

OFFICE OF INSPECTOR GENERAL
OF THE NEBRASKA CORRECTIONAL SYSTEM

Reception and Treatment Center Use of Force Complaint, May 23, 2023

SUMMARY OF INVESTIGATIVE REPORT

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Doug Koebernick, Inspector General
Zach Pluhacek, Assistant Inspector General

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) of the Nebraska Correctional System received a complaint in May 2023 alleging excessive and unnecessary use of force on a man incarcerated at the Reception and Treatment Center (RTC) in Lincoln. The OIG reviewed the incident and found the use of force to be justifiable, yet unfortunate and likely avoidable. The May 23 incident was one of three in the same month in which force was used on this individual, starting two weeks earlier when staff used force on him to administer a monthly shot with psychiatric medication.

The incarcerated man at the center of these incidents is seriously mentally ill and has an extensive history of negative interactions with correctional staff. When he leaves his housing unit, he is usually accompanied by a fellow incarcerated person who serves as a health porter, but he did not have a porter with him at the time of the May 23 use of force or either of the other use of force incidents that month.

While the OIG did not find any wrongdoing on the part of staff involved in the May 23 incident, the incident provided insight into the RTC's role as the main mental health and nursing facility within the Nebraska Department of Correctional Services (NDCS). On October 2, 2023, the OIG submitted an investigative report to NDCS Director Rob Jeffreys which included the following findings:

1. The May 23 use of force and another one on May 26 may have been avoided if this individual had been accompanied by a health porter, as he usually was.
2. The health porter program at the RTC is hindered by a lack of direction and communication.
3. Off-unit distribution of medications for people living on the chronic care mental health unit raises concerns.
4. Chronic staffing shortages, including in the areas of security and mental health staff, present a continued challenge.

The OIG made the following recommendations to NDCS:

1. Maintain a list of individuals at each facility who, per mental health and/or medical staff, require a health porter escort when they are away from their housing unit, and ensure this information is shared with other facility staff.
2. Revamp the health porter program at RTC.
3. Return to on-unit distribution of medications for people residing in the RTC's chronic care mental health unit.
4. Develop a plan to improve recruitment and retention of licensed mental and behavioral health staff, in cooperation with the Behavioral Health Education Center of Nebraska (BEHCN) and other stakeholder groups.

ABOUT THIS REPORT

This report summarizes the findings from an investigation by the Office of Inspector General (OIG) of the Nebraska Correctional System. The OIG was established in 2015 to provide legislative oversight and accountability of Nebraska's correctional system, including the Nebraska Department of Correctional Services (NDCS). Among its many duties, the OIG investigates complaints of possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the Department.¹ This includes allegations of excessive or unnecessary force used by staff.

The OIG is also tasked with providing information and recommendations which may help improve the operations of the correctional system. As such, this report contains recommendations for systemic reform which are related to findings from the OIG's underlying investigation. The full report from this investigation was submitted to NDCS Director Rob Jeffreys on October 2, 2023, and is summarized here.²

¹ Office of Inspector General of the Nebraska Correctional System Act, Neb. Rev. Stat. § 47-901 to 47-920.

² Neb. Rev. Stat. § 47-912.

SUMMARY OF INCIDENT

At 08:32 hours on Tuesday, May 23, 2023, Mr. Alpha³ was returning to his housing unit after breakfast and morning medication distribution. He entered the turnkey area in the Reception and Treatment Center (RTC), where a sergeant directed him to submit to a pat search.⁴ Instead of complying with directives, Mr. Alpha refused to fully raise his arms and exchanged words with the sergeant. The sergeant then attempted to restrain him. Mr. Alpha fell to the ground, curled into a fetal position, and continued pulling away as staff attempted to put him in wrist restraints. The sergeant, two corporals, and a supervisory sergeant used various types of force in an attempt to restrain him. They ultimately were able to pull his arms behind his back, place him in restraints, and walk him to a nearby holding cell.

³ The individual's name has been redacted from this summary report.

⁴ Turnkey is known as a specific spot in a prison where doors must be unlocked and opened for individuals to pass through, moving from one area to another, sometimes being searched as they enter that particular part of the prison. It is usually a high-traffic spot.

COMPLAINT AND REVIEW

An incarcerated individual who witnessed the May 23 use of force submitted a complaint to the OIG the same day. The complainant alleged the use of force was unnecessary and due to escalation on the part of the staff, that staff “slammed” Mr. Alpha to the floor, and that larger staff members pressed down on Mr. Alpha (who is 5-foot-6 and weighs about 120 pounds). The complainant also alleged that one staff member had his knee on Mr. Alpha’s neck.

The OIG reviewed video footage, departmental reports from the use of force incident, and interviewed Mr. Alpha, the complainant, and staff involved. The OIG also reviewed information from previous and subsequent uses of force involving Mr. Alpha, examined records of his mental health and criminal history, and interviewed staff and incarcerated people who are familiar with Mr. Alpha.

About Mr. Alpha

Mr. Alpha, 51, has a history of seizures since approximately age 12, followed by severe alcohol use and schizophrenia as a young man, and extensive involvement in the criminal justice system. He also has experienced “at least two adult traumatic brain injuries resulting in hospitalization and neurological examination, (and) *exposure to multiple (in excess of 100) correctional ‘uses of force,’ which have exposed him to possible blunt force trauma and/or compression anoxia,*”⁵ according to a 2013 involuntary medication order (IMO) application signed by two former NDCS psychiatrists. The Department’s IMO requires Mr. Alpha to receive psychiatric medication shots against his will due to the severity of his illness and his noncompliance with voluntary medication.

He is currently serving seven consecutive 10-year sentences, with no chance at parole, for a series of incidents that began when he was seeking psychiatric care at a hospital in 2003. Mr. Alpha hit a nurse with a leather and metal restraint device, then began strangling her while threatening two other nurses who tried to intervene. While pending charges for that incident, he was accused of assaulting three correctional officers in two separate incidents as they were

⁵ Emphasis added by OIG.

attempting to restrain him. He also was accused of being a habitual criminal. Because he distrusted his public defenders and other court-appointed attorneys, and despite his “limited intellectual ability” and questions about his competency, Mr. Alpha represented himself in each of these cases. He was found guilty at trial and received 70 years in prison.

“His extensive history of violence is well-known in the department and has demanded extraordinary intervention by the Department, sometimes requiring dozens of uses of force in a single month,” the IMO application notes. As a result of this behavior, he spent more than seven years in segregation, from July 2005 to October 2012.

It appears the May 23 incident was the first time staff had used force on Mr. Alpha – other than on his IMO shot days – in more than a year.

Justification of Force

Video from the May 23 incident clearly shows Mr. Alpha being noncompliant with staff directives. As stated in the synopsis from the use of force report, Mr. Alpha “started to comply with directives but suddenly refused to lift his arms,” prompting the sergeant’s initial use of force.⁶ The completed use of force report includes a note from the facility warden stating the force was justified, “however time could have been used or IPS” (intentional peer support).⁷

In considering the response, it is important to note that turnkey is a high-traffic spot, serving as a nexus between the main yard, the housing units, the gym, and the various programming and support service areas of the RTC. The adjoining hallways or “spines” – one which connects the facility’s five main housing units, and the other leading to programming and support service areas – often become crowded with incarcerated individuals and food and laundry carts. This is particularly true on days when the main yard is closed due to low staffing, inclement weather, or other reasons. Any disturbance in this area interrupts the orderly flow of individuals through the

⁶ The OIG does not know exactly what words were exchanged between Mr. Alpha and the staff due to the RTC not having body-worn cameras. Unlike body cameras, institutional cameras generally do not capture audio.

⁷ Intentional peer support is an alternative response to behavioral health issues and other challenges wherein peers (in the case of NDCS, fellow incarcerated individuals) help people navigate these issues through mutual support. NDCS recognizes IPS as a non-clinical program.

facility. Throughout the May 23 incident involving Mr. Alpha, individuals can be seen congregating outside the turnkey doors – either to observe what was happening or waiting to get through.

Time may have helped in this incident, but also likely would have impacted operations throughout the facility.

Application of Force

What appeared to the complainant to be staff “slamming” Mr. Alpha to the ground took place as Mr. Alpha was already on the floor, squirming to avoid being restrained, based on the video footage. When the OIG spoke with Mr. Alpha several weeks after the incident, he said the only pain he experienced was to his fingers due to being twisted as he tried to keep his hands away from the staff.

May 26 Use of Force

Three days after the May 23 incident, staff used force on Mr. Alpha again after he refused to open his mouth to show he had taken his medication, walked off, and then sat on the floor in the turnkey area. Staff tried getting him to stand up as a crowd gathered outside, waiting to pass through turnkey. The staff ultimately used force to turn him on his stomach and place him in restraints.⁸

One corporal who regularly works turnkey was involved in both of these uses of force. This same corporal and the sergeant from the May 23 use of force had also been involved in previous uses of force to administer Mr. Alpha’s IMO shot.

⁸ Summary based on OIG review of video and reports from the incident.

EXAMINATION OF ISSUES

Health Porter Program

Mr. Alpha resides in the RTC's chronic care mental health unit. This unit is part of the former Lincoln Correctional Center (LCC), which was a separate facility before it was merged with the adjacent Diagnostic and Evaluation Center (DEC), the NDCS intake center for men. This merger and expansion of the former LCC and DEC resulted in what is today known as the Reception and Treatment Center (RTC).

The RTC has a handful of incarcerated health porters who live in this housing unit and provide assistance to other residents in that unit, the prison's skilled-nursing facility, and the acute care mental health unit. Some, but not all, of these men have undergone training comparable to what is expected of certified nursing assistants (CNAs) in the community. Other NDCS facilities have health porters, as well.⁹

Mr. Alpha is encouraged to have a health porter accompany him any time he leaves the unit, including regular trips to the dining hall and to pick up medications. Among other things, the porter serves as a form of ongoing peer support and can serve as a buffer for Mr. Alpha during stressful situations. At the time of the May 23 and May 26 incidents, Mr. Alpha was without this escort because his usual porter was ill, the porter told the OIG. Staff and inmates said they believe it may have helped if Mr. Alpha's porter had been with him.

Mr. Alpha is one of at least two residents from this unit who routinely have a porter escort when they move throughout the facility. This is an expectation set by mental health and unit staff. The other resident is 72 years old and has significant cognitive issues. In July 2023, the OIG was made aware of two recent occasions on which this second resident was left to move throughout the facility by himself. On July 10, after returning from an outside medical appointment, he was allowed to walk through the facility unescorted until fellow inmates found him "trying to

⁹ The OIG requested information about the health porter program from NDCS administration. However, some of the information provided by NDCS in response to the request was inconsistent with information the OIG received from facility staff. This includes the specific number of porters at each facility. Because of these inconsistencies, the exact numbers are not included in this report.

navigate down the stairs using a cane” in the facility’s main yard. This is despite the fact that he had been living in the SNF, which has its own yard, for several months. On July 11, he was briefly discharged from the SNF and allowed to return to his housing unit; he arrived at the unit by himself. Fortunately, he made it to the right place on both of these occasions without incident.

The situations involving this second individual indicate lapses in communication and understanding related to some of the more vulnerable people incarcerated at the RTC. NDCS staff also described situations in which security staff have refused to allow or resisted allowing health porters to accompany individuals who have been given permission to go to another part of the correctional facility, which is a job duty of the porters.

Inherently, the health porter program operates in a space between various “silos” of NDCS and facility level administration. These porters’ work is related to medical and mental health services, but mostly involves helping people with their activities of daily living (ADLs), which often take place under the watch of unit and custody staff. At the RTC, the porters mostly work with people in a mental health setting.

The porter program has been scaled back in recent years. For some time, each inmate health porter essentially provided 24-hour care and could receive more than 40 hours of paid wages per week. Beginning in June 2021, NDCS central administration limited each of these men to 40 hours of paid work per week. This was supposed to be accompanied with an increase in the number of health porters; however, the number of trained health porters has not been increased to account for the reduced coverage time.¹⁰

Medication Distribution

Staff and health porters at the RTC raised concerns about the facility’s process for distributing medications to residents of the chronic care mental health unit. Previously, these individuals received their medications in the housing unit, allowing staff who are familiar with them to ensure they are actually taking the medications and to prevent them from being taken advantage

¹⁰ See letter attached as Exhibit A.

of by people from other housing units. For the past few years, these residents have joined the rest of the general population in getting their meds from the centralized medication lines, which are near the dining halls in the facility's main corridor.

The OIG lacks the ability to know for certain whether the change has led to more medication noncompliance and abuse. However, staff who work the unit are under the impression these problems – including residents of the chronic care mental health unit giving or selling their meds to people from other units – have gotten worse. Security staff have repeatedly raised concerns about the amount of activity that takes place in the facility's main corridors, particularly compared with the number of staff working there. Also, at least in Mr. Alpha's case, unit staff who have a rapport with him might be more successful getting him to take his meds, as compared to less-familiar security staff who work in the corridors and are responsible for monitoring a much larger number of people.

When it comes to the question of who would administer medications on the unit, the Department has options. With adequate staffing, one or more nurses could be assigned this responsibility. Otherwise, the Department employs staff CNAs and caseworkers who could give meds if they were to receive training as medication aides.

Staffing

The RTC remains under a staffing emergency. While its staffing numbers improved significantly in 2022, vacancies have increased since the start of 2023. As of Aug. 7, 2023, the facility had 58.5 vacant positions, including 35.5 corporal positions.¹¹ That is compared with 57.5 vacancies in May, including 36.5 corporal positions, showing essentially no change during that period. The facility reported 42.5 total vacancies in January 2023.¹²

This data does not include behavioral health staff, because those positions are technically assigned to NDCS central administration. A look at those numbers shows the RTC lacks a sufficient number of licensed mental and behavioral health care staff, as well, despite being the

¹¹ Human resources data from RTC administration.

¹² Facility monthly report to NDCS central administration.

Department's primary mental health facility and the site of a newly built acute care mental health unit. As of Aug. 1, 2023, more than half of the facility's behavioral health practitioner positions were vacant (10 of 18 positions), and half of its psychologist positions were vacant (2.5 out of 5). This shortage reflects a trend throughout NDCS and in the general public. While all 10 behavioral health caseworker positions were filled, these are not clinical positions and are similar to normal security posts but with better work hours. As of September 8, 2023, the OIG was informed that more mental health staff had resigned from the Department or were in the process of leaving.

In the month of May, command staff at the RTC reported the facility was operating at or below its minimum established staffing level for at least part of 50 different shifts. The facility continued to dip below minimum staffing levels on an almost daily basis all summer. Low staffing continues to result in occasional lockdowns or other modified operations at the facility.¹³ It also places greater strain on staff when they are expected to maintain normal operations with less help, or are required to step away from their normal duties to fill vacant security posts. Staff and people who are incarcerated at RTC have also described inconsistencies that result from low staffing and high turnover. Staff who are new to the system or are working unfamiliar posts enforce rules differently than others, resulting in unclear expectations for the incarcerated population. Staff and incarcerated people with direct knowledge of the uses of force against Mr. Alpha cited this as another contributing factor in these incidents.

Hiring and retention of correctional staff is a nationwide issue. The OIG has offered recommendations on the subject in the past.

¹³ Lockdowns or modified operations are events when out-of-cell movement by the incarcerated population ceases or is very limited.

FINDINGS

Following its review of the May 23 use of force on Mr. Alpha, the OIG found no misfeasance on the part of staff involved. Mr. Alpha did not comply with staff directives and physically resisted their efforts to restrain him. The OIG found no evidence that the force was unjustifiably excessive or that Mr. Alpha was physically injured as a result. Nonetheless, the OIG believes this incident and Mr. Alpha's overall situation illustrate some of the challenges facing the RTC and NDCS. Specifically, as a result of this investigation, the OIG found as follows:

- 1. The May 23 and May 26 uses of force on Mr. Alpha may have been avoided if Mr. Alpha had been accompanied by a health porter, as usual.** Mr. Alpha is mentally ill and distrustful of correctional staff and anyone else involved in administering his IMO shots. Prior to May 23, 2023, staff had not used force on Mr. Alpha for purposes other than administering his involuntary medication order (IMO) in more than a year. On May 23 and May 26, when Mr. Alpha was without his usual health porter, staff used force on him twice in a four-day period. In both incidents, the staff involved had previously helped administer his IMO.
- 2. The health porter program at the RTC is hindered by a lack of direction and communication.** This is due to a combination of factors, some of which are specific to the RTC while others are Department-wide.
- 3. Off-unit distribution of medications for people living on the chronic care mental health unit raises concerns.** While these individuals can succeed in a general population setting, the medication lines at RTC are not secure enough to prevent their medications from being taken by others, particularly given the amount of foot traffic in the corridors.
- 4. Chronic staffing shortages, including in the areas of security and mental health staff present a continued challenge.** While the facility and the Department as a whole have seen progress in their efforts to recruit and retain security staff, this progress has slowed in recent months. Mental health staffing remains a significant concern.

RECOMMENDATIONS

The OIG recommended NDCS take the following actions:

- 1. Maintain a list of individuals at each facility who, per mental health and/or medical staff, require a health porter escort when they are away from their housing unit, and ensure this information is shared with other facility staff.**
- 2. Revamp the health porter program at RTC.** Placing the program under a staff person who interacts with the porters on a regular basis, such as the unit manager, would help improve communication and coordination.
- 3. Return to on-unit distribution of medications for people residing in the RTC's chronic care mental health unit.**
- 4. Develop a plan to improve recruitment and retention of licensed mental and behavioral health staff, in cooperation with the Behavioral Health Education Center of Nebraska (BEHCN) and other stakeholder groups.** On the subject of behavioral health staffing, which has special relevance to this report, the state of Nebraska has established an entity with the purpose of recruiting, retaining and increasing the competency of the state's behavioral health workforce. The Behavioral Health Education Center of Nebraska (BHECN, pronounced "beacon") was established by the Legislature in 2009 under LB603 and is administered by the University of Nebraska Medical Center. In discussions with the OIG, BHECN leadership expressed interest in partnering more closely with NDCS and other state agencies to address staffing shortages in Nebraska's mental health treatment and correctional systems. It is the understanding of the OIG that behavioral health leaders from the Department will be meeting in the near future or have already met with representatives from BHECN and UNMC. Talking with BHECN will be a good start, but NDCS should craft a plan with measurable goals and concrete steps to address this area of need.

NDCS RESPONSE

On October 12, 2023, the OIG received a response from Director Jeffrey to the report. In the response, he wrote:

“The department will consider the recommendations made in your report but will not be providing comment to your office regarding those recommendations.”¹⁴

¹⁴ Exhibit B: October 12, 2023 letter from Director Rob Jeffrey.

NEBRASKA

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Exhibit A



Pete Ricketts, Governor

June 11, 2021

[REDACTED]

This letter is in response to your correspondence received in my office on May 28, 2021, wherein you express your concern at being limited to receiving pay for only 40 hours per week as an Inmate Health Porter on the mental health unit at the Lincoln Correctional Center (LCC).

Policy Directive 021-001, Policy 113.17 *Inmate Work/Program Assignments and Stipends*, effective January 1, 2021, stipulated that all inmate job assignments shall be for a 5-day work week or 4-day/10-hour day work week unless approved by the respective Deputy Director. This is not applicable only to Inmate Medical Porters, but rather all inmate work assignments. While exceptions may occur, such is not intended to be a regular occurrence.

An established work schedule of 8 or more hours a day, seven days a week is not reasonable by any standard. It is also not reasonable to expect for you to provide continued assistance after your workday to a cellmate. Warden Boyd met with you today and is working to develop a more reasonable schedule for you and the other health porters at LCC. The goal will be to hire additional Inmate Health Porters so that this assistance can be provided by different individuals over the course of a day with each working no more than a 40-hour work week schedule.

The assistance provided by Inmate Health Porters is extremely valuable and your ability to do this kind of work is commendable. While it is regrettable that this decision impacts your monthly earnings, this type of permanent schedule should not have been previously allowed. I appreciate you working with Warden Boyd to find a feasible solution.

Sincerely,


Scott R. Frakes
Director

c: Taggart Boyd, Warden, LCC
[REDACTED]

Scott R. Frakes, Director
Dept of Correctional Services
P.O. Box 94661 Lincoln, NE 68509-4661
Phone: 402-471-2654 Fax: 402-479-5623
corrections.nebraska.gov

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Jim Pillen, Governor

October 12, 2023

Doug Koebernick, Inspector General
P.O. Box 90604
Lincoln, NE 68509

Dear Mr. Koebernick,

I received your report dated October 2, 2023, regarding the May 23, 2023 use of force at RTC. The department will consider the recommendations made in your report but will not be providing comment to your office regarding those recommendations.

Respectfully,

A handwritten signature in black ink, appearing to read "Rob Jeffreys".

Rob Jeffreys
Director

CC: Julie L. Rogers, Public Counsel
Ryan Gilbride, NDCS General Counsel