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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED

10/24/2024 10:25 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Discrimination Complaint Review System (AIC)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/16/2024 12:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

The purpose of these rules is to establish department policy and procedures for adults in custody (AICs) to obtain internal review, investigation, and resolution of perceived instances of unfair discriminatory practices and action by the department based on race, color, national origin, religion, gender, sex, sexual orientation, marital status, age, disability, or familial status. The purpose of the amended rule is to amend Department of Corrections policy to provide that PREA-related reports will be exempted from the department's grievance and discrimination complaint systems and will be separately investigated outside of those systems. An adult in custody (AIC) may continue to make PREA-related reports through those systems, and any such report will initiate the department's duty to investigate that report, but the report will no longer be considered a grievance or discrimination complaint under the department's grievance and discrimination complaint systems. Accordingly, an AIC will not be subject to any technical or formatting or processing requirements for PREA-related reports. The amended rule is needed to simplify and clarify the process for AICs who are seeking to report a PREA-related issue and may choose to do so by making that report through the grievance or discrimination complaint review systems. Other revisions were made to improve clarity of the rules and consistency within these rules; to align with other department rules; and to reorganize these rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department of Corrections anticipates the proposed amendments to its Division 6 rules (OAR 291-006 AIC Discrimination Complaint Review System) will have a neutral impact on racial equity in the state of Oregon.

These rules permit and encourage adults in custody (AICs) to seek resolution of issues, actions, or incidents related to perceived instances of discriminatory practices or actions by using the department's internal discrimination complaint

review system.

These revisions simplify rule language, remove duplicate rule language, streamline processes, and add clarity for ease of use. In addition, these revisions include a reorganization of the rules and address general housekeeping items, such as grammar and punctuation corrections. These revisions do not include any operational or policy changes. For this reason, the Department of Corrections anticipates that the proposed revisions to the AIC Discrimination Complaint Review System Rules (OAR 291-006) will have a neutral impact on racial equity in the State of Oregon.

FISCAL AND ECONOMIC IMPACT:

OAR 291-006 rule amendments will allow DOC to implement a streamlined process that is consistent for all types of PREA allegations received through OAR 291-109 and OAR 291-006.

The rule change could impact workload to train Grievance/Discrimination Complaint Coordinators and PREA Teams prior to adoption but there are no anticipated additional costs or staffing fiscal impacts on the department, other state agencies, local governments (the counties), or the general public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules as they will not be impacted by these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The department has determined that use of an advisory committee would not have provided any substantive assistance in drafting these rule revisions because of the technical nature of the revisions.

RULES PROPOSED:

291-006-0005, 291-006-0011, 291-006-0050, 291-006-0055, 291-006-0060, 291-006-0065, 291-006-0070, 291-006-0075, 291-006-0078, 291-006-0080

AMEND: 291-006-0005

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; and to align with other department rules.

CHANGES TO RULE:

291-006-0005

Authority, Purpose, and Policy ¶¶

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.¶¶

(2) Purpose: The purpose of these rules is to establish department policy and procedures for adults in custody (AICs) to obtain internal review, investigation, and resolution of perceived instances of unfair discriminatory practices and/or actions by the department based on race, color, national origin, religion, gender, sex, sexual

orientation, marital status, age, disability, or familial status.¶

(3) Policy: Within the inherent limitations of resources and the need to maintain internal security, good order, and discipline in Department of Corrections facilities, the health and safety of AICs, ~~staff~~ adults in custody, employees, contractors, and volunteers, and to promote ~~AIC~~ the rehabilitation of adults in custody, it is the policy of the Department of Corrections:¶

(a) That all AICs adults in custody are treated fairly, equitably, and that ~~staff~~ employee actions and decisions be consistent with the rules, policies, and procedures of the department.¶

(b) To permit and encourage AICs adults in custody to seek resolution of ~~issues or~~ disputes related to perceived instances of discriminatory practices or actions by an employee, contractor, or volunteer of the Department of Corrections or Oregon Corrections Enterprises by using the department's internal discrimination complaint review system established in these rules.¶

(c) To promptly and thoroughly ~~investigate~~ review any complaint alleging perceived discrimination and, if appropriate, take measures to resolve the dispute.¶

(d) No person shall be discriminated against, intimidated, threatened, coerced, or suffer any form of retaliation or reprisals, because the person has opposed unlawful discrimination, filed a complaint, testified, assisted, or participated in any manner, in any proceeding regarding unlawful discrimination or has attempted to do so.

Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

AMEND: 291-006-0011

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; to align with other department rules; and to update or add definitions.

CHANGES TO RULE:

291-006-0011

Definitions ¶

(1) Active Complaint: ~~An active grievance, discrimination complaint, or appeal of either, that is awaiting a response or is within the available timelines for appeal or return for correction.~~¶

(2) Adult in Custody (AIC): ~~A~~For the purposes of these rules, a person incarcerated or detained in a correctional facility who is accused of, convicted of, or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a diversion program.¶

(3) Adult in Custody Complaint Review Committee (AICCRC): ~~A multi-disciplinary team chaired by the Statewide Agency Grievance and Discrimination Complaint Coordinator designated by the Inspector General and made up of AIC grievance coordinators, institution discrimination complaint coordinators, institution grievance coordinators, and department subject matter experts.~~¶

(4) Agency Grievance and Discrimination Complaint Coordinators, and department subject matter expert: An employee designated by the Inspector General to chair the Adult in Custody Complaint Review Committee (AICCRC) and provide statewide program oversight, coordination, and direction to institution grievance and discrimination complaint coordinators and department employees, managers, and administrators relating to the adult in custody grievance and discrimination complaint programs.¶

(45) Communication: A process by which information is exchanged between individuals, usually through verbal or written message.¶

(56) Communication Form: An official Department of Corrections form commonly referred to as a "kyte" or "kite." The form is designed for ~~AIC use in use by adults in custody for~~ communicating with ~~DOC~~department employees, volunteers, or contractors and allows employees, volunteers, or contractors to respond in writing to the adult in custody, when appropriate, ~~to the AIC.~~¶

(67) Contractor: Any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under any department-sanctioned assignment to provide services or support to department programs.¶

(78) Court Name: ~~The AIC name as established and used by the Department of Corrections for use on the AIC's case file, identification card, medical file, etc., based on the name provided in the first judgment in the custody cycle sentencing an AIC to the Department of Corrections custody.~~For the purposes of these rules, the definition of "court name" is defined in OAR 291-100 Admission, Sentence Computation, and Release.¶

(89) Department of Corrections (DOC) Employee (Employee): Any person employed full-time, part-time, or under temporary appointment by the Department of Corrections. ¶

~~(910) Disability: W~~Per ORS 659A.104, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment. This definition is to be construed consistently with ORS 659A.104.¶

(101) Discrimination Complaint: ~~A written complaint submitted by an AIC pursuant to adult in custody in accordance with the Department's Rules on the Discrimination Complaint Review System (OAR 291-006).~~¶

~~(112) Discrimination Complaint Coordinator: An employee who is assigned by the functional Unit Manager to review and investigate incidents of perceived discrimination. In a DOC facility, the discrimination complaint coordinator may also be the grievance coordinator.~~¶

(12) Functional Unit Manager: ~~A DOC Employee; Any person within the Department of Corrections who reports to either to the Director, the Deputy Director, an Assistant Director, or an administrator; and who has responsibility for the delivery of program services or the coordination of program operations. In a correctional facility, the functional unit manager is the superintendent.~~¶

(13) Grievance: ~~A written complaint submitted by an AIC pursuant to these rules.~~adult in custody in accordance with the department's rules on Grievance Review System (OAR 291-109).¶

(14) Institution AIC ADA Coordinator: ~~DOC employee(s) at each institution or facility assigned to coordinate efforts to comply with and carry out responsibilities under the Americans with Disabilities Act with regards to AICs, and to respond to AIC ADA grievances.~~The department employee or designee assigned by the functional unit manager to coordinate compliance with and carry out responsibilities under the Americans with Disabilities Act regarding access to department programs, services, and activities within their respective functional unit.¶

(15) Institution Discrimination Complaint Coordinator: ~~The department employee or designee assigned by the functional unit manager to coordinate discrimination complaint processes and communicate about discrimination~~

complaint related matters within their respective functional unit. ¶

(16) Institution Grievance Coordinator: The department employee or designee assigned by the functional unit manager to coordinate grievance processes and communicate about grievance related matters within their respective functional unit. ¶

(157) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. ¶

(168) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. ¶

(17) Statewide Grievance and Discrimination Complaint Coordinator: An employee designated by the Inspector General to chair the AICCRC and provide statewide program oversight, coordination and direction to DOC facility grievance/discrimination complaint coordinators and DOC staff, managers and administrators relating to the AIC grievance and discrimination complaint programs. ¶

(189) Vendor: A person or company contracted to provide services directly for sale to AICs adults in custody through the department, (for example, companies providing telephone services). ¶

(1920) Volunteer: A person who, with prior approval from the department, donates time, knowledge, skills, or effort to the department, Oregon Corrections Enterprises, or other state agency to enhance the mission, activities, and programs of the department.

Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075, ORS 179.040

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

AMEND: 291-006-0050

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; and to align with other department rules.

CHANGES TO RULE:

291-006-0050

Discrimination Complaint and Discrimination Complaint Appeal Timelines

(1) Discrimination complaints must be received by the institution discrimination complaint coordinator within 14 calendar days ~~from the date of the incident giving rise to~~ alleged in the discrimination complaint unless the AI adult in custody can satisfactorily demonstrate why the discrimination complaint could not be timely filed. Untimely discrimination complaints will be denied and returned to the AI adult in custody with a statement of the rule. ¶

(2) A discrimination complaint response by the functional unit manager or designee will be sent to the AI adult in custody within 70 calendar days from the date the discrimination complaint was accepted by the institution discrimination complaint coordinator, unless further ~~investigation is necessary~~ review is necessary to fully respond to the adult in custody's discrimination complaint. ¶

(3) Discrimination complaint appeals must be received by the institution discrimination complaint coordinator within 14 calendar days from the date ~~that~~ the functional unit manager's ~~initial~~ discrimination complaint response was sent to the AI adult in custody unless the adult in custody can satisfactorily demonstrate why the discrimination complaint appeal could not be timely filed. Untimely ~~initial~~ discrimination complaint appeals will be denied and returned to the AI adult in custody with a statement of the rule. ¶

~~(4) An untimely discrimination complaint appeal will be denied. ¶~~

~~(5) Discrimination complaint appeals will be responded to within 70 calendar days from the date the discrimination complaint appeal was accepted, unless further investigation is necessary. ¶~~

~~(6) Discrimination complaints, discrimination complaint appeals, or responses may be consolidated by the department review is necessary to fully respond to the adult in custody's discrimination complaint appeal. ¶~~

~~(7.5) If the deadline for submitting a discrimination complaint or discrimination complaint appeal falls on a weekend or legal holiday, that discrimination complaint or discrimination complaint appeal will be deemed timely if the discrimination complaint or discrimination complaint appeal form is timely dated by the AI adult in custody and the institution discrimination complaint coordinator receives the discrimination complaint or discrimination complaint appeal during the first business day following the weekend or legal holiday in which the deadline passed. ¶~~

~~(6) Discrimination complaints, discrimination complaint appeals, or responses to either may be consolidated by the department.~~

Statutory/Other Authority: ORS 179.040, 179.321, 423.07520, 423.0230, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.07520, 423.0230, 423.075

AMEND: 291-006-0055

RULE SUMMARY: Amends rule to remove PREA-related discrimination complaints concerning sexual harassment and sexual abuse in order to streamline the PREA reporting process through the Discrimination Complaint Review System; to remove language no longer needed; to clarify these rules and for consistency throughout these rules; and to align with other department rules.

CHANGES TO RULE:

291-006-0055

Discrimination Complaint and Discrimination Complaint Appeal Submission Limits

(1) An At-Cadult in custody shall not have ~~no~~ more than four active complaints (discrimination complaints, grievances, or appeals from either) at any time. Any discrimination complaint or discrimination complaint appeal submitted ~~that exceeds~~ that limit will be found to be an improper use of the ~~grievance and~~ discrimination complaint review or grievance review systems and returned to the At-Cadult in custody with a statement of the rule. ¶

(2) An At-Cadult in custody may not submit ~~no~~ more than a combined total of four initial discrimination complaints and At-Cgrievances in any calendar month. ¶

(3) ~~Emergency grievances as defined under OAR 291-109-0110, sexual harassment~~ For the purposes of these rules, an emergency grievance, as defined under in OAR 291-109-0110 and sexual abuse grievances submitted under OAR 291-109-0245 (or any appeal of either) are (12), or any appeal regarding an emergency grievance, is not counted when determining, for purposes of this rule, the number of active complaints or the number of submitted discrimination complaints or grievances within any calendar month. ¶

(4) Any discrimination complaint or grievance (or appeal of either) received that causes the At-Cadult in custody to exceed the limits described in OAR 291-006-0055-(1) or (2) will be considered an improper use of the discrimination complaint review and grievance review systems. ¶

~~(5) When determining the total number of active complaints, the Department will not count any complaint (grievances, discrimination complaints, or appeals of either) submitted prior to the first effective date of this rule.~~

Statutory/Other Authority: ORS 179.040, 179.321, 179.360, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 179.360, 423.020, 423.030, 423.075

AMEND: 291-006-0060

RULE SUMMARY: Amends rule to clarify the circumstances under which an adult in custody may file more than one accepted discrimination complaint or grievance regarding a single incident; to update or correct rule names; to clarify the process for discrimination complaints related to a claim of sexual harassment or sexual abuse; to clarify these rules and for consistency throughout these rules; and to align with other department rules.

CHANGES TO RULE:

291-006-0060

Discrimination Complaint and Discrimination Complaint Appeal Submission Requirements

(1) An ~~AIC~~adult in custody who believes they have been subjected to unlawful discrimination by the department or by an employee, contractor, or volunteer of the Department of Corrections or Oregon Corrections Enterprises on the basis of race, color, national origin, religion, gender, sex, sexual orientation, marital status, age, disability, or familial status, may seek resolution of their complaint ~~or issue~~ through the department's internal discrimination complaint process ~~by completing the review system by submitting a written discrimination complaint to the institution discrimination complaint coordinator using a department's approved discrimination complaint form and submitting it to the design~~ in accordance with these rules. As with informal communications, adults in custody shall use a civil and respectful tone and manner in their written ~~discrimination complaint coordinators to attempt to resolve the dispute.~~

(a) Instructions for filing a discrimination complaints and discrimination complaint appeals are found on the reverse side of the ~~AIC discrimination complaint forms~~, or the ~~AIC~~adult in custody may contact the institution discrimination complaint coordinator or the law library for assistance.

(b) Functional unit managers or designees shall ensure ~~the~~ approved AIC discrimination complaint and discrimination complaint appeal forms are readily available to AICs in DOC ~~adults in custody in Department of Correctionals facilities.~~

(2) An ~~AIC~~adult in custody must use their ~~DOC~~court name when submitting a discrimination complaint or discrimination complaint appeal, which must be entered in the designated "Name" portion of ~~the~~ a discrimination complaint or discrimination complaint appeal form. A secondary name an ~~AIC~~adult in custody is known by may also be listed underneath their court name on ~~the~~ a discrimination complaint or discrimination complaint appeal form by adding "AKA/aka" (or "also known as") before the additional name.

(3) Discrimination complaints and discrimination complaint appeals must be legible and written within the appropriate space provided. A discrimination complaint or discrimination complaint appeal may be up to three pages (single-sided) in length. An ~~AIC~~adult in custody must use a discrimination complaint form ~~for each page of~~ their discrimination complaint appeal for each page of a discrimination complaint or discrimination complaint appeal. Discrimination complaints and discrimination complaint appeals that are not legible or contain multiple sentences per line will be returned to the ~~AIC~~adult in custody for correction.

(4) A discrimination complaint must include a complete description of the incident, issue, action, or application of rule that directly impacted the submitting AIC ~~and how the AIC~~adult in custody ~~and how the adult in custody~~ believes it has subjected them to discrimination on the basis of race, color, national origin, religion, gender, sex, sexual orientation, marital status, age, disability, or familial status.

(5) An ~~AIC~~adult in custody may only submit supporting documentation ~~only~~ if it directly relates to the discrimination complaint ~~or discrimination complaint appeal~~. Any supporting documentation should be attached and submitted with the discrimination complaint and discrimination complaint appeal. An adult in custody may submit no more than five pages (single-sided) of supporting documentation per discrimination complaint or discrimination complaint appeal. Communication forms seeking a response should not be attached to a discrimination complaint or discrimination complaint appeal and should be submitted separately.

(6) ~~An AIC may submit only their signature on discrimination complaint or appeal forms and all pages of the discrimination complaint or appeal must be signed and dated.~~

(7) ~~If an AIC cannot complete the~~ an adult in custody cannot complete a discrimination complaint or discrimination complaint appeal form due to physical or mental impairments or language barriers, the ~~AIC~~adult in custody may contact the legal law library for assistance. ~~An AIC may also contact the~~, institution discrimination complaint coordinator, or institution ADA coordinator to request assistance.

(87) An ~~AIC~~adult in custody may not write a discrimination complaint ~~for another AIC~~ or discrimination complaint appeal for another adult in custody unless authorized by the institution discrimination complaint coordinator or institution ADA coordinator. However, the ~~AIC~~ submitting the adult in custody submitting a discrimination complaint or discrimination complaint appeal form must still sign the form.

(8) An adult in custody may submit only their signature on discrimination complaint or discrimination complaint appeal forms and all pages of the discrimination complaint or discrimination complaint appeal must be signed and

dated.

(9) Discrimination complaints and discrimination complaint appeal forms with foreign substances or potential biological hazards on them will not be processed. They will be disposed of in accordance with the institution's procedure on biological hazards. If the AIC's name and adult in custody's name and state identification number (SID) is known, the institution discrimination complaint coordinator will notify the AIC/adult in custody of the actions taken.

(10) Discrimination complaints and discrimination complaint appeal forms containing sexually explicit, derogatory, or offensive artwork, drawings, or other sexually explicit material will be returned to the AIC for correction.

~~(11) An AIC may not file more than one accepted discrimination complaint regarding a single incident.~~ adult in custody for correction.

~~(12) Discrimination complaint forms and discrimination complaint appeal forms containing hostile, sexual, abusive, or threatening language or gestures towards or about another person will be returned to the AIC for correction.~~

~~(13) An AIC/adult in custody for correction.~~

(12) An adult in custody may not file more than one accepted discrimination complaint or grievance regarding a single incident or issue, regardless of incident date, unless substantial new information is available about the incident or issue.

(13) An adult in custody may file a discrimination complaint on the same incident or issue as raised in a previously filed complaint provided:

(a) There is another incident and occurrence of the same incident or issue;

(b) New information is available about the issue, which incident or issue; and

(c) This new information would result in a different response than has already been provided, at the discretion of the discrimination compla.

~~(14) An adult int coordinator.~~

~~(14) An AIC/Custody cannot file a discrimination complaint regarding the following:~~

~~(a) Actions or decisions on any matter that is outside the jurisdiction of the department (for example, actions by the Board of Parole and Post-Prison Supervision);~~

~~(b) Any matter that may be reviewed through a separate review process under the Department's rules. Examples include, but are not limited to, the review processes set out in the following Department rules:~~

~~(A) Segregation (Administrative Housing) - (OAR 291-046)~~

~~(B) Alternative Incarceration Programs - (OAR 291-062)~~

~~(C) Classification - (OAR 291-104)~~

~~(D) Cost of Care Reimbursement - (OAR 291-203)~~

~~(E) Discrimination Complaints Grievance Review System - (OAR 291-006109)~~

~~(F) Informed Consent to Treatment with Psychotropic Medication - (OAR 291-064)~~

~~(G) Mail - (OAR 291-131)~~

~~(H) Prison Term Modification - (OAR 291-097)~~

~~(I) Security Threat Group Management - (OAR 291-069)~~

~~(J) Trust Accounts - (OAR 291-158)~~

~~(K) Visiting - (OAR 291-127);~~

~~(c) Daily fails as defined in the DOC rule on Performance Recognition and Award System - (OAR 291-077-0033);~~

~~(d) Conduct orders, investigations leading to a conduct order, or any conduct order sanction, except where a pattern of bias can be articulated;~~

~~(e) Misconduct reports, investigations leading to or arising from misconduct reports, or disciplinary hearings, findings, and sanctions, except where a pattern of bias can be articulated;~~

~~(f) Any matter that does not directly and personally affect the AIC/adult in custody;~~

~~(g) Any matters in which the AIC/adult in custody lacks personal knowledge of the incident or issue;~~

~~(h) Claims or issues the AIC/the adult in custody has pursued or is pursuing in pending litigation in state or federal courts; and~~

~~(i) The processing of or response to, or late response to discrimination complaints, discrimination complaint appeals, grievances, grievance appeals, or other separate review processes.~~

Statutory/Other Authority: ORS 179.040, 179.321, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.020, 423.030, 423.075

AMEND: 291-006-0065

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; to further define process; to reorganize; and to align with other department rules.

CHANGES TO RULE:

291-006-0065

Discrimination Complaint and Discrimination Complaint Appeal General Processing Standards

(1) The institution discrimination complaint coordinator shall date stamp the discrimination complaint or discrimination complaint appeal form upon receipt. After the discrimination complaint or discrimination complaint appeal form has been date-stamped and recorded, the AIC adult in custody will be issued a return receipt, and if accepted, the ~~coordinator will direct that an investigation occur~~ institution discrimination complaint coordinator will assign the discrimination complaint or discrimination complaint appeal for administrative review. ¶

(2) Discrimination ~~e~~Complaint and ~~d~~Discrimination ~~e~~Complaint ~~a~~Appeals ~~r~~Returned for ~~e~~Correction: ¶

(a) An AIC adult in custody may elect to resubmit a discrimination complaint or discrimination complaint appeal that has been returned ~~for correction to the AIC because it~~ to the adult in custody for correction because the discrimination complaint or discrimination complaint appeal does not comply with these rules. ¶

(b) The discrimination complaint or discrimination complaint appeal may only be resubmitted twice and must be received by the institution discrimination complaint coordinator within 14 calendar days from the date when the discrimination complaint or discrimination complaint appeal was originally returned to the AIC. ¶

~~(c) If rewritten~~ adult in custody. ¶

~~(c) If corrected and resubmitted by the adult in custody,~~ the return receipt and original discrimination complaint or discrimination complaint appeal must also be attached. ¶

(3) An AIC ~~may withdraw a discrimination complaint by submitting a written request to the~~ institution discrimination complaint coordinator determines the adult in custody has pursued or is pursuing the claim through pending litigation in ~~stitution discrimination complaint coordinator at any time during~~ ate or federal courts, the discrimination complaint process will cease, and the discrimination complaint ~~process.~~ For discrimination complaints that have been withdrawn may only be reopened upon written request, at the discretion of ~~t appeal will be closed and returned to the adult in custody.~~ The institution discrimination complaint coordinator. ¶

~~(4) A denied discrimination complaint is not subject to further review or appeal will retain a copy of the adult in custody's discrimination complaint or discrimination complaint appeal and document the date and reason for closure of the complaint.~~ ¶

~~(5) If at any time the~~ An adult in custody may withdraw an accepted discrimination complaint ~~oor~~ dinator determines that the AIC is pursuing the complaint or issue in pending litigation in state or federal courts, the discrimination complaint process will cease and the complaint will be returned to the AIC. T scrimination complaint appeal by submitting a written request to the institution discrimination complaint coordinator at any time during the discrimination complaint process. Discrimination complaints or discrimination complaint appeals that have been withdrawn may only be reopened upon written request within 14 calendar days from when the adult in custody requested to withdraw the discrimination complaint ~~oor~~ dinator will r etscrimination complaint a copy of the AIC's ppel. ¶

~~(5) A denied discrimination complaint and document the date and reason for return of the complaint.~~ ¶

~~(6) Once an AIC~~ or discrimination complaint appeal is not subject to further review or appeal. ¶

(6) Once an adult in custody's request for resolution is granted, ~~then~~ the department may, in its sole discretion, upon approval of the Inspector General or designee, discontinue further processing of the discrimination complaint and notify the AIC or discrimination complaint appeal and notify the adult in custody of the conclusion of the administrative review process. ¶

(7) If an AIC adult in custody has filed a Notice of Tort Claim with the Oregon Department of Administrative Services while an AIC the adult in custody has an active discrimination complaint, ~~and the primary remedy sought by the discrimination complain or discrimination complaint appeal on the same incident or issue, and the primary remedy sought~~ is monetary relief, ~~then~~ the department may, in its sole discretion, upon approval of the Inspector General or designee, discontinue further processing of the discrimination complaint and notify the AIC and notify the adult in custody of the conclusion of the administrative review process. ¶

(8) Once an AIC adult in custody has released from the custody of the Department of Corrections, any ~~pending~~ active discrimination complaints or discrimination complaint appeals will be ~~completed~~ responded to and held on file unless other arrangements have been made with the institution discrimination complaint coordinator prior to release. No further discrimination complaints or discrimination complaint appeals will be accepted. ¶

(9) If a discrimination complaint or discrimination complaint appeal is received by the institution discrimination complaint coordinator after the AIC adult in custody has released from the custody of the Department of

Corrections, the ~~complaint~~ discrimination complaint or discrimination complaint appeal no longer complies with these rules and will ~~not be further processed~~ be denied.

Statutory/Other Authority: ORS 179.040, 179.321, 423.0320, 423.0230, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.0320, 423.0230, 423.075

AMEND: 291-006-0070

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; to further define process; to reorganize; and to align with other department rules.

CHANGES TO RULE:

291-006-0070

Discrimination Complaint Appeal Process

(1) An ~~AIC~~Adult in custody may appeal the ~~initial~~ discrimination complaint response using a discrimination complaint appeal form. ¶

(a) The discrimination complaint appeal must include the original discrimination complaint, attachments, and ~~staff~~employee response(s). ¶

(b) The discrimination complaint appeal must comply with the timeframes set forth in OAR 291-006-0050. ¶

(c) The scope of the original discrimination complaint cannot be expanded on appeal. ¶

(2d) No additional information may be submitted, ~~unless the AIC can clearly articulate how~~ with the discrimination complaint appeal unless the information was unavailable to the ~~AIC~~Adult in custody at the time the original discrimination complaint was filed or if the ~~initial~~ discrimination complaint response noted that the information was missing and the submitted information is directly related to the alleged incident or issue being reviewed. ¶

(32) After the discrimination complaint appeal has been date stamped and recorded, the ~~AIC~~Adult in custody will be issued a return receipt. If accepted, the discrimination complaint appeal will be forwarded to the Adult in Custody Complaint Review Committee (AICCRC). ¶

(43) The Adult in Custody Complaint Review Committee (AICCRC) will review all accepted appeals and make a recommendation to the Inspector General or designee. ¶

(54) An ~~AIC~~Adult in custody's discrimination complaint appeal will be responded to by the Inspector General or designee upon review of the ~~AIC~~Adult in custody's complaint, documentation, and the recommendation of the Adult in Custody Complaint Review Committee (AICCRC) within the timeframes set forth in OAR 291-006-0050.

¶
(65) The Inspector General or designee's response is final and not subject to further review. ¶
(7) If an ~~AIC~~ has filed a Notice of Tort Claim with the Oregon Department of Administrative Services while an ~~AIC~~ has an active discrimination complaint appeal, and the primary remedy sought by the discrimination complaint is monetary relief, then DOC may, in its sole discretion, discontinue further processing of the discrimination complaint appeal and notify the ~~AIC~~ of the conclusion of the administrative review process.

Statutory/Other Authority: ORS 179.040, 179.321, 423.0320, 423.0230, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.0320, 423.0230, 423.075

AMEND: 291-006-0075

RULE SUMMARY: Amends rule to remove PREA-related discrimination complaints concerning sexual harassment and sexual abuse in order to streamline the PREA reporting process through the Discrimination Complaint Review System; to clarify these rules and for consistency throughout these rules; to further define process; to reorganize; and to align with other department rules.

CHANGES TO RULE:

291-006-0075

Improper Use of the Discrimination Complaint Review System

(1) An Adult in custody improperly uses the discrimination complaint review system when they:¶

(a) Include language that is identified as posing a criminal threat; ¶

(b) Repeatedly submit ~~grievances~~, discrimination complaints, ~~grievances~~, or appeals of either, that do not comply with the requirements set forth in ~~these~~ rules, including, but not limited to, multiple resubmissions of the same discrimination complaint or discrimination complaint appeal, multiple untimely discrimination complaints or discrimination complaint appeals, and multiple resubmissions of uncorrected discrimination complaints or discrimination complaint appeals; ¶

(c) Submit ~~grievances~~, discrimination complaints, ~~grievances~~, or appeals of either, in excess of the allowed limitations set forth in OAR 291-006-0055. ¶

(2) Administrative ~~a~~ Action for i Improper ~~u~~ Use of the d Discrimination ~~e~~ Complaint s Review System:¶

(a) If an Adult in custody demonstrates a pattern of improper use of the discrimination complaint review system, the functional unit manager or designee will notify the Adult in custody in writing that their actions are not in compliance with the department's rules on Discrimination eComplaint and grievance rules Review System (OAR 291-006) or Grievance Review System (OAR 291-109). From the date of the notice, the Adult in custody will have 35 calendar days to bring their discrimination complaint submissions into compliance with the rules or the Adult in custody will be subject to restriction of their access to the discrimination complaint review and grievance ~~complaint~~ review systems as specified in this rule. ¶

(b) Adults in custody who continue to improperly use the discrimination complaint review system will be notified by the Inspector General or designee, in writing, that such actions are creating an administrative burden at the expense of legitimate complaints. From the date of this notification, due to their continued improper use of the discrimination complaint review system, the Adult in custody will be limited to submitting no more than two active discrimination complaints or grievances at a time, excluding emergency ~~grievances, sexual harassment grievances and sexual abuse~~ grievances. Any discrimination complaints or grievances submitted that are not in compliance with this restriction will not be processed. ¶

(c) Once the Adult in custody has demonstrated compliance for 35 calendar days, the Adult in custody may request removal of the administrative restriction by writing to the institution ~~discrimination/~~ complaint coordinator or institution grievance coordinator who will forward the request to the Adult in Custody Complaint Review Committee (AICCRC) for review.¶

(d) An Adult in custody's request for removal of the administrative restriction will be responded to by the Inspector General or designee upon review of the Adult in custody's request and the recommendation of the Adult in Custody Complaint Review Committee (AICCRC) within 70 calendar days from the date the request was received. The administrative restriction will remain in effect until such time it is reviewed and removed by the Inspector General or designee.¶

(e) Administrative restrictions are not subject to review through the discrimination complaint ~~or~~ review and grievance process ~~review~~ systems. ¶

(f) Records of active and inactive notifications of improper use of the discrimination complaint review system will be maintained by the institution discrimination complaint coordinator or institution grievance coordinator and will be enforced throughout the department, regardless of the Adult in custody's facility.

Statutory/Other Authority: ORS 179.040, 179.321, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.020, 423.030, 423.075

ADOPT: 291-006-0078

RULE SUMMARY: Adopts rule to establish a streamlined process for discrimination complaints related to a claim of sexual harassment or sexual abuse.

CHANGES TO RULE:

291-006-0078

Discrimination Complaints Related to Sexual Abuse or Sexual Harassment

- (1) A discrimination complaint related to a claim of sexual harassment or sexual abuse will be immediately subject to investigation that is outside the department's administrative remedies process.¶
- (2) For purposes of these rules, the term "sexual harassment" is defined in OAR 291-109-0110(20), and the phrase "related to a claim of sexual harassment or sexual abuse" includes claims of sexual abuse, fear of sexual abuse, or allegations of mishandling of an incident, issue, or investigation of sexual abuse such as retaliation for reporting or retaliation for cooperating with a sexual abuse investigation.¶
- (3) For purposes of these rules, "sexual abuse" is defined as sexual abuse of an adult in custody by another adult in custody and sexual abuse of an adult in custody by an employee.¶
- (a) The term "sexual abuse" includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence or is unable to consent or refuse.¶
- (A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;¶
- (B) Contact between the mouth and the penis, vulva, or anus;¶
- (C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and¶
- (D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.¶
- (b) Sexual abuse of an adult in custody by an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises includes any of the following acts, with or without consent of the adult in custody, detainee, or resident:¶
- (A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;¶
- (B) Contact between the mouth and the penis, vulva, or anus;¶
- (C) Contact between the mouth and any body part where an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises has the intent to abuse or arouse. ¶
- (D) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises has the intent to abuse, arouse, or gratify sexual desire; ¶
- (E) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks that is unrelated to the official duties or where an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises has the intent to abuse, arouse or gratify sexual desire;¶
- (F) Any attempt, threat, or request by an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises to engage in the activities described by paragraphs (A) - (E) of this section;¶
- (G) Any display by an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises of their uncovered genitalia, buttocks, or breast in the presence of an AIC, detainee, or resident, and ¶
- (H) Voyeurism by an employee, contractor or volunteer of the Department of Corrections or Oregon Corrections Enterprises. Voyeurism by an employee, contractor or volunteer means an invasion of the adult in custody's privacy by an employee, contractor, or volunteer for reasons unrelated to official duties, such as peering at an adult in custody who is using a toilet in the their cell to perform bodily functions; requiring an adult in custody to expose their buttocks, genitals, or breasts; or taking images of all or part of an adult in custody's naked body or of an adult in custody performing bodily functions.¶
- (4) A discrimination complaint related to a claim of sexual harassment or sexual abuse will not be considered or counted as a "grievance" or "discrimination complaint" under the department's rules on Grievance Review System (OAR 291-109) or Discrimination Complaint Review System (OAR 291-006).
- Statutory/Other Authority: ORS 179.040, 179.321, 423.020, 423.030, 423.075
- Statutes/Other Implemented: ORS 179.040, 179.321, 423.020, 423.030, 423.075

AMEND: 291-006-0080

RULE SUMMARY: Amends rule to clarify these rules and for consistency throughout these rules; and to align with other department rules.

CHANGES TO RULE:

291-006-0080

~~Recordkeeping of~~ Retention of Adult in Custody Discrimination Complaints

(1) The institution discrimination complaint coordinator will retain a file copy of discrimination complaints with pertinent documents, including appeals, in accordance with the department's approved retention schedule for these records. ¶

(2) ~~AIC~~ Discrimination complaints will not be filed in the ~~AIC~~ adult in custody's working file. ¶

(3) ~~AIC~~ Discrimination complaints will not be filed in the ~~staff~~ employee's working file.

Statutory/Other Authority: ORS 179.040, 179.321, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 179.321, 423.020, 423.030, 423.075