



STATE OF WASHINGTON

OFFICE OF CORRECTIONS OMBUDS

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March 11, 2019

Steve Sinclair, Secretary
Department of Corrections (DOC)


Office of Corrections Ombuds (OCO) Investigative Report

Attached is the official report regarding the OCO systemic investigation into DOC urinalysis procedures. We appreciate the opportunity to work collaboratively with DOC to amend current policies to better ensure that all inmates' rights are protected while they are incarcerated.

OCO received several complaints pertaining to DOC urinalysis procedures, particularly that inmates were testing positive for substances which they allegedly had not consumed. The positive tests resulted in significant consequences to the inmates, including transfers far from family and privilege restrictions, and the inmates did not have the opportunity to request a confirmation test by an outside laboratory. OCO met with DOC to discuss and both agencies engaged in further research to determine practices by other DOCs and feasibility of implementing such a test. DOC staff stated that they had confidence in their current testing process, but recognized that offering a confirmation test could mitigate concerns expressed by incarcerated persons and their friends, loved ones, and advocates. Following this review, DOC agreed to make several changes to policy to better ensure that no inmate would be held accountable for substances that he/she/they had not taken while incarcerated.

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
Director

cc: Governor Inslee

OCO INVESTIGATION

Summary of Complaint/Concern

On November 20, 2018, OCO received a complaint that alleged the following:

- On July 27, 2018, Inmate A entered DOC at Washington Corrections Center. On September 26, 2018, he was ordered to take a urinalysis in order to be transferred to a work release program. The test came back positive for THC/marijuana. Inmate A explained that the test was positive due to the residual effect from prior to being incarcerated. Inmate A received 30 day cell confinement, 30 days of good time taken, denial of work release, transfer to a facility three hours away from his fiancé who was pregnant with their child and due in December. Inmate A's appeal allegedly took 48 days for a response and he was kept in close confinement during this time.

On November 24, 2018, OCO received a second complaint that alleged the following:

- Inmate B reportedly had a history of testing positive on urinalyses due to medication that was taken. Two weeks prior, he had been given a random urinalysis and passed, and then was given another urinalysis shortly thereafter that he failed with a positive result for spice (synthetic marijuana). He was immediately transferred from a camp inside a secure perimeter facility. Inmate B also lost his visits, work release, good time, privileges, and was reclassified.

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 offenders, 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 inmates' health, safety, welfare, and rights.

OCO Investigative Actions

- As part of its investigation, OCO staff contacted DOC staff regarding the individual inmates' situations, met with DOC HQ staff regarding the policy, and conducted 50 state research regarding urinalyses policies.

OCO Findings

- Inmate drug testing is controlled by DOC Policy 420.380. If the test result is positive or abnormal, the policy requires a witness to confirm the test result. The tester must provide the inmate an opportunity to admit use. If the inmate denies use, the policy states that a new specimen will only be allowed with Superintendent/designee approval. There is no

provision for an inmate to otherwise request a confirmation test. The policy does not specify how an inmate would request the Superintendent/designee approval, nor is there a form to do so. Further, when OCO staff contacted DOC facility staff to inquire how an inmate would request the Superintendent/designee approval, staff were unable to say. It is therefore OCO's understanding that incarcerated individuals do not have a meaningful opportunity to request a confirmation test of the sample if they believe a positive finding to be in error.

- In an effort to understand other states' policies regarding urinalyses and confirmation tests, OCO conducted 50 state research, which revealed the following:
 - As of 2016, 21 states confirmed all positive cup results through an off-site laboratory.¹
 - Four states confirm all positive tests through another on-site method² or through a central lab internal to DOC.³
 - An additional 12 states⁴ do not conduct confirmation tests for all positive results, but allow for confirmation tests at the inmate's request.
 - Only three states,⁵ in addition to Washington, did not permit confirmation tests at the inmate's request.⁶
 - Further, several states⁷ delay testing of inmates in reception to ensure all drugs have time to clear the inmate's system. This is especially the case for THC (marijuana) as THC has been found to potentially remain in the body for an extended period of time based on body mass, usage, and other factors. WA does not currently include in its policy any similar timeframes to ensure that inmates are not infracted for substances consumed prior to incarceration.
- Regarding permitted medications potentially resulting in a false positive, WA DOC staff relayed that they have in place a specific form to require medical staff to screen for potential medications that could result in a false positive. DOC provided documentation that this form was completed for Inmate B.

¹ Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Montana, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming. Association of State Correctional Administrators 2016 Survey.

² Louisiana, Rhode Island, South Carolina, and Utah. Utah's policy states that all positive urine samples shall be retested for confirmation of a positive result by an approved testing lab, which could be the same or different operator that conducted the first test.

³ New Jersey

⁴ New Hampshire, Oregon, Hawaii, Kansas, South Dakota, New Mexico, Minnesota, Ohio, Alaska,

⁵ Virginia, Oklahoma, Vermont

⁶ OCO was unable to find information about nine states.

⁷ For example, North Carolina, Massachusetts, South Dakota, Virginia, Ohio, and South Carolina.

Outcomes

- DOC staff met with OCO staff twice regarding this issue. At the first meeting, they had already begun working collaboratively on solutions to address the concerns. DOC immediately agreed to put in place a timeframe for inmates newly entering the system to not be tested for THC. The timeframe that was ultimately set by DOC is 45 days. Inmates who enter DOC will still be tested for other substances within that timeframe. The new policy should go into effect within the next two months.
- After some initial review and consideration of costs and feasibility, DOC also agreed to allow for confirmation tests of positive urinalyses by an outside lab at the inmate's request and at the inmate's expense if the confirmation test comes back positive. The change in policy will require substantial work to identify the outside lab and set up a contract, and establish new procedures for the secure handling and transport of urinalyses samples. DOC estimated approximately six months to bring this policy change into effect.
- For Inmate B, DOC policies appeared to have been followed and his medications were appropriately screened by medical staff to ensure there was no false positive. As the sample was immediately disposed of in line with current policy, it is not possible to retroactively re-test the original sample. This complaint was therefore unsubstantiated, but the changes in policy will enable future inmates to request confirmation tests.
- For Inmate A, DOC agreed to reclassify him from close security to medium. OCO followed up with DOC staff regarding reinstating his good time and transferring him back closer to his family. DOC staff refused to reinstate his good time because he was tested at 48 days and therefore would have been beyond the 45 day timeframe established in the new policy, and they also refused to transfer him as he was approaching his release date. As it is not possible to retroactively re-test the original sample to confirm the THC positive result, this complaint was also unsubstantiated, but again, the changes in policy will hopefully enable future inmates to challenge any perceived false positives.

Recommendations

- None. DOC has taken swift, proactive action to revise its own policies in light of raised concerns and knowledge of other states' practices. OCO appreciates DOC's willingness to work together and make significant changes to policy. The following page provides DOC's action plan for implementation.

Action Planning Worksheet
Activities Required to Reach Future State
Prisons Division
March 5, 2019

Current Situation: The UA process does not allow incarcerated individuals an opportunity to request a Confirmation test. There also is no consideration given to fact that THC is legal in this state and may have been consumed in close proximity to incarceration.

Desired Future State: Completion of the action plan by October 2019 which develops and implements a process that allows UA confirmation testing, a 45 day wait on THC testing for new and readmissions, staff training and an ongoing quality assurance process.

Activities	Who's Responsible	Completion Date	Resources Needed	Monitoring Technique
New Admissions and Re-Admissions/Violator at Reception Center. Reception Centers to use 6 panel cup for new and re-admits starting 3/18/2019. Memo sent to impacted Superintendents on	Jo Wofford Dan White	Ongoing	6 panel UA cups	
Training and Policy Memorandum. Memo will be authored by Prison and Community Corrections Assistant Secretaries.	Roy Gonzalez Dave Phillips	4/1/2019	NA	
UA Policy Revision. Final Draft will be utilized to train staff	Roy Gonzalez Al Smack	4/30/19	NA	
Staff Training. Train custody staff involved in new UA and confirmation process	Roy Gonzalez	5/30/2019	NA	
Quality Assurance for Prisons UA Process. Three sites to be selected for ongoing monitoring and compliance checks.	Roy Gonzalez Al Smack	10/1/2019	NA	