

**m** MINNESOTA  
OFFICE OF THE OMBUDS  
FOR CORRECTIONS

The Honorable Tim Walz, Governor of Minnesota  
130 State Capitol  
75 Rev Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

May 10, 2021

Dear Governor Walz,

Attached is a report of the Office of the Ombuds for Corrections' investigation into a staff use of force incident at Minnesota Correctional Facility Moose Lake; and the Minnesota Department of Corrections response. I am publishing this report by transmitting it to you, in accordance with Minnesota Statutes section 241.95.

We look forward to working with the Department of Corrections as they consider our recommendations while revising their use of force policies to better ensure the safety of incarcerated persons and corrections staff.

Respectfully,



Mark Haase  
Ombudsperson for Corrections

CC: DOC Commissioner Paul Schnell

Note: Minnesota statutes grant the Office of the Ombuds for Corrections (OBFC) authority to take complaints about and investigate the actions and policies of Minnesota's corrections agencies. The OBFC can investigate individual complaints and systemic issues that the Ombuds determines need review, work to resolve them, conduct investigations, make recommendations to agency leadership and the Governor and legislature, and publish reports. The office is a separate and independent entity from the Department of Corrections (DOC). Details on the authority and responsibilities of the OBFC can be found in [Minnesota Statutes, Chapter 241](#), sections 90-95; and more information can be found at [mn.gov/obfc/](http://mn.gov/obfc/).

## Investigation Report and Recommendations

### SUMMARY OF COMPLAINT

The Office of the Ombuds for Corrections (OBFC) received a complaint from a Black male incarcerated at MCF-Oak Park Heights regarding his previous incarceration at MCF-Moose Lake. Complainant stated he did not intentionally strike an officer as described by staff and for which he was disciplined, that staff used excessive force against him, and that he was subsequently denied access to showers and grievance forms.

### SUMMARY DESCRIPTION OF INCIDENT/SITUATION

Complainant received a call (via staff) from a family member telling him that a close family member had died. He was offered and declined behavioral health and chaplaincy services. Later that day he was in a phone kiosk when another incarcerated person was arguing with a corrections officer (CO) about the short time allowed out of cell. Complainant was upset by something the CO said and verbalized his anger as he left the kiosk and walked past the CO in the doorway. Another CO then ordered him to stop and face the wall. He ignored the order and continued to his room. The first CO initiated the Incident Command System (ICS).

The ICS team arrived at the door to Complainant's room where several other incarcerated persons were present. Complainant was yelling, gesturing, and pacing back and forth. According to staff he was making threatening statements and refused directives to come out of his room. Approximately 3.5 minutes after the ICS team arrived at the room door, Complainant was sprayed with chemical irritant, then came out of the room. As he came out, he struck an officer in the face according to staff accounts; according to Complainant he put his hands out to catch his balance. He was then taken to the ground and restrained through use of empty hand control. One staff stated that as Complainant "continued to fight and refused to stop resisting our attempts to restrain him, I delivered three or four knee strikes to his right common peroneal nerve."

Complainant was subsequently disciplined and sentenced to 90 days segregation.

Complainant was assessed by health services staff as having normal range of motion. Complainant states that due to injuries from this incident, he was not able to shower because he couldn't walk to the shower and was denied assistance to do so. He states he asked for grievance forms but was never given one.

### OBFC INVESTIGATIVE ACTIONS

OBFC staff completed the following investigative actions: In-person interview of Complainant; review of incident Notice of Violation report and other incident reports; review of health encounters reports; review of ICS handheld camera video footage and footage during the incident from cameras inside Complainant's room and in the hallway outside of and adjacent to Complainant's room; and review of relevant DOC policies.

## OBFC FINDINGS

**Assault of Staff and Use of Force:** Due to limitations of video evidence, the OBFC was unable to fully substantiate if Complainant intentionally struck an officer. However, based upon the video evidence that was available, and other evidence available to the DOC, discipline for assaulting staff was not found by OBFC to be unreasonable.

The OBFC also found that this incident reveals possible shortcomings in DOC policies on de-escalation. Although this is only one case, and as noted below the use of chemical irritant was found to to be likely in violation of DOC policy and unjustified, it also reveals some shortcomings in DOC policy when it comes to de-escalation of situations that could cause injury to both incarcerated people and staff.

It appears that no significant efforts were made to de-escalate this situation from the beginning. Complainant refused a directive and was agitated and likely verbally threatening; however, based on video footage from inside his room, Complainant posed no apparent danger to officers while in his room and did not appear to pose a threat or verbalize any threats towards others in his vicinity. He has no history of violence or even significant discipline while incarcerated and had just experienced a traumatic personal event. From the time Complainant entered his room to the time the door was opened, and chemical irritant was introduced, only 3 minutes and 24 seconds had elapsed. Additional time could have been given for him to calm down and for staff to use or locate an officer with Crisis Intervention Training (CIT) in order to attempt to de-escalate the situation.<sup>1</sup>

**Use of Chemical Irritant:** The OBFC found that DOC Policy was likely violated because prior authorization was not given for the use of chemical irritant, and the use of irritant did not appear to be justified. However, the OBFC recognizes that there is some subjectivity involved in the interpretation of the policy.

DOC Policy 301.081 B.5.b requires that:

The watch commander and/or the unit supervisor must authorize any use of chemical irritant except in spontaneous situations where delay would result in bodily harm, death, or loss of control of an area, or if the safety of staff and offenders is in jeopardy.

Authorization was not given for chemical irritant in this case, and Complainant was secured in his cell. The OBFC found there was no indication delay would result in bodily harm, death, or loss of control of an area, nor that the safety of staff or other offenders was in jeopardy. In video footage, one of Complainant's roommates was standing nearby him, seemingly unconcerned.

Policy 301.081 B.5.d requires that:

Irritants must not be used against an unarmed offender who is confined to a cell/room or under adequate physical control even though the offender may be excessively verbally belligerent and provocative, unless the offender continues to engage in destructive or self-injurious behavior, or refuses to comply with the application of mechanical restraints. However, with prior authorization, chemical irritants may be used when it is necessary to move an offender from a cell/room, and the offender refuses direct orders to submit to any procedure necessary to safely complete that move.

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<sup>1</sup> In the Department response, it was noted that the officers responding did have CIT training, but did not note that fact in their reports.

Complainant was belligerent and provocative, exactly as this policy expressly states is *not* grounds for use of chemical irritant; but he was not engaging in destructive or self-injurious behavior. Had authorization been given, the short amount of time that elapsed (less than 3.5 minutes) made it less than clear that its use was “necessary” to remove Complainant from his room. According to staff, orders were given to Complainant and he apparently refused to come out of the door and move across the room to the wall, but based on the OBFC review of available evidence, the totality of circumstances did not indicate force was “necessary” at that point.

**Video Camera:** The OBFC found that the late arrival of a handheld video camera system likely violated DOC’s policy requiring it whenever a cell extraction might be used. DOC Policy 301.081A.6 requires that “Staff must activate the handheld video camera system whenever a cell extraction or pinion restraint might be used.”

In this case the ICS video was not requested until the cell extraction had already occurred and arrived approximately 6 minutes later. The circumstances of the situation made it clear that cell extraction might be used.

**Denial of Showers/Denial of Grievance Forms:** The OBFC was unable to substantiate if Complainant was denied reasonable access to showers or grievance forms.

## OBFC RECOMMENDATIONS

**Training:** Staff involved in this incident should receive additional/refresher training on the use of force policy for use of chemical irritant and activation of the handheld video camera system policies.

**De-Escalation Policy Development:** The DOC Use of Force and other applicable policies should be revised to increase the use of de-escalation practices when appropriate.

The Use of Force policy limits the use of force, but it does not require the use of de-escalation when appropriate nor does it require that de-escalation attempts be reported. The Crisis Intervention Team policy, 301.075, makes CIT de-escalation available as a program, and requires the monitoring of its use, but does not require it be used when appropriate and does not require reporting of why it was *not* used, only when CIT training is utilized.

This recommendation is intentionally broad because the complexity of the change will require agency review and consideration, but some more specific changes offered for consideration are:

1. Require that CIT or other de-escalation efforts be utilized whenever reasonable and trained staff are reasonably available and increase training in this area if needed.
2. Require use of force incident reporting to include reporting of de-escalation efforts. The City of Minneapolis recently changed their policy to require this of police officers, and it seems like a good step.
3. Require that facility CIT committees review all use of force cases and make recommendations for improving and increasing the use of de-escalation, rather than only reviewing the actual use of CIT.

**Video Policy and Video Equipment Availability;** The DOC handheld video policy should be strengthened to better ensure the videotaping of all use of force incidents, and the ready availability of handheld video cameras may need to be improved.

An ICS camera arrived at the scene after it was useful, making both staff and Complainant's version of events difficult to verify.

Although this is only one case, and as noted above the absence of the handheld camera was likely in violation of DOC policy, it also reveals some shortcomings in the policy. Hand-held cameras should be required whenever ICS is activated, not in just the instances required in current policy. This would prevent possible confusion and hesitation when staff decide if it is needed. This could be accomplished by revising DOC Policy 301.081 A.6 as follows:

Staff must activate the handheld video camera system whenever the incident command system is activated a-  
cell extraction or pinion restraint might be used.

**The following letter is the Department of Corrections response provided in accordance with Minnesota Statutes section 341.93 subd. 6.**

Dear Mr. Haase,

I have fully reviewed the findings presented in the Office of the Ombuds for Corrections' report and recommendation regarding complainant [REDACTED].

The assault of a staff member was not substantiated by your office. Upon reviewing the reports, multiple staff members indicated Mr. [REDACTED] struck the officer on the right side of the face (eye and temple region) with a closed fist. The officer, who sustained a minor injury, was taken to the local hospital for assessment and emergent care. The combination of staff reports as well as the need for medical care seem to provide sufficient evidence to substantiate the staff assault.

Your office deemed the use of chemical irritant as a "likely policy violation." DOC Policy 301.081 B.5.b) states the use of chemical irritant may be utilized without authorization in spontaneous situations where a delay in response would result in bodily harm, death, or loss of control of an area, or if the safety of staff and offenders is in jeopardy. The known factors during this situation which warranted the use of chemical irritant are: Mr. [REDACTED] refused to comply (several times) with verbal directives to have mechanical restraints applied; Mr. [REDACTED] displayed aggressive behavior (threats and actions) towards staff; Mr. [REDACTED]' maladaptive behavior jeopardized the safety of other incarcerated men in the immediate area (dorm room and living unit wing) which could have resulted in the potential for loss of control on the living unit. The concern regarding inadequate de-escalation effort is noted. However, it appears guided by the benefit of hindsight being 20/20. Review by facility leadership staff indicates the presence of several collective and protective factors influencing the decision to utilize force.

Your office also deemed the lack of a video camera as a "likely policy violation." As you know, spontaneous responses during dynamic incidents do not always allow staff the time to either request or retrieve the handheld video camera. DOC Policy 301.081 C.2.e) requires that "Whenever possible, videotaping is used to document the use of force." Given the "whenever possible" provision in the existing policy, as well as the dynamic nature of the incident, the lack of a video camera should not be viewed as a policy violation.

The following actions will be taken based upon the Ombuds' findings and recommendations:

**Training:** All MCF-WRML incident response staff are required to and will receive annual training on the Use of Force and Restraints (Policy 301.081), requirements for the provision and use of chemical irritants (Policy 301.081 Procedure B.5), and activation of the handheld camera system (Policy 301.081 Procedure C.2.e). This training will be initiated by June 30, 2021 and shall be completed by September 30, 2021.

You should know the Commissioner has called together the agencywide Use of Force Committee, which is comprised of at least one incident response staff from each facility. The Use of Force Committee is being tasked with a substantial rewrite of the agency's use of force policies, use of force training, and use of force post incident review protocols.

**De-escalation Policy Development:** The DOC continues to strive towards having all its staff trained in Crisis Intervention (CIT). As of April 1, 2020, MCF-WRML had 51 staff members trained in CIT. With regard to this specific incident, there were six CIT trained staff who responded to the incident. It is notable that [REDACTED], who received the 2020 MCF-WRML CIT Person of the Year Award, documented in his report that

Mr. [REDACTED] personally requested to speak with him at the onset of the incident. Sgt. [REDACTED] did speak with Mr. [REDACTED] and made several attempts to de-escalate the situation. I have directed that command staff ensure CIT members responding to incidents indicate on the incident report forms whether they are a CIT member and whether they used CIT techniques.

During this particular incident, Mr. [REDACTED] verbally threatened others. While our goal is and should be to avoid the use of force, the recommendation that additional de-escalation time could have been applied to this incident is subjective.

The following recommendations for CIT related changes will be forwarded to the DOC Use of Force Committee for review and consideration as they initiate the Commissioner directed policy rewrite:

1. Require that CIT or other de-escalation efforts be utilized whenever reasonable, trained staff are reasonably available, and increased training in this area if needed.
2. Require use of force incident reporting to include reporting of de escalation efforts. The City of Minneapolis recently changed their policy to require this of police officers, and it seems like a good step.
3. Require that facility CIT committees review all use of force cases and make recommendations for improving and increasing the use of de-escalation, rather than only reviewing the actual use of CIT.

Video Policy and Video Equipment Availability: As previously noted, DOC Policy 301.081 C.2.e requires that "Whenever possible, videotaping is used to document the use of force." As the policy currently reads, the absence of the handheld camera at the onset of the incident was not a policy violation. However, I will make a recommendation that the use of force policy chairs (John Melvin, Office of Special Investigations Director and Jami Doeden, Associate Warden of Operations) discuss and consider the proposed revision that "Staff must activate the handheld video camera system whenever the Incident Command System (ICS) is activated."

MCF-WRML has four handheld cameras, which are strategically placed throughout the facility for readily available access. Our facility will submit a funding request for the purchase of two additional handheld video cameras.

Please let me know if you have any questions or concerns.

Sincerely,



William Bolin, Warden  
MCF Moose Lake

CC: Paul Schnell, Commissioner  
Michelle Smith, Deputy Commissioner  
John Melvin, Director, Office of Special Investigations