

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED
03/27/2024 11:28 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: CORRECTED: Prohibited Conduct and Processing Disciplinary Actions

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/15/2024 5:00 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.

CONTACT: Julie Vaughn
971-701-0139
julie.a.vaughn@doc.oregon.gov

3601 State St
Salem, OR 97301

Filed By:
Julie Vaughn
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/26/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Julie Vaughn

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-277-2160

SPECIAL INSTRUCTIONS:

IMPORTANT NOTE: This hearing replaces the hearing for these rules scheduled for April 2, 2024 at 1:30 PM. The hearing scheduled for 1:30 PM will not occur.

Remote Hearing Details for Hearing scheduled on 4/26/2024 at 10:00 AM:

Phone Conference ID: 839 649 014#

Meeting URL: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MWM3ZDgxNGUtZTNiYy00ZmViLWE5ZTYtZTM4Mjk1NjYwY2Jm%40thread.v2/0?context=%7b%22Title%3a%22Prohibited%20Conduct%20and%20Processing%20Disciplinary%20Actions%22%2c%22Organizer%3a%22Julie%20Vaughn%22%2c%22StartTime%3a%2204/26/2024%2010%3a00%3a00%22%2c%22EndTime%3a%2204/26/2024%2011%3a00%3a00%22%2c%22Phone%3a%22971-277-2160%22%2c%22MeetingID%3a%22839649014%22%7d

3792-477b-abf5-ff27250dd659%22%2c%22Organizer%3a%22Julie%20Vaughn%22%2c%22StartTime%3a%2204/26/2024%2010%3a00%3a00%22%2c%22EndTime%3a%2204/26/2024%2011%3a00%3a00%22%2c%22Phone%3a%22971-277-2160%22%2c%22MeetingID%3a%22839649014%22%7d

Microsoft Teams Meeting ID: 249 089 091 522

Passcode: fjHJ45

Only those registered to provide testimony will be called to testify. To register to testify for this hearing, please contact: DOC.RulesCoordinator@doc.oregon.gov at least 24 hours prior to the start of the hearing. Those providing testimony will be provided an opportunity to speak depending on the number of registrants testifying. Be prepared to summarize your comments to fit within the allotted time. Submit any written materials you would like to submit for this meeting and for the record to the DOC Rules Coordinator, including a contact list.

To join the hearing in listen-only mode, call 971-277-2160, Phone conference ID: 839 649 014#.

The hearing will close no later than 11:00 AM and may close earlier if all individuals that have registered to testify have had the opportunity to submit their comments into the record. You may also send hard copy written materials to Rules Office, 3723 Fairview Industrial Dr SE #200, Salem, OR 97331. All hard-copy written comments must be received by the close of the comment period. For accommodations or questions, please contact the DOC Rules Coordinator at least 72 hours prior to the hearing.

NEED FOR THE RULE(S)

The purpose of these rules is to define the rules of conduct governing adults in custody and outline the procedures to be followed in processing disciplinary action(s). These revisions standardize definitions of terms across Department of Corrections rules; adopt a definition for "digital currency"; and update misconduct violations to address trends affecting the safety and security of our facilities. These updates to Violations Involving Property will allow the department to hold AICs accountable when they destroy items owned by a vendor or transfer digital currency to another for the benefit of any AIC (not including authorized transfers or AIC Trust Account funds). The revisions to Violations Against Persons will allow us to hold AICs accountable when they engage in assaultive behavior acting in concert with one or more AIC(s), thereby improving safety and security for staff and adults in the custody of the department.

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 that the adoption of the proposed amendments to OAR 291-105 Prohibited Conduct and Processing Disciplinary Actions will have a positive impact on racial equity in this state.

Adults in custody, who are disproportionately represented by race when compared to the communities within the State of Oregon, are subject to heightened and increased risk of physical and personal harm presented by the introduction of contraband, especially dangerous controlled substances. The Department of Corrections proposes a new rule, titled Unauthorized Transfer of Digital Currency, that will prohibit AICs from unauthorized transfers of "digital currency" (defined as including "any currency or stored value (including cryptocurrency) commonly held by a financial institution, payment service, or digital wallet"). The Department of Corrections knows that those types of transfers are commonly used to facilitate payments for the introduction of dangerous contraband into Department of Corrections facilities, which causes an increased risk of physical and personal harm to AICs. The proposed rule will help reduce unauthorized contraband, including dangerous controlled substances that present a physical hazard to potentially any person within a facility. In addition, the proposed rule will not apply to funds maintained in an AIC's trust account, or to legitimate transfers of "digital currency" that have been previously approved by a functional unit manager or designee. The Department of Corrections anticipates that the overall impact of the proposed rule will reduce the risk of contraband entering Department of Corrections facilities and have a positive impact on racial equity.

In addition, adults in custody, as compared to communities in the state, are subject to heightened and disproportionate risk of physical violence and physical injury through the assaultive behavior of other adults in custody. The proposed amendments include a new rule to lower that risk through a rule that will hold an adult in custody accountable at a higher level if that adult in custody acts in concert with one or more other AICs to engage in assaultive behavior. The department anticipates this rule will have a positive effect on racial equity protecting adults in custody from the risk of group assaultive activity.

The proposed amendments also include a change to clarify the disciplinary rules regarding mishandling of property. Under current rules, an adult in custody may be subject to a Property I violation for engaging in specified actions with "state-owned" or "employee-owned" property that exceeds \$100 in value. The proposed amendment would clarify that the rule also will apply to property belonging to contractors or volunteers who provide services to the state. The department's mission is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior, and to protect the safety and security of contractors and volunteers providing services

to the state, and to reduce or avoid disruptions caused by the damage or destruction of the property of contractors and volunteers. For these reasons, the department anticipates that these amendments will have no impact on racial equity in this state.

The proposed rule also includes some technical procedural amendments with clarifying language to definitions to align with department standards, and those technical amendments will have no impact on racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

Rule 291-105 changes for Prohibited Conduct and Processing Disciplinary Actions would include the following:

- Adds language that makes the act of damaging non-state property in excess of \$100 a Property I misconduct violation.
- Adds language that makes the act of transfers digital currency to another for the benefit of any adult in custody (AIC) an Unauthorized Transfer of Digital Currency (Major) violation.
- Adds language that makes the act of engaging in assaultive behavior acting in concert with one or more AIC(s) an AIC Assault I misconduct violation.

The changes could impact the number of AICs currently being disciplined for both major and minor grid violations. An increase in the number of major violations could have an impact on the number of AICs housed in DSU (could require additional staff time or generate more overtime) as well as increasing fines that a violating AIC would have not otherwise had to pay to DOC prior to this rule change. An increase in the number of minor violations could result in a fine that an AIC would have not otherwise had to pay to DOC prior to this rule change.

If violations increase, there could be a fiscal impact on the department and on the AIC. It would be difficult to determine the exact cost of the increase due to a variety of factors including: the number of violations occurring in a biennium relating to the rule change, the timing in the biennium of the misconduct, DSU staffing levels at an institution, etc. For these reasons, the rule change is anticipated to have an indeterminate fiscal impact on the department and to AICs.

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. These changes are not anticipated to have an impact on other state agencies, local governments (the counties), or the general public.

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:

291-105-0010, 291-105-0015, 291-105-0028

AMEND: 291-105-0010

RULE SUMMARY: Amends rule to standardize definitions of terms across DOC rules; to clarify definitions; and to adopt definition for "digital currency".

CHANGES TO RULE:

291-105-0010
Definitions ¶¶

- (1) **Adjudicator:** The assigned employee within the facility responsible for the disposition of all informal hearings and minor misconduct reports that are to be adjudicated without a formal hearing. ¶¶
- (2) **Adult in Custody (AIC):** 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. For the purposes of these rules, AIC includes individuals who are in the legal custody of the Department of Corrections but are temporarily outside of the physical custody of the Department of Corrections for reasons that include, but are not limited to, transport, court proceeding, medical appointments, work assignment, programs, or interstate compact. AIC also includes those who have been released onto Short-Term Transitional Leave, Non-Prison leave, or ~~E~~emergency leave. ¶¶
- (3) **Attempt:** Conduct that constitutes a substantial step towards the commission of a rule violation. ¶¶
- (4) **Calendar Day:** All weekdays, weekends, and holidays. ¶¶
- (5) **Conduct Order:** An Oregon Department of Corrections form that allows for various interventions to affect positive behavioral change, and without the need for a disciplinary hearing, in accordance with OAR 291-105-0021(1). Restriction of an AIC's privileges through a conduct order can be for no more than 72 hours. ¶¶
- (6) **Conspiracy:** An agreement between an AIC and one or more persons to engage in, cause, or conceal a rule violation. ¶¶
- (7) **Contraband:** Any article or thing that an AIC is prohibited by statute, rule, or order from obtaining or possessing, that the AIC is not specifically authorized to obtain or possess, or that the AIC alters without authorization. ¶¶
- (8) **Controlled Substance:** A drug or its precursor as listed in ORS 475.005 through 475.999. ¶¶
- (9) **Dangerous or Deadly Weapon:** Any instrument, article, or substance specifically designed for or readily capable of causing death or serious physical injury. ¶¶
- (10) **Deadly Force:** Physical force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. ¶¶
- (11) **Department of Corrections Facility:** Any institution, facility, or ~~employee~~staff office, including the grounds, operated by the Department of Corrections. ¶¶
- (12) **Digital Currency:** Any currency or stored value (including cryptocurrency) commonly held by a financial institution, payment service, or digital wallet, and that may be transferred to another person by electronic or other means. Payment services or digital wallets include but are not limited to; CashApp, Venmo, Paypal, and Zelle. Digital currency excludes funds maintained by DOC in an AIC trust account) ¶¶
- (13) **Distribution:** The transfer of contraband from one person to another. This term includes smuggling or the deliberate destruction of evidence. ¶¶
- (13~~4~~) **Drugs:** Any controlled substance as listed in ORS 475.005 through 475.999. ¶¶
- (14~~5~~) **Electronic Communication Device:** A device designed to be used for or is readily capable of being used for making or receiving wireless communication transmissions. ¶¶
- (15~~6~~) **Employee:** Any person who is employed full time, part time, or under temporary employment by the Department of Corrections ~~or~~. For the purposes of these rules, this includes employees of Oregon Corrections Enterprises. ¶¶
- (16~~7~~) **Escape Device:** Any item designed for, physically altered for, or readily capable of being used to facilitate an escape from a secure housing unit, a facility, or from custody. ¶¶
- (17~~8~~) **Facility:** Any institution, facility, or employee office, including the grounds, that an AIC under the supervision of the Department of Corrections is assigned. ¶¶
- (18~~9~~) **Fine:** A monetary sanction imposed in accordance with these rules (OAR 291-105). AIC fines shall be deposited as established under ORS 421.068 as confiscated funds. ¶¶
- (19~~20~~) **Functional Unit:** Any organizational component within the Department of Corrections responsible for the delivery of program services or coordination of program operations. ¶¶
- (20~~1~~) **Functional Unit Manager:** Any person within the Department of Corrections who reports to either the Director, the Deputy Director, an Assistant Director, or an administrator, and ~~who~~ has responsibility for the delivery of program services or coordination of program operations. In a correctional setting the functional unit manager is the sSuperintendent. ¶¶
- (21~~2~~) **Good Cause:** Adequate or substantial grounds or reason to take (or not take) an action prescribed by law.

What constitutes good cause is usually determined on a case-by-case basis and is thus relative.¶

(223) Hearings Officer: A DOC employee assigned to review and adjudicate misconduct reports through a formal hearing.¶

(234) Intoxicant: Any substance, including but not limited to, unauthorized medication, alcoholic beverages, and inhalants, which causes a disturbance of mental or physical capacity resulting from the introduction of the substance in the body.¶

(245) Lesser Included Violation: Any violation which is a lesser degree of the charged violation (for example, AIC Assault III is a lesser included violation of AIC Assault II.)¶

(256) Local Jail: Any city or county lock-up or local correctional facility.¶

(267) Money: Cash, money orders, personal checks, warrants, certified checks, and other remittances.¶

(278) Non-Employee Service Provider (NSP): An individual who provides services or programs to the department or to AICs, including an individual who provides services or programs remotely, but not as a paid employee of the department. Examples of non-employee service providers include contractors, volunteers, mentors, criminal justice partners, and government agency partners.¶

(289) Non-Prison Leave: A period of leave preceding an established release date granted to AICs successfully completing the institution phase of an Alternative Incarceration Program. Non-Prison Leave is designed to provide AICs with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.751, ORS 421.508, ORS 421.510, and DOC rule 291-062 the department's rules on Alternative Incarceration Programs.¶
~~(29 (OAR 291-062).~~¶

(30) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with ~~policy~~, rule, or procedure during periods when the functional unit manager ~~is or officer-of-the-day are~~ not readily available.¶

(301) Order: Any direction given to an AIC that directs or forbids the doing of some act over which the AIC has control. An order may be written, verbal, or gestured communication (including all Department of Corrections rules; functional unit rules, and procedures; all federal, state, and local laws; conditions of leave; and court-ordered terms and conditions).¶

(312) Oregon Corrections Enterprises (OCE): A semi-independent state agency established under ORS 421.344 that is a non-Department of Corrections agency or division. For purposes of ~~this~~ these rules only, Oregon Corrections Enterprises shall not be considered an external organization.¶

(323) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms, or other physical methods used to restrain, subdue, control, or intimidate another person, or to compel another person to act in a particular way or to stop acting in a particular way.¶

(334) Physical Injury: Impairment of physical condition or substantial pain. An impairment of physical condition can include, but is not limited to, an abrasion, scrape, scratch, bruise, contusion, or swelling.¶

(345) Possession: To have physical possession of or otherwise exercise dominion or control over property.¶

(356) Public Safety Officer: Corrections officers, emergency medical dispatchers, emergency medical technicians, firefighters, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators, and regulatory specialists.¶

(367) Restitution: A monetary amount ordered in accordance with these rules (OAR 291-105). Restitution funds will be credited to the institution or program suffering fiduciary loss or cost from the AIC misconduct and shall be the actual cost incurred.¶

(378) Security Device: Any fixture, device, or tool, the purpose of which is to assist with safety or security.¶

(389) Security Threat Activity: AIC behavior that poses a significant threat to the ~~safe, and secure, or orderly~~ operation of a facility.¶

(3940) Security Threat Group (STG): Any group of two or more individuals who:¶

(a) Have a common name, identifying symbol, or characteristic, which serves to distinguish themselves from others; and¶

(b) Have members, affiliates, or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violate Department of Corrections rules; and¶

(c) Have the potential to act in concert to present a threat, or potential threat, to employees, non-employee service providers, public, visitors, AICs, or the ~~safe, secure, or and~~ orderly operation of the institution.¶

(401) Serious Physical Injury: Injury that creates a substantial risk of death, causes protracted disfigurement, impairment of health, loss or impairment of any bodily organ function, or death.¶

(412) Sexual Activity: Sexual contact includes, but is not limited to: contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person or of oneself, in a manner likely to cause abuse,

humiliation, harassment, or degradation to another person, or to cause sexual arousal, gratification, or desire excluding contact incidental to a physical altercation; and any other intentional touching to include kissing and fondling.¶

(423) Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature directed toward another, including, but not limited to, demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.¶

(434) Short-Term Transitional Leave: A period of leave granted to AICs preceding an established release date, granted in accordance with ORS 421.168 and ~~DOC rule 291-063~~ the department's rules on Short-Term Transitional Leave and Emergency Leaves, (OAR 291-063) to AICs for transitional opportunities that promote successful reintegration into the community.¶

(445) Working Day: Monday through Friday, excluding Saturday, Sunday, or legal holidays.¶

(456) Working File: Those documents maintained in a Department of Corrections facility, Community Corrections office, or functional unit for administrative, operational, or case management purposes.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075, 475.005

AMEND: 291-105-0015

RULE SUMMARY: Amends rule for grammatical fixes; to add rules around Violations Involving Property which will hold AICs accountable when they destroy items owned by a vendor; to add rules around Violations Involving Property which will hold AICs accountable when they transfer digital currency to another for the benefit of any AIC; and to add rules around Violations Against Persons which will hold AICs accountable when they engage in assaultive behavior acting in concert with one or more AIC(s).

CHANGES TO RULE:

291-105-0015

Rules of Misconduct ¶¶

(1) Violations Involving Property¶¶

(a) 1.01 Arson: An AIC commits Arson when that AIC starts an unauthorized fire or causes an explosion.¶¶

(b) 1.05 Property I: An AIC commits Property I when that AIC, except as authorized by an employee, destroys, abuses, alters, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce issued property in a timely manner; and:¶¶

(A) 1.05.01 The state-owned or employee-owned property involved exceeds \$100 in value; or¶¶

(B) 1.05.02 The misconduct involves the functioning of a security device; or¶¶

(C) 1.05.03 The misconduct involves a threat to the safety, security, or orderly operation of a facility; or¶¶

(D) 1.05.04 The misconduct includes possession of an unauthorized or altered blade, such as a razor blade or pencil sharpener; or¶¶

(E) 1.05.05 The property involved exceeds \$100 in value, is not state-owned property, and is owned by or belongs to any person or agency that provides services to the state.¶¶

(c) 1.06 Property II (minor violation): An AIC commits Property II when that AIC, except as authorized by an employee, destroys, alters, abuses, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce issued property in a timely manner.¶¶

(d) 1.10 Contraband I: An AIC commits Contraband I when that AIC:¶¶

(A) 1.10.01 Possesses any intoxicant or is intoxicated; or¶¶

(B) 1.10.02 Possesses any drug paraphernalia; or¶¶

(C) 1.10.03 Has gone through any authorized screening process such as urinalysis, breathalyzer, oral swabs, etc. and has been found to have any controlled substance or intoxicant in urine, blood, or other body parts; or¶¶

(D) 1.10.04 Fails to provide or refuses to submit an acceptable sample for testing or submits an unacceptable sample for testing; or¶¶

(E) 1.10.05 Alters, substitutes, contaminates, or destroys a urine sample; or¶¶

(F) 1.10.06 Possesses money in the amount of \$10 or more (this excludes trust account funds); or¶¶

(G) 1.10.07 Possesses illegitimately obtained items or trust account funds valuing \$100 or more.¶¶

(e) 1.11 Contraband II: An AIC commits Contraband II when that AIC possesses contraband, including that listed in Contraband I and Contraband III, that creates a threat to the safety, security, or orderly operation of a facility, including but not limited to:¶¶

(A) 1.11.01 Tobacco or smoking paraphernalia, unauthorized medication, items of barter, checks, money under \$10, or unauthorized sexually explicit material; or¶¶

(B) 1.11.02 Items that were obtained by threats of or actual theft, forgery, or coercion.¶¶

(f) 1.12 Contraband III (minor violation): An AIC commits Contraband III when that AIC possesses contraband, including that listed in Contraband I and Contraband II, or un-cancelled stamps, expired self-medication, legal material belonging to another AIC, or property in excess of that authorized.¶¶

(g) 1.14 Unauthorized Transfer of Digital Currency: An AIC commits Unauthorized Transfer of Digital Currency when that AIC, directly or through a third party, transfers digital currency to another for the benefit of any AIC. This rule does not apply to funds maintained by DOC in an AIC trust account or to a transfer that has been previously authorized by the functional unit manager or designee. ¶¶

(h) 1.15 Drug Possession: An AIC commits Drug Possession when that AIC possesses a controlled substance.¶¶

(hi) 1.20 Possession of Body Modification Paraphernalia: An AIC commits Possession of Body Modification Paraphernalia when that AIC possesses items capable of being used in body modification, including but not limited to, motors, needles, and ink.¶¶

(ij) 1.25 Unauthorized Use of Information Systems I: An AIC commits Unauthorized Use of Information Systems I when that AIC operates or uses any information system equipment (including terminals, personal computers, tablet computers, minicomputers, workstations, controllers, printers, copiers, fax machines, or phones) if the usage exceeds the conditions of use or access granted by the Director, functional unit manager, or designee in the

following manner:¶

(A) 1.25.01 To send, receive, or read messages or e-mails, access the Internet, or access any employee-only programs or computer systems; or¶

(B) 1.25.02 To conduct illegitimate business activity; or¶

(C) 1.25.03 To do unauthorized legal work.¶

(j) 1.26 Unauthorized Use of Information Systems II: An AIC commits Unauthorized Use of Information Systems II when that AIC operates or uses any information system equipment (including terminals, personal computers, tablet computers, minicomputers, workstations, controllers, printers, copiers, fax machines, or phones) if the usage exceeds the conditions of use or access granted by the Director, functional unit manager, or designee in the following manner:¶

(A) 1.26.01 To prepare a letter or other unauthorized document; or¶

(B) 1.26.02 To make copies, view video, or listen to audio files for personal use; or¶

(C) 1.26.03 To use the phone, Video Interactive Phone system, or any incentive level electronic device in excess of, or outside, the parameters permitted under the department's rules.¶

(2) Violations Against Persons¶

(a) 2.01 Staff Assault I: An AIC commits Staff Assault I when that AIC:¶

(A) 2.01.01 Causes physical injury to or commits a physical attack on an employee, public safety officer, or non-employee service provider in a manner that has potential to cause physical injury; or¶

(B) 2.01.02 Causes bodily fluids (human or animal) to come in contact with an employee, public safety officer, or non-employee service provider; or¶

(C) 2.01.03 Commits a physical attack on an employee, visitor, public safety officer, or non-employee service provider and uses a dangerous or deadly weapon; or¶

(D) 2.01.04 Harms or endangers the well-being of an animal in the care and custody of DOC or used to conduct DOC affairs; or¶

(E) 2.01.05 Refuses to stop any assaultive behavior after being ordered to do so, which necessitates an employee to use physical force to stop the behavior and which results in employee injury.¶

(b) 2.02 Staff Assault II: An AIC commits Staff Assault II when that AIC commits a physical attack on an employee, public safety officer, non-employee service provider, or animal in the care and custody of DOC.¶

(c) 2.03 Assault of a Member of the Public: An AIC commits Assault of a Member of the Public when that AIC commits a physical attack, endangers the well-being of, or causes bodily fluids (human or animal) to come into contact with any person or animal who is not an employee, a non-employee service provider, AIC in the care and custody of DOC, or an animal in the care and custody of DOC.¶

(d) 2.05 AIC Assault I: An AIC commits AIC Assault I when that AIC:¶

(A) 2.05.01 Causes serious physical injury to another AIC or causes injury to another AIC that requires transporting the AIC to an outside agency for medical care; or¶

(B) 2.05.02 Causes physical injury to another AIC and uses a dangerous or deadly weapon; or¶

(C) 2.05.03 Commits a unilateral attack in a location or under circumstances that create a threat to the safety, security, or orderly operation of a facility; or¶

(D) 2.05.04 Refuses to stop assaultive behavior after being ordered to do so which necessitates an employee to use physical force to stop the assaultive behavior; or¶

(E) 2.05.05 Causes bodily fluids (human or animal) to come into contact with another AIC; or¶

(F) 2.05.06 Engages in assaultive behavior acting in concert with one or more AIC(s).¶

(e) 2.06 AIC Assault II: An AIC commits AIC Assault II when that AIC:¶

(A) 2.06.01 Commits a unilateral attack or is involved in a mutual fight that causes physical injury to another AIC; or¶

(B) 2.06.02 Is involved in a mutual fight in a location or under circumstances that create a threat to the safety, security, or orderly operation of a facility.¶

(f) 2.07 AIC Assault III: An AIC commits AIC Assault III when that AIC commits a unilateral attack or is involved in a mutual fight with another AIC.¶

(g) 2.10 Disrespect I: An AIC commits Disrespect I when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person that involves racial, religious, or sexual harassment or a physical threat to the other person.¶

(h) 2.11 Disrespect II: An AIC commits Disrespect II when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person, in a manner or circumstances that create a threat to the safety, security, or orderly operation of a facility.¶

(i) 2.12 Disrespect III (minor violation): An AIC commits Disrespect III when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person.¶

(j) 2.15 Extortion I: An AIC commits Extortion I when that AIC compels or induces any person, who is not an AIC, to act or refrain from acting, by threats, force, or intimidation.¶

- (k) 2.16 Extortion II: An AIC commits Extortion II when that AIC:¶
 - (A) 2.16.01 Compels or induces another AIC to act or refrain from acting by threats, force, or intimidation; or¶
 - (B) 2.16.02 Compels or induces an employee to act, to refrain from acting, or to refrain from performing a job duty through use of demands.¶
- (l) 2.20 Sexual Assault/Abuse: An AIC commits Sexual Assault/Abuse when that AIC engages in sexual activity and the victim does not consent, is unable to consent or refuse consent, or is coerced into such activity by expressed or implied threats of violence.¶
- (m) 2.25 Sexual Harassment: An AIC commits Sexual Harassment when that AIC:¶
 - (A) 2.25.01 Makes repeated and unwelcomed sexual advances or requests for sexual favors, or¶
 - (B) 2.25.02 Makes repeated and unwelcomed verbal comments, gestures, or actions of a derogatory or offensive sexual nature, directed toward or about another, including demeaning references to gender; or¶
 - (C) 2.25.03 Makes repeated and unwelcomed sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.¶
- (n) 2.30 Non-Assaultive Sexual Activity: An AIC commits Non-Assaultive Sexual Activity when that AIC solicits or engages in sexual activity and the sexual activity is conducted without violence, threat of violence, coercion, or use of a weapon.¶
- (o) 2.40 Hostage Taking: An AIC commits Hostage Taking when that AIC seizes, holds, or otherwise significantly deprives the liberty of another person.¶
- (p) 2.45 Body Modification: An AIC commits body modification when that AIC alters or allows any person to be altered by tattooing, piercing, puncturing, scarring, etc., including modifying or perpetuating any previous modification.¶
- (3) Violations Involving Fraud or Deception¶
 - (a) 3.01 False Information to Employees I: An AIC commits False Information to Employees I when that AIC presents or causes the presentation of false or misleading information to an employee or non-employee service provider that creates a threat to the safety, security, or orderly operation of a facility. False or misleading information shall include gestures, verbal, or written communications.¶
 - (b) 3.02 False Information to Employees II (minor violation): An AIC commits False Information to Employees II when that AIC presents or causes the presentation of false or misleading information to an employee or non-employee service provider. False or misleading information includes gestures, verbal, or written communications.¶
 - (c) 3.05 Forgery: An AIC commits Forgery when that AIC falsely makes, completes, alters, or presents a written instrument.¶
 - (d) 3.10 Gambling: An AIC commits Gambling when that AIC wagers anything of value in games of chance, possesses paraphernalia associated with gambling, or possesses the proceeds of gambling activity.¶
 - (e) 3.15 Fraud: An AIC commits fraud when that AIC deceives another person or business in order to obtain money, property, or something of value.¶
- (4) Violations Against the Orderly Operation of the Department or a Facility:¶
 - (a) 4.01 Disobedience of an Order I: An AIC commits Disobedience of an Order I when that AIC overtly refuses to promptly or in a timely manner comply with a valid order, which creates a threat to the safety, security, or orderly operation of a facility.¶
 - (b) 4.02 Disobedience of an Order II: An AIC commits Disobedience of an Order II when that AIC fails to comply with a valid order, which creates a threat to the safety, security, or orderly operation of a facility.¶
 - (c) 4.03 Disobedience of an Order III (minor violation): An AIC commits Disobedience of an Order III when that AIC fails to comply with a valid order.¶
 - (d) 4.04 Leave Violation: An AIC commits a Leave Violation when that AIC:¶
 - (A) 4.04.01 Refuses or fails to follow a valid order or condition of Short-Term Transitional Leave.¶
 - (B) 4.04.02 Refuses or fails to follow a valid order or condition of Non-Prison Leave.¶
 - (e) 4.05 Disturbance: An AIC commits a Disturbance when that AIC advocates, incites, creates, engages in, maintains, or promotes a situation characterized by unruly, noisy, or violent conduct, or unauthorized group activity, which disrupts the orderly administration of or poses a direct threat to the security of a facility, facility programs, or the safety of an employee or another person.¶
 - (f) 4.10 Distribution I: An AIC commits Distribution I when that AIC:¶
 - (A) 4.10.01 Distributes or receives any controlled substance, intoxicant, drug paraphernalia, or money in the amount of \$10 or more (not including funds maintained by DOC in an AIC trust account); or¶
 - (B) 4.10.02 Possesses any controlled substance, intoxicant, drug paraphernalia, or money in the amount of \$10 or more (not including funds maintained by DOC in an AIC trust account), which have been packaged for distribution.¶
 - (g) 4.11 Distribution II: An AIC commits Distribution II when that AIC:¶
 - (A) 4.11.01 Distributes or receives contraband that creates a threat to the safety, security, and orderly operation

of a facility; or¶¶

(B) 4.11.02 Possesses contraband that has been packaged for distribution and that creates a threat to the safety, security, and orderly operation of a facility; or¶¶

(C) 4.11.03 Knowingly destroys evidence to interfere with an employee's ability to identify the contraband or item.¶¶

(h) 4.15 Compromising an Employee: An AIC commits Compromising an Employee when that AIC knowingly engages an employee, public safety officer, non-employee service provider, or any person involved in DOC programs or activities in a personal relationship or business transaction, excluding AICs or visitors approved under DOC ~~rule 291-127~~ visiting rules.¶¶

(i) 4.20 Escape I: An AIC commits Escape I when that AIC departs without authorization from:¶¶

(A) 4.20.01 Within the security perimeter of a facility; or¶¶

(B) 4.20.02 The immediate control of an employee or public safety officer while in secure physical custody and outside a secure facility perimeter; or¶¶

(C) 4.20.03 The immediate control of a secure cell or secure housing unit.¶¶

(j) 4.21 Escape II: An AIC commits Escape II when that AIC departs without authorization from:¶¶

(A) 4.21.01 The grounds of a facility without a secure perimeter; or¶¶

(B) 4.21.02 The direct supervision of personnel authorized to supervise AICs while outside a facility secure perimeter; or¶¶

(C) 4.21.03 Short-Term Transitional Leave or Non-Prison Leave and a warrant or an order for arrest and return of the AIC has been issued.¶¶

(k) 4.25 Possession of an Escape Device: An AIC commits Possession of an Escape Device when that AIC possesses any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a facility or from custody.¶¶

(l) 4.30 Possession of a Weapon: An AIC commits Possession of a Weapon when that AIC possesses an instrument, article, or substance specifically designed for, physically altered for, or readily capable of causing death or serious physical injury to a person or animal.¶¶

(m) 4.33 Possession of an Electronic Device: An AIC commits Possession of an Electronic Device when that AIC possesses an unauthorized electronic communication device.¶¶

(n) 4.35 Racketeering: An AIC commits Racketeering when that AIC engages in illicit activity that is carried out for the purpose of personal or financial gain through unlawful acts.¶¶

(o) 4.40 Unauthorized Area I: An AIC commits Unauthorized Area I when that AIC fails to be present in any location designated by assignment, programmed activity, call out, or employee or non-employee service provider directive (or is in any location not designated by assignment, programmed activity, call out, or employee or non-employee service provider directive) that creates a threat to the safety, security, or orderly operation of a facility.¶¶

(p) 4.41 Unauthorized Area II (minor violation): An AIC commits Unauthorized Area II when that AIC fails to be present in any location designated by assignment, programmed activity, call out, or employee or non-employee service provider directive (or is in any location not designated by assignment, programmed activity, call out, or employee or non-employee service provider directive).¶¶

(q) 4.45 Unauthorized Organization I: An AIC commits Unauthorized Organization I when that AIC is part of a group of two or more persons (whether formal or informal), who collectively, or in concert, create or actively promote, recruit, participate in, or is involved in security threat activity.¶¶

(r) 4.46 Unauthorized Organization II: An AIC commits Unauthorized Organization II when that AIC:¶¶

(A) 4.46.01 Supports, displays, or endorses through verbal, visual, or written acts or communication any club, association, or organization that is a security threat group; or¶¶

(B) 4.46.02 Engages in a petition drive without specific authorization from the functional unit manager.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

AMEND: 291-105-0028

RULE SUMMARY: Amends rule to update Exhibit 1 Major Violation Grid to add violation involving property around unauthorized transfer of digital currency and for minor technical edits to the rule.

CHANGES TO RULE:

291-105-0028

Conduct of Formal Hearings

- (1) Unless waived by the AIC, a formal hearing shall be conducted by the Hearings Officer on all misconduct reports charging any major rule violation (and any included minor violation), on all misconduct reports charging a minor rule violation(s) for which an AIC requests a formal hearing, and on all misconduct reports referred by the adjudicator for a formal hearing in accordance with OAR 291-105-0041(6).¶
- (2) The findings must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report should not be grounds for dismissal, unless there is substantial prejudice to the AIC.¶
- (3) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of evidence, not necessarily established by the amount of evidence or number of witnesses, but by that evidence that has the most convincing force.¶
- (4) The Hearings Officer shall consider such evidence as would be considered by a reasonable person in the conduct of their serious affairs.¶
- (5) Once the formal hearing has begun, if the Hearings Officer determines that the violations are not supported by the facts as written in the misconduct report, the Hearings Officer may substitute a lesser included violation or refer back to the author for less formalized discipline.¶
- (6) At the hearing, the AIC will be allowed to exercise rights as allowed in OAR 291-105-0056.¶
- (7) The Hearings Officer may pose questions during the hearing.¶
- (8) An investigation shall be conducted in a formal hearing upon the AIC's request if the information sought, when viewed in a light most favorable to the AIC, and with all reasonable inferences drawn in the favor of the AIC, would constitute a defense to the charge or substantially mitigate the violation. The information sought must be within the ability of the facility to procure. If a request for investigation is denied, the reason(s) for denial shall be made a part of the record.¶
- (9) Testimony of Witnesses:¶
 - (a) The Hearings Officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include AICs, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.¶
 - (b) The AIC may request that the Hearings Officer schedule witnesses to present testimony at the hearing. The request should be submitted to the Hearings Officer in writing in advance of the hearing and include a list of all persons the AIC requests be called to testify, and the questions sought to be posed to each person. Requests for witnesses must minimally be made to the Hearings Officer at the time of the hearing. The AIC must provide sufficient evidence for the Hearings Officer to conclude that the results of the testimony provided by witnesses will either constitute a defense to the alleged violation(s) or substantially lessen the severity of the violation(s). The Hearings Officer shall arrange for the taking of testimony from such witnesses as properly requested by the AIC, subject to the exclusions and restrictions provided in these rules. Requests for witnesses made or received after a hearing is decided will not be considered.¶
 - (c) The AIC shall not directly pose questions to any witness.¶
 - (d) The Hearings Officer may limit testimony when it is cumulative or irrelevant.¶
 - (e) The Hearings Officer may exclude a specific witness upon finding that the witness' testimony, together with all reasonable inferences to be drawn from that testimony, would not constitute a defense to the charge, would not substantially mitigate the violation, or would not assist the Hearings Officer in the resolution of the disciplinary action. The Hearings Officer may exclude a specific witness upon finding that the appearance of the witness at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of employees and AICs. If a witness is excluded, the reason(s) shall be made a part of the record.¶
 - (f) The Hearings Officer may call witnesses to testify as deemed necessary.¶
 - (g) Persons requested as witnesses, other than employees, may refuse to testify.¶
 - (h) All questions that may assist in eliciting evidence that would constitute a defense to the alleged rule violation(s) or substantially mitigate the violation(s) shall be posed. The reason for not posing a question will be made part of the record.¶
 - (i) Confidential Informants:¶
 - (A) When confidential informant testimony is submitted to the Hearings Officer, the identity of the informant and the verbatim statement of the informant shall be submitted to the Hearings Officer in writing using an approved

Department of Corrections form but shall remain confidential in accordance with OAR 291-105-0036(3).¶
(B) Information must be submitted supporting the informant is a person who can be believed or that the information provided is believable in order for the Hearings Officer to rely on the testimony of the confidential informant.¶

(10) Documents and Physical Evidence:¶

(a) An AIC participating in a formal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules. Any evidence submitted by the AIC will be added to the record and will not be returned or photocopied for the AIC by the Hearings Officer. In instances where the AIC does not have the ability to procure the evidence (for example, obtaining surveillance video footage), the Hearings Officer may assist.¶

(b) Any person who is knowledgeable of any rule violation charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.¶

(c) The Hearings Officer may exclude documents and physical evidence upon finding that such evidence would not assist the Hearings Officer in the resolution of the disciplinary action or that such evidence would present an undue risk to the safe, secure, or orderly operation of a facility, specifically including the safety and security of employees and AICs. The reason(s) for exclusion shall be made a part of the record.¶

(d) The Hearings Officer shall classify documents and physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of any facility, specifically including the safety and security of employees and AICs, or that disclosure would interfere with an ongoing official investigation. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record. Documents and physical evidence classified as confidential by the Hearings Officer shall not be shown or otherwise provided to the AIC.¶

(e) The Hearings Officer may show to the AIC or read into the record any evidence submitted. However, the Hearings Officer will not provide copies of the evidence to the AIC. AICs may request and obtain copies of nonexempt records in accordance with the department's rules on Release of Public Records (OAR 291-037).¶

(11) The Hearings Officer shall determine whether any rule violations occurred.¶

(a) The Hearings Officer may postpone the rendering of a decision for a reasonable period of time, not to exceed seven working days, for the purpose of reviewing the evidence to determine if there is a violation(s). The decision will be based solely upon information obtained in the hearings process, including employee reports, the statements of the AIC charged, and evidence derived from witnesses and documents.¶

(b) Attempt or Conspiracy: An AIC who attempts or conspires to commit a rule violation shall be found in violation of the rule and shall be subject to appropriate sanctions on the same basis as if the AIC had committed the rule violation.¶

(12) At the formal hearing the Hearings Officer shall decide:¶

(a) No Violation: The Hearings Officer may find that the AIC did not commit the violation(s) charged, in which case the AIC may be restored to similar status and privileges as before being charged, as allowed by other rules, policies, etc.¶

(b) Violation: The Hearings Officer may find that the AIC committed the violation(s) charged, in which case, the Hearings Officer will so inform the AIC.¶

(c) Dismissal: The Hearings Officer may dismiss the alleged rule violation(s) if:¶

(A) There is insufficient evidence to support the alleged violation(s); or¶

(B) Corrective action using less formalized procedures would be more appropriate. The Hearings Officer may refer back to the author for less formalized discipline; or¶

(C) The AIC is released from custody.¶

(d) Violation Not Responsible: An AIC is deemed not to be responsible for their actions.¶

(e) Violation of Leave: When conduct constitutes a violation of the AIC's condition(s) of Short-Term Transitional Leave or Non-Prison Leave, the Hearings Officer may also recommend retraction of earned time, statutory good time, or extra good time credits in accordance with the department's rules on Prison Term Modification (OAR 291-097).¶

(13) If no violation is found or all of the alleged rule violation(s) are dismissed on the misconduct report(s), the report(s) shall not be placed in the AIC's institution file but may be retained for statistical or litigation purposes in the Hearings records.¶

(14) Upon the finding of violation(s) by the Hearings Officer, the Hearings Officer:¶

(a) Shall determine the location of the violation(s) on the major or minor grids (Exhibits 1 and 2).¶

(b) Shall determine the AIC's prior misconduct history as recorded on the Disciplinary Misconduct System. Evidence of the AIC's prior misconduct history shall be placed in the record either orally or in writing.¶

(ed) Shall impose appropriate sanctions in accordance with the major or minor grids (Exhibits 1 and 2).¶

(de) Determine if a deviation of disciplinary segregation sanction (upward or downward) is appropriate. The Hearings Officer shall document in writing the substantial reasons for the deviation of disciplinary segregation

sanction in accordance with OAR 291-105-0072.¶

(ef) Determine if consecutive sanctions are appropriate for separate rule violations arising from a single misconduct report. The Hearings Officer must document in writing the substantial reasons for consecutive sanctions, in accordance with OAR 291-105-0066(4)(b).¶

(15) The Hearings Officer may also consider imposing the additional sanctions that are available punder OAR 291-105-0069.¶

(16) The Hearings Officer may suspend imposition of any or all of the imposed disciplinary sanctions, informing the AIC of expected conduct to avoid imposition and the length of time for which the sanction will be suspended.¶

(17) The Hearings Officer may impose any or all sanctions previously suspended after finding that the AIC has failed to comply with the conditions of the suspension.¶

(18) At the conclusion of the hearing, the AIC shall be informed of the rule violations the Hearings Officer found the AIC committed and any sanctions imposed.¶

(19) A verbatim record of the hearing shall be made. A written record will be made of the decision and the supporting reasons.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

**Exhibit 1
MAJOR VIOLATION GRID**

	#	Rule	
I	2.05 1.01 2.03 4.15 4.10 4.05 1.15 4.20 2.15 2.40 4.33 4.25 4.30 4.35 2.20 2.01 4.45	AIC Assault I Arson Assault of the Member of the Public Compromising an Employee Distribution I Disturbance Drug Possession Escape I Extortion I Hostage Taking Possession of an Electronic Device Possession of an Escape Device Possession of a Weapon Racketeering Sexual Assault/Abuse Staff Assault I Unauthorized Organization I	DSU: 60 days max LOP: 28 days max Fine: \$200 max
II	2.06 1.10 4.11 4.21 2.16 4.04 2.25 2.02 1.14	AIC Assault II Contraband I Distribution II Escape II Extortion II Leave Violation Sexual Harassment Staff Assault II Unauthorized Transfer of Digital Currency	DSU: 30 days max LOP: 28 days max Fine: \$100 max
III a	4.01 2.10 4.40	Disobedience of an Order I Disrespect I Unauthorized Area I	DSU: 14 days max LOP: 28 days max Fine: \$75 max
III b	2.07 2.30 1.05 4.46 1.25	AIC Assault III Non-Assaultive Sexual Activity Property I Unauthorized Organization II Unauthorized Use of Info Systems I	LOP: 28 days max Fine: \$75 max
IV	2.45 1.11 4.02 2.11 3.01 3.05 3.15 3.10 1.20 1.26	Body Modification Contraband II Disobedience of an Order II Disrespect II False Information to Employees I Forgery Fraud Gambling Possession of Body Modification Par. Unauthorized Use of Info Systems II	LOP: 14 days max Fine: \$50 max

291-105 Exhibit 1: XXX 2023

**Exhibit 2
MINOR VIOLATION GRID**

	#	Rule	
V	4.03 2.12 1.06	Disobedience III Disrespect III Property II	LOP:10 days max Fine: \$25 max
VI	1.12 3.02 4.41	Contraband III False Information to Employees II Unauthorized Area II	LOP: 7 days max Fine: \$15 max

291-105 Exhibit 1: XXX 2023