process (infractions, hearings, appeals, sanctions, etc)? How do you feel that the disciplinary process could be improved?

A consistent, nearly universal concern stated in response to this question was widespread distrust of the Disciplinary Process and those who issue infractions, apply sanctions, review infractions and decide appeals. This cannot be understated in any analysis or attempt to improve the system through adjustments in procedure and practice. Over and over responses speak of the system as being unfair, biased and even “weaponized” by facility staff. This is a cultural issue that transcends race, gender and occupation. It is a lens that colors the discussion of discipline on both sides of the issue.

- Many of the responses report that people on the tiers they represent believe that guilt is pre-determined, that infractions are viewed as conclusive “evidence” by officers conducting hearings and that an individual is guilty regardless of any evidence or testimony subsequently presented by the accused.
- Responses report concern with the difficulty overcoming bias against an accused individual by staff and based on records of infractions retained in OMNI. Several responses suggest that prior infractions, after a specific time period, be deleted or by action of rule/policy not be considered by an officer deciding an infraction or reviewing an appeal.
- Tier representatives report that there is a lack of consistency in the interpretation of rules and policy by staff. A major source of concern among respondents was the lack of consistency between one facility and a facility of a similar size located in a different part of the state. What behavior or acts are not considered an infraction for one Corrections Officer may at times result in an infraction being issued by another Officer for similar behavior in the same facility and or living unit. A suggested remedy is a thorough review of disciplinary policy and rules and the elimination or rewriting of policies that are vague and subject to multiple interpretations.
- Respondents suggest that the amount of time between an incident or behavior said to be in violation of policy or rule occurs, and when the accused is given the infraction be restricted. The concern raised is that infractions are often given days after an incident takes place.

Question 1. Disciplinary Process (continued)

- Tier representatives report that individuals are not adequately prepared for appeal hearings and that restrictions on their ability to call witnesses and to view evidence prior to the hearing compromise their ability to present their case. Responses suggest more time to list witnesses and that they be afforded an opportunity to view evidence. They also suggest that the standard of evidence relied upon in a hearing should be changed from “some evidence” to a “preponderance of evidence.”
- Based on the responses, the conduct of hearings varies from facility to facility. Several responses call for better training on the part of hearing officers and many responses call for an outside panel formed by non DOC employees. Still other responses suggested a system wide designated DOC hearings person or persons to review major infractions and conduct all disciplinary proceedings.
- There is widespread concern that “staff always sides with staff” in the disciplinary process. Several tier reps noted that the remote location of their facility makes unbiased decisions regarding the issuance of an infraction and the ultimate determination of guilt nearly impossible because of the close working relationship among staff in the small communities in which the facility is located.
- In all 12 facilities tier representatives report dissatisfaction and concerns regarding the issuance of an infraction tied to a single event that results in multiple sanctions being assessed as punishment. They are concerned that this type of “stacking of sanctions” results in punishments that do not fit the behavior or actions that the infraction was originally issued for. They also reported concern that stacking of sanctions is used against individuals selectively by staff. A suggestion from multiple respondents was that infractions should carry one punishment.
- Tier reps report that the appeals process takes too long and sanctions should be stayed during the appeal process. At least one respondent identified that such a stay would require WAC 137-28-250 (4) to be changed to allow for a stay.
- A concern was raised about infractions issued pursuant to a failure to urinate within the required hour for a random drug test. As the population incarcerated in Washington ages, difficulty in urinating becomes more commonplace in men. Age and physical disabilities should be a factor in the issuance of an infraction for non-compliance.
- Many of the responses noted that a portion of the population on their tiers have some form of mental illness and that an individual’s mental illness or condition is not always taken into account in the issuance of infractions or during an appeals hearing. Actual accommodation and understanding should be made for those suffering from mental illness.

Question 1. Disciplinary Process (continued)

- Responses noted that the use of segregation as a punishment is overused and extremely detrimental to the physical and mental health of individuals. The use of segregation should be restricted to the most extreme situations. Several responses noted that among individuals suffering from mental illness, behaviors that are the subject of sanctions such as violence, are often made worse by segregation.
- Several respondents report that it has been their observation that more minor infractions are being issued by officers to an individual instead of a major infraction that the behavior or act by the individual would normally require.
- There were many responses that indicate individuals find the facility rules, DOC policies and the relevant sections of the WAC difficult to understand. Despite access to these bodies of rules and regulations, preparing and presenting an appeal of a major infraction is a daunting task. Many of the responses have suggested outside help and assistance, either in the form of legal representation or informal assistance within the facility.
- Suggestion to require diversity training for all DHO's and Corrections Officers and that the training be refreshed each successive year of employment with the DOC. Several responses suggest that all disciplinary hearings be heard and issues determined by an organization of outside of the DOC. Several responses echoed the desire to move away from a system they see as hopelessly biased against the infractioned individual, by rotating DHO's within the facility.
- In several responses there was a concern that infractions should be given based on acts actually committed and not because of proximity to the incident, or on the basis of a past association with those actually committing offenses. The concern is that guilt should be based on verifiable evidence, and not solely on an association of some kind with the person receiving the first infraction. A similar and closely related concern is that infractions are given by staff because of personal bias or anger directed at an individual for previously using the grievance system.
- A suggested improvement was made on several responses that a form of alternative dispute resolution be implemented, where the incarcerated can meet with staff, the OCO or other individuals to find better solutions to issues before infractions are issued and sanctions imposed. Remedies have been suggested that as are as simple as informal, off the record conversations with Officers or a more formal process. Although that formal process is not detailed in any of the responses the suggestion implies a form of informal mediation before behavior or actions results in an infraction or series of infractions.
- There were multiple responses that suggested that the imposition of sanctions of all types, including the loss of a job, not be imposed until the final determination of an infraction appeal is made. A suggestion in several responses to have positive alternatives to sanctions, instead of only imposing sanctions that result in punishment.

Question 2. What concerns do you have regarding property loss/mishandling? How do you feel property loss/mishandling could be reduced/improved?

- Of the 90 responses returned to the OCO, only nine were returned without a response to this question or “no problems” “or not encountered” regarding property loss or mishandling. The bulk of the concerns raised were about property being lost, delayed or damaged during transfers between facilities in the DOC system. Almost all issues raised were focused at a common critical point in the handling process: “packing out” as a result of a transfer or disciplinary sanctions and receiving damaged items at a new facility or at the conclusion of any sanction involving segregation.
- Concerns were raised about the practice of having incarcerated individuals “pack out” a cellmate’s belongings following a transfer to different facilities or within the facility for disciplinary actions. It is reported that it is commonplace to have items of personal property, clothing, and recently purchased consumables from the commissary go missing during the pack out and transfer process. Concern that had there been a proper inventory of property during the pack out by incarcerated individuals or not performed by cellmates or other individuals, it would be less likely that property would have gone missing.
- Responses also suggest that the property matrix of the individual is not often checked against what is packed for transfer or when the property box is opened by the transferred individual at the new facility. Long delays in receiving personal property are cited repeatedly even for intra facility transfers. When property is discovered missing, the burden shifts to the property owner to prove that it was originally in his property matrix and that the property is missing or damaged because of an act or omission by the Property department. Since the packed-out individual was not present when the property was placed in a box for shipment, this becomes problematic when assessing fault for purposes of pursuing any form of redress through the tort claim process.
- Concerns were raised in the responses about the indifference towards personal property that staff often exhibits to the incarcerated when property is damaged or lost. A majority of responses have asked for some form of accountability for staff that repeatedly loses or damages personal property.
- Multiple suggestions have been made to lessen the chances that property, particularly bulky electronics such as personal televisions, are damaged or lost in storage or during transfers. A suggested two-step verification that electronics are in working order when the property is being packed would be helpful. Both the property owner and the staff member responsible for the personal property verify in writing that the property was in working order. Both sides agree and the property is shipped. Receipts for this verification are given to the property owner and retained/transmitted to receiving facility. Upon receipt, the box is opened with the property owner present and the condition and operation of the property checked.

Question 2. Property Loss/Mishandling (continued)

- Other suggestions to improve the process is bar coding or tracking numbers assigned to property packages about to be transferred, much like the large commercial shipping organizations. Other suggestions: property be digitally photographed before the package is sealed for shipment and then photographed again once the property reaches its final destination. GPS tags could be applied to packages and tracked during transfers between facilities.
- Multiple concerns were relayed that property is held in storage too long or that notification of the whereabouts of the property is difficult to come by. Issues with regard to property handling may be a result of staff shortages in certain facilities.
- The tier reps relayed concerns about broad bans of books and magazines because of content. Staff needs to inform incarcerated promptly when reading materials are rejected rather than allow the materials to sit waiting for disposition.
- The tier reps relayed concerns that officers who conduct a cell search are not held accountable for damage or loss to personal property during the cell search. Policy states that following a cell search the cell is left in reasonably the same condition it was prior to the search. When a claim is submitted for damaged property the claim is almost always denied.
- Lost clothing in laundry because of laundry bags needs to be addressed. This issue was raised in several institutions independent of each other (on different sides of the state).
- Suggestion for additional training in packaging personal property items for shipment for property staff. Concern that materials for packaging personal property not equivalent to what UPS, USPS or FedEx use. Have staff cover all aspects of shipping and handling of property with the person being transferred to reduce mistakes and misunderstandings. Have staff and person shipping property sign and affix name on packaging as contact person regarding damage or mishandling.

Question 3. What concerns do you have regarding educational access in WA DOC? What suggestions do you have for how to improve educational access in WA DOC?

- Suggestions for improvement by the tier reps include increased access to higher education across the board. They suggested allowing the incarcerated to receive Pell Grants and reducing restrictions on LWOP individuals from obtaining further education.

Question 3. Educational Access (continued)

- The responses indicated a desire for increased vocational and technical oriented programs, such as programs sponsored by UNLOOP, UBB and other organizations. They relayed that educational programs should be oriented to include skilled trades with defined paths into apprenticeship programs sponsored by unions once released. They suggested applying hours worked in plant maintenance or other quasi apprentice type work assignments to carry over towards total apprenticeship hours in skilled trades and requested greater access to life skills programs and training.
- Tier reps relayed concern that technology that allows for extensive educational opportunities is not being adopted by the DOC. In cell laptops or lap top computers with capabilities similar to those that would be encountered upon re-entry should be allowed in either classroom settings and or in cells. They reported that the third party vendor “Jpay” tablet was not a platform for education. This would greatly increase the number of people who can participate in a given class or program. Often timing of classes makes additional educational goals difficult to attain because of jobs or other required forms of programming.
- Tier rep responses note that often a person about to leave the facility and moved to work release or released from DOC custody often misses many educational opportunities that, had they additional time or the program had been started sooner, they would have been able to take advantage of.
- Several responses expressed concern that there are limited opportunities for education at the facility they are currently a resident of when compared to other facilities in the system. The suggestion is for equal access to education at all institutions and that the programs be geared towards education that provides “real world” job skills.
- There is a constant theme among those who answered this question that education is a key to success upon release and entering the re-entry phase following their incarceration. There is a great deal of interest in course content, materials and access to advanced degrees that can lead to employment opportunities of substance following incarceration. There is also an awareness that educational opportunities should be made for *all* individuals incarcerated regardless of disabilities, sentence length and custody classification.

Question 4. What concerns do you have regarding mental health services and treatment? What suggestions do you have for how mental health services and treatment could be improved?

- A common concern among tier reps responding to this question is the variety of treatment options offered in certain facilities and not in others. Larger facilities have more options for mental illness therapies and other forms of treatment but even in the smaller facilities there is a need for services. Knowledge of these differences generally comes to the respondent as a result of a transfer.

Question 4. Mental Health Concerns and Treatment (continued)

- Several responses expressed concerns with the use of medication for the treatment of those with some form of mental illness and that the only answer for too many individuals is medication. Responses expressed concerns that medication was being abused by individuals.
- Many responses detail concerns about a lack of adequate mental health staff and the difficulty in getting treatment in a particular institution. Still other respondents detail a lack of timely responses to inmates asking for help from the mental health professionals when individuals are in distress or having issues of potential self-harm. In several responses tier reps reported that they understand the difficulties in recruitment and retaining mental health professionals, but that delays in response can lead to individuals being harmed.
- There is concern regarding medications and the alteration of treatment individuals have been given over a period of time. These alterations in treatment often occur abruptly and without warning. This has led to issues regarding infractions being issued for behavior brought about by the change in medications.
- Several responses suggested that staff should improve training for awareness of those with mental illness and those showing recognizable signs of crisis. Suggestions that staff be trained to better recognize behaviors tied to mental illness before they become problematic for the individual and staff alike.
- Several responses expressed interest in additional group classes/therapy, and several expressed a concern that they not be tied to the long-term use of medication. Several expressed interest in improving “mental health” as opposed to the treatment of “mental illness.” These responses also expressed concerns and interest in alternative means of attaining better mental health through meetings, exercise, better diets.
- Concerns expressed from women’s facilities included the need for programs that address deep rooted issues of abuse, neglect, and sexual abuse, the core issues of addiction. There is a concern that mental health treatment for those issues and others are not available to those individuals serving long term sentences. The tier reps expressed concern that treatment, when available, is prioritized for those with shorter terms or about to be released.
- Several responses expressed concern that wait times for treatment are too long and state that treatment delays are often the result of staff not being available to meet the needs of those seeking treatment.
- Tier reps expressed concern that living units are often not equipped to deal with or understand the issues of the mentally ill. They suggested that unit residents be screened for placement in units based on an assessment by mental health professionals and placed appropriately.

Question 5. What are your top THREE suggestions for OCO systemic work in 2021?

- A wide variety of responses and suggestions for the top three priorities for OCO systemic work in 2021 are contained in the 82 responses from Tier Representatives. Responses range from “none at all” to very broad suggestions such as “Increase vocational and trades based educational opportunities” to very specific requests, “Eliminate Sweet Potatoes from food service.”
- Many responses list Medical/Dental/Mental health issues as top priorities for 2021, though there are more specific areas in the individual responses i.e. obtain dentures, glasses, or a need to expand mental health counseling.
- Several responses requested that the OCO attend tier rep meetings at the facilities from time to time and that the OCO make clear that the office is not part of or controlled by the DOC. There appears to be some level of confusion as to the role of the office and the limitations of its abilities. And while this was not a frequent response, it was also picked up in several responses to other questions as a concern: What is the role that the OCO can play, how can the office intervene in a variety of areas of concern? Several responses included a concern that those who use the office and contact the office by mail are singled out by Corrections Officers and start receiving infractions as a result of their contacts with the OCO.
- Suggestions seeking the OCO’s involvement to improve and expand access to education and education in the skilled trades were made in several responses. Several suggestions to allow in-cell operation of laptop computers in conjunction with expanded educational opportunities.
- Many responses, as part of other questions or as a stand-alone suggestion for a 2021 priority for the Corrections Ombuds, relate to staff accountability. Both in the Disciplinary and Property Handling questions there is a widespread desire to see staff held accountable for alleged acts and omissions. There was also a suggestion that there is a need for the incarcerated to see consequences for acts or omissions by staff.
- Increasing the pay that individuals receive for work and expanded work training opportunities was listed as a concern in multiple responses as was better food, improved mattresses and expanded job and educational opportunities for LWOP individuals.
- Additional concerns were with eliminating long waiting periods for responses to complaints and waiting times for telephone calls.
- Several responses indicated that the OCO should be involved or should be more gender responsive and properly assess the different needs of individuals in the various facilities.

Question 6. OCO is also monitoring DOC's COVID-19 response. Please feel welcome to communicate any concerns from your tier regarding DOC's COVID-19 response.

- A common and frequently mentioned concern was that DOC staff within the facilities were not complying with DOC requirements to wear masks yet quick to demand that the incarcerated wear theirs. In many of the responses the comment “staff not wearing masks” was stated with alarming frequency. And yet, in other responses, it was also reported that administration and staff were working with the population to successfully respond to Covid – 19.
- In several responses there were comments that the DOC was slow to respond to the crisis. Transfers between facilities continued, it was reported, despite the statewide requirement to shelter in place. Supplies of sanitizer, cleaning materials and PPE have been in short or spotty supply according to some responses, while other responses from other facilities report no issues.
- Several tier reps reported that sanitizer was briefly made available in the living units at their facilities and then without warning, taken out. There has been no replacement or substitution made following their removal.
- Many of the tier reps stated that respondents feel safe, for now. Several stated that they were pleased with the response of the Administration at their facilities, though this was not a universal sentiment among all respondents.
- Many tier reps express a concern and need for more education and information about the COVID-19 virus. Comprehensive information discourages fear and an awareness that in facilities where there have been no outbreaks of the virus, the importance of being proactive when dealing with COVID-19. At first it was reported that many did not take the virus seriously and there was a belief that the virus was a hoax. According to the responses, that is no longer the case.
- The requirement to socially distance is a major issue of concern for the respondents. Several responses have noted that the design and construction of prison facilities discourages social distancing. It is also evident from the responses that compliance by staff for the requirement to utilize PPE and to socially distance varies from facility to facility and often from tier to tier. The failure of staff to fully comply with the mandate to wear masks, only heightens the concern and overall fear that the COVID-19 virus will be introduced from contacts outside the incarcerated population.
- Many of the responses expressed concerns that any changes to routine movements or activities made in response to the pandemic will not be made permanent by the department or facility administration.
- Concerns regarding the impact of the suspension of visitation on families and loved ones were reported.

Question 6. COVID-19 Concerns (continued)

- There is a concern among the responses that there is a lack of testing for either COVID-19 or the antibodies and that the response to calls for testing by the DOC have been vague and confusing. There is widespread concern that their families and loved ones do not receive accurate information about COVID-19 in the facilities. Testing in all facilities of staff and the incarcerated should be done sooner rather than later.
- There was widespread concern that the information provided to the population in the various facilities, is lacking and less than informative. There has been a call to include information that details why certain steps are taken by staff and the DOC to deal with COVID-19 that will reduce anxiety among the incarcerated and their families. Improve janitorial training by providing explanations as to why steps are taken and new protocols installed, not just impose rules without a follow up.
- Concern that cleaning equipment is distributed every other day or with no set schedule. This leaves gaps in sanitizing surfaces throughout living unit, and individual houses.
- Concerns that transfers in and out of facility continued to be made despite the dangers posed by such transfers between facilities.
- Respondents report that restricted movements, no visitation and limited times for communicating to their families and loved ones puts a lot of stress on incarcerated individuals on their tiers. They note that tensions with staff have also increased as a direct result of the COVID-19 virus and the fear of infections breaking out in their facilities.