



STATE OF WASHINGTON

**OFFICE OF THE CORRECTIONS OMBUDS**

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

June 3, 2020

Steve Sinclair, Secretary  
Department of Corrections (DOC)

**Office of the Corrections Ombuds (OCO) Investigative Report**

Enclosed is the official report regarding the OCO investigation into an allegation that an incarcerated individual was not served a court summons and further that he remained in restrictive housing for an extended period of time. We appreciate the opportunity to work collaboratively with DOC to amend current policies and practices to better ensure that the rights of incarcerated persons 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  
Director

cc: Governor Inslee

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

**Summary of Complaint/Concern**

On December 5, 2019, the Office of the Corrections Ombuds (OCO) met with an incarcerated individual at the Washington State Penitentiary (WSP) to gather information regarding a complaint that alleged the following:

- The complainant alleged that he was transferred from Clallam Bay Corrections Center (CBCC) on August 8, 2018. The incarcerated person was moved to Washington Corrections Center (WCC) where he stayed until August 15, 2018, at which time he was sent on to WSP. He later learned that this transfer had taken place so he could attend a court appearance in Walla Walla. He alleged that he was never served with a summons for this court appearance, leaving him unaware that it was occurring and unable to prepare for the appearance. He further alleged that he had been housed in the Intensive Management Unit (IMU) at WSP for an extended period of time with no pending court appearance. He alleged this extended detention in the IMU at WSP was preventing his previously planned transfer to a transition pod that would facilitate his release from the IMU and place him back in general population.

**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 individuals, 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 individuals' health, safety, welfare, and rights.

**OCO Investigative Actions**

- As part of this investigation, OCO reviewed Department of Corrections (DOC) documentation regarding the movement of the incarcerated person, grievances filed by the complainant accompanied by DOC responses, and documents supplied to OCO by the complainant. OCO also interviewed the complainant and reached out to DOC staff at the facility and headquarters levels for clarifying information.

**OCO Findings**

This report will be broken into three sections to address the following concerns, (1) lack of service of court summons, (2) unnecessary and extended detention in the IMU at WSP, (3) delay in re-entry to general population.

## **Service of Court Summons**

The allegation that the complainant was not served a court summons for his appearance in Walla Walla was substantiated. A letter and summons were received at CBCC on July 31, 2018 from the Office of the Prosecuting Attorney of Walla Walla County, noting that copies of the enclosed information and the summons were included for delivery to the complainant.

- In October 2019 the incarcerated individual involved filed a grievance to address the lack of service of the summons.
- In December of that year the Level III response was received by the complainant. The response acknowledged that the complainant was not served with the summons to appear. DOC stated they could give no reason as to why this was not done, as the records manager at the time had since retired.
- It should be noted that although DOC acknowledged they failed to deliver the summons to the complainant, the grievance was settled by the department in favor of the state. The stated reason was, "Although it is unfortunate that you were not served, sufficient information could not be located to determine fault".
- OCO does not understand how no fault could be determined, nor how the grievance was settled in favor of the state, given the admission by DOC that they did not deliver the summons as directed. That finding would appear to put the fault on DOC.
- It should also be noted that in the response to the grievance, the responder seemed to attempt to minimize the importance of the issue. The responder writes. "It has been determined that you are correct that you were not served a summons in July of 2018 for your upcoming court date...However, as stated in the level II response, you had an opportunity to share that information with the court at your first hearing, which you did not". DOC should under no circumstance, when they have admitted their own negligence in a matter, attempt to assign some portion of the blame for their mistakes to the grievant when the grievant had no part in the mistake.
- Through inquiries made by OCO of DOC, it was established that there is no policy within DOC that governs the delivering of a court summons to an incarcerated individual.

## **Extended Detention in WSP IMU**

The allegation of extended and unnecessary detention in the IMU at WSP was substantiated by OCO.

- After arriving at WSP on August 15, 2018, the incarcerated person attended court on four separate occasions. The court appearances were as follows: August 27, 2018, December 5, 2018, February 11, 2019, and February 25, 2019.

- After the February 25, 2019 court appearance, there is no record of any further pending appearances.
- When OCO requested all information DOC was holding regarding interactions and/or notices from the court after the February 25<sup>th</sup> court appearance, DOC reported that they had none. However, once contacted by OCO, WSP did reach out to the incarcerated individual's attorney and learned that there was indeed nothing pending.
- While reviewing this report with DOC headquarters, OCO was provided with further documentation that showed DOC records staff had reached out to the prosecutor to check on the incarcerated individual's court status. The prosecutor's office repeatedly told DOC that they needed the incarcerated man to stay in Walla Walla. However, DOC did not contact the prosecutor's office until November 2019. This left the incarcerated man waiting in the IMU for nine months before any inquiry began.
- The incarcerated individual remained in the IMU at WSP until March 18, 2020, at which time he was sent back to WCC, and on March 23, 2020, he was sent to his final destination at Monroe Correctional Complex (MCC).
- This incarcerated individual is currently being housed in the IMU at Stafford Creek Corrections Center (SCCC).
- While OCO does find that the prosecutor's office contributed to the extended stay in the IMU at WSP, we also find that DOC should have reached out to the prosecutor much sooner than nine months after his last court appearance.
- OCO also finds that there was a breakdown in communication between the records staff who were communicating with the prosecutor and the staff at the facility. This resulted in the facility being unaware these communications were happening and left the incarcerated individual with no understanding of why he was still waiting at WSP.

### **Delay in Re-Entry to General Population**

The allegation that the incarcerated person's admission to the transition pod and his eventual re-entry to general population was unnecessarily delayed was substantiated by OCO.

- As part of re-entry to general population from an IMU setting, an incarcerated person may be required to enter a transition pod for a period of time.
- This incarcerated individual was left in the IMU at WSP for a total of 13 months past his last court date. While the prosecutor continued to request his presence in Walla Walla, if DOC had reached out before nine months had passed, it is possible this situation could have been resolved sooner.

- As a result of this delay, it is determined that the complainant could well have been released from the IMU setting and transferred into general population far sooner than he now will be.
- It has been communicated to OCO that the complainant is now on a waiting list and will have to wait an undetermined amount of time to enter a transition pod.

### **Outcomes**

- Upon notification of OCO's investigation into this complaint, DOC reached out to inform OCO that the incarcerated person would soon be moved to MCC and begin his transition to general population.
- DOC has indicated they will explore the issue of not having an established policy that addresses how incarcerated persons are to be served with a court summons.

### **Recommendations**

- DOC should create and implement a department wide policy that outlines in what manner and in what timeframe incarcerated persons are to be served a court summons once it is received by the facility.
- DOC should immediately, or as soon as possible, move the incarcerated person involved in this complaint to a transition pod or directly into general population.
- DOC should create a procedure by which, when an incarcerated person is transferred to another facility for court proceedings, there is a plan in place for their return to the facility of origin. At the very least, DOC should assign a staff member to be in charge of keeping track of the incarcerated persons placement, movement, and court proceedings. This person should also be responsible for facilitating the incarcerated person's return when appropriate.
- DOC should make every effort to keep an incarcerated person being housed temporarily at a facility for court proceedings updated on their situation.
- DOC should clarify to those individuals responding to grievances, how fault is to be determined and assigned in a grievance investigation.



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

June 16, 2020

Joanna Carns  
 Office of Corrections Ombuds  
 PO Box 43113  
 Olympia, WA 98504

Dear Ms. Carns:

The Washington Department of Corrections appreciates the opportunity to respond to the OCO Report on the ‘OCO investigation into an allegation that an incarcerated individual was not served a court summons and further remained in restrictive housing for an extended period of time’ completed by the Office of Corrections Ombuds.

Recommendation	Response
DOC should create and implement a department wide policy that outlines in what manner and in what timeframe incarcerated persons are to be served a court summons once it is received by the facility.	In the revision to policy <i>590.500 Legal Access for Incarcerated Individuals</i> , a new Operational Manual requirement was added that each facility will have a written plan for the service of all court documents.
DOC should immediately, or as soon as possible, move the incarcerated person involved in this complaint to a transition pod or directly into general population.	The Department of Corrections has housed the individual at a facility where there is access to the program <i>Getting it Right</i> . Upon completion of this program, the department will review the individual for custody promotion consideration. Due to the COVID-19 pandemic, the department cannot place the incarcerated individual into the transition pod.
DOC should create a procedure by which, when an incarcerated person is transferred to another facility for court proceedings, there is a plan in place for their return to the facility of origin. At the very least, DOC should assign a staff member to be in charge of keeping track of the incarcerated persons placement, movement, and court proceedings. This person should also be responsible for facilitating the incarcerated person’s return when appropriate.	The Department of Corrections has a dedicated employee that is responsible for communicating with records staff every 30 days to inquire about individuals who are on a temporary transfer pending court proceedings. This inquiry is recorded in the chronos log for reference. Once the court proceeding is completed the individual will be returned to their parent facility.
DOC should make every effort to keep an incarcerated person being housed temporarily at a facility for court proceedings updated on	The Department of Corrections communicated with the incarcerated population frequently about the status of their court proceedings and

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<p>their situation.</p>	<p>temporary housing placements. In this specific case, it was noted that the classification and records staff confirmed and communicated with the court and the incarcerated individual monthly to update the status of the temporary housing and need to be held at the facility for court proceedings.</p>
<p>DOC should clarify to those individuals responding to grievances, how fault is to be determined and assigned in a grievance investigation.</p>	<p>The Department's Statewide Grievance Manager conducted a required training for all grievance coordinators in March 2020. This training encompassed direction on how fault is to be determined and assigned in a grievance investigation.</p>

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