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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 291

DEPARTMENT OF CORRECTIONS

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NEED FOR THE RULE(S):

The Department of Corrections Division 127 rules establish Department policy and procedures regarding inmate visitation, and the administration of visitation programming in Department of Corrections facilities. Among these is a rule that makes ineligible for visiting persons who are identified as victims of an AIC's crime(s) without regard to the nature or seriousness of the crime(s), and without consideration of whether the person is a minor child of the AIC. The rule also makes ineligible for visiting persons who has been convicted of a person crime when the AIC is a victim of the crime, and persons who are or have been a co-defendant with the AIC in any criminal prosecution, past or present. Amendment of the rule, OAR 291-127-0415, is needed to: (1) make eligible for visiting persons who are victims of an AIC's crime(s), provided that the crimes do not constitute person felonies or Class A misdemeanors; (2) authorize the Assistant Director of Correctional Services or designee to approve visits for certain minor children with their incarcerated parents, notwithstanding that the minor child has been identified as a victim of a person felony or class A misdemeanor committed by their incarcerated parent, if the Department of Human Services or the juvenile court provides the Department of Corrections with written support or a court order that approves or recommends the visitation; (3) make eligible for visiting persons who has been convicted of a person crime when the AIC is a victim of the crime, and persons who are or have been a co-defendant with the AIC in any criminal prosecution, provided that these events occurred within 5 years of the visiting application date.

In addition to expanding eligibility criteria, amendment of the Department's Division 127 rules is needed to: (1) make the eligibility criteria apply retroactively to all persons who have submitted or will submit a visiting application prior to, on, and after the effective date of the rule amendments; (2) delete and add definitions of terms; and (3) clarify the Department's policies and procedures for administrative review of decisions denying an application for visiting.

JUSTIFICATION OF TEMPORARY FILING:

Visitation between AICs and their family and friends is an integral component of facility management, inmate habilitation and community safety. Visitation can improve public safety, institutional management, encourage responsible familial relationships and reduce the risk of future criminal behavior. Visitation in Department of Corrections facilities is permitted by the Department when it furthers the inmate's correctional planning and the

Department's correctional goals and mission and is consistent with the safe, secure and orderly management and operation of the facility. Visitation between minor children and their incarcerated parents, even when the minor children are victims of serious person felonies and misdemeanors committed by their incarcerated parents, can in certain circumstances be supported by the Department if the visitation is supported and recommended by DHS and juvenile courts as an important part of family reunification and in the childrens' best interests.

For these reasons, the Department of Corrections finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because the department's failure to promptly amend its Division 127 rules to expand and clarify its eligibility criteria for prospective visitors, and its policies and procedures for administrative review of decisions denying an application for visiting, will result in the continued ineligibility of certain persons to visit with AICs in Department of Corrections facilities, including certain minor children whose visitation with their incarcerated parents is supported and recommended by DHS and the juvenile courts, in circumstances in which the Department determines that the visitation will further the inmate's correctional planning and the Department's correctional goals and mission and is consistent with the safe, secure and orderly management and operation of the facility; and prevent AICs and their families and friends who have previously been denied visitation the opportunity to immediately re-apply for visiting or seek administrative review of the denial of visiting under the expanded eligibility criteria.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:

291-127-0405, 291-127-0415, 291-127-0515

AMEND: 291-127-0405

RULE TITLE: Definitions

RULE SUMMARY: Amends rule to remove definitions made unnecessary by other revisions in this adoption and to add the definition of "official records" for clarity.

RULE TEXT:

(1) Accompanied Visit: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a minor child who remains in the company of an approved adult visitor with the written consent of the custodial parent or guardian.

(2) Basic Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with no physical contact.

(3) Caregiver: The person primarily responsible for caring for an inmate's minor child(ren).

(4) Co-Defendant: A person who has been convicted of a crime in which the inmate had some involvement in the same criminal incidents which gave rise to the conviction, or who is currently the subject of a criminal prosecution for the same criminal incidents involving the inmate.

(5) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation or criminal activity.

(6) Contraband: Any article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, or which the inmate is not specifically authorized to obtain or possess or which the inmate alters without authorization.

(7) Contractor: Any person working or providing services in a Department of Corrections facility under a contractual arrangement to provide services to the Department, or any person employed by private or public sector agencies who is serving under Department-sanctioned special assignment to provide services or support to the Department programs.

- (8) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.
- (9) Disrespect: Where a visitor directs hostile, sexual, abusive, or threatening language or gestures, verbal or written, towards or about another person.
- (10) Disturbance: Conduct or activity which unnecessarily interferes with visitation operations, or which advocates, encourages, promotes or otherwise creates or poses a threat to the safety, security, health and good order of the facility, or the safety and security of inmates, staff, visitors, contractors or the community. A visitor commits a disturbance if he or she advocates, creates, engages in, maintains or promotes an annoying condition or disorder characterized by unruly, noisy, violent conduct which disrupts the orderly administration of the visiting process.
- (11) Domestic Partner: An individual joined in a domestic partnership.
- (12) Domestic Partnership: A civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon, which has been filed with the County Clerk and entered in the domestic partnership registry.
- (13) Employee: Any person employed full-time, part-time or on temporary appointment by the Department of Corrections.
- (14) Excessive Contact: Prolonged or frequent contact between a visitor and an inmate which exceeds the brief embrace and kiss upon meeting and leaving. Excessive is not casual contact, but rather a pattern of contact beyond rule limits. Hand-holding or holding of children is specifically allowed.
- (15) Holiday: A day recognized and announced annually as a holiday. If the actual and generally recognized holiday differs from the day recognized by the Department of Administrative Services, the holiday recognized for purposes of this rule is the date indicated on the calendar.
- (16) Inflammatory: Material whose presence in the facility is deemed by the department to constitute a direct and immediate threat to the security, safety, health, good order, or discipline of the facility because it incites or advocates physical violence against others.
- (17) Immediate Family Member: Spouse, domestic partner, parent, sibling, child, aunt, uncle, niece, nephew, grandchildren and grandparents, including foster, in-law, and step relationships. Immediate family also includes the caregiver of the inmate's minor children.
- (18) Inappropriate Relationship: A personal relationship between an inmate or offender and any employee, contractor, or volunteer of the Department of Corrections that developed during the course of employment, contract work, or volunteering or as a result of same.
- (19) Inmate: Any person under the supervision of Department of Corrections who is not on parole, post-prison supervision, or probation status.
- (20) Intake Status: That period of time following delivery of an inmate to the custody of the Department of Corrections in which the Department conducts its intake processing of the inmate including, but not limited to, the conduct of medical and mental health assessments, custody classification, and identification of programming needs and assignments.
- (21) Non-Employee Service Providers (NSP): An individual who provides services or programs to the department and or to inmates, 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.
- (22) Official Records: Police Reports, indictments, judgement orders, or other official government records.
- (23) Privileged Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with limited physical contact, consisting of a brief embrace and kiss upon meeting and leaving, hand holding, and holding of children.
- (24) Professional Visits: Visitation for nonsocial purposes by attorneys, representatives for criminal justice agencies, state or local agencies, other public government agencies or for therapeutic or programming purposes.
- (25) Search: A close inspection, including touching in an impartial manner, of a person, vehicle, possessions, or other

property, or buildings or premises. For purposes of entering a correctional facility, searches often require the removal and separate inspection of shoes, belts, jackets, and other accessories during processing. Types of searches include the following:

(a) Clothed: To search a person for something by running the hands over the clothed person, through the hair, inspecting pockets and cuffs, and other items in his or her possession.

(b) Hand-Wand Inspection: A search procedure wherein the person will be asked to stand with feet and legs apart and arms out to the side while a wand is passed in close proximity to all areas of the visitor's body.

(c) Unclothed: A search procedure wherein the person being searched removes all of his or her clothing and is visually examined and clothing removed is carefully inspected before return and redressing, for the purpose of detecting contraband.

(26) Service Animal: A dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the Americans with Disabilities Act (ADA).

(27) Sexual Activity: Sexual contact including, but not limited to sexual intercourse, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner which produces or is intended to produce sexual stimulation or gratification.

(28) Sex Crime Involving a Minor Child: Any conviction (including juvenile adjudications) of a sexual crime committed, attempted or conspired in which a minor child was involved, victimized, or the intended victim.

(29) Special Visits: Those visits listed below:

(a) A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a person who is not on the inmate's approved visiting list;

(b) An extra visit by an inmate and a person who is on the inmate's approved visiting list that is permitted beyond the limits on the number of visits established by these rules and the facility; and

(c) A visit that is permitted at an hour or place at which visits are not normally permitted.

(30) Spouse: A person who is legally married to an inmate.

(31) Termination of Visiting: The end of visiting privileges for the day by order of the visiting area staff or other authorized staff.

(32) Visitor: Any person authorized access inside the secure perimeter of a facility who is not a department employee, non-employee service provider or who is not an inmate visitor at the facility.

(33) Volunteer: An approved person who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the Department (includes practicums and interns). Volunteers serve at the pleasure of the Department and are not considered employees. Volunteers are subject to the provisions of the Department of Corrections rule on Volunteers and Students Interns (OAR 291-015).

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: 291-127-0415

RULE TITLE: Eligibility of Prospective Visitors

RULE SUMMARY: Amends rule to expand visitation eligibility.

RULE TEXT:

- (1) All persons, except as specifically provided in these rules, are eligible to be considered by the Department for approval to visit an inmate confined in a Department of Corrections facility, upon application and request by the inmate or prospective visitor.
- (2) A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person:
 - (a) Has been convicted of, or has criminal charges pending against him or her for the following crimes or criminal activities:
 - (A) Introduction or supplying, attempting or conspiring to introduce or supply contraband;
 - (B) Possession, control or delivery of an explosive device or substance, including attempt or conspiracy to do the same; or
 - (C) Assisting an inmate in an escape or unlawful departure from a correctional facility, including an attempt or conspiracy to do the same.
 - (b) Has any pending criminal charges;
 - (c) Is an inmate on transitional leave or who is assigned to another Department of Corrections facility;
 - (d) Has been determined by the Department to have introduced or conspired to introduce contraband as defined in the Department's rule on Prohibited Inmate Conduct (OAR 291-105) and the person was permanently removed from the inmate's visiting list;
 - (e) Is identified in official records reviewed by the Department of Corrections as a victim of the inmate's crime(s) of conviction for which the inmate is currently serving a sentence of incarceration to the legal and physical custody of the Department of Corrections, and the sentence is for conviction of a person felony or person misdemeanor crime as defined in the Oregon Criminal Justice Commission's rules on Definitions (OAR 213-003-0001);
 - (f) Has been convicted of a person felony or person Class A misdemeanor as defined in the Oregon Criminal Justice Commission's rules on Definitions (OAR 213-003-0001) within 5 years of the application date in which the inmate was a victim;
 - (g) Is or has been a co-defendant with the inmate in any criminal prosecution, within 5 years of the application date;
 - (h) Has been convicted of the unlawful possession, delivery, or manufacture of a controlled substance as defined in ORS 475.005(6) within the last three years
 - (i) Has been incarcerated for conviction of a felony crime in a state, county or federal corrections facility at some time in the past three years;
 - (j) Is a former Department of Corrections employee, or law enforcement personnel who resigned in lieu of termination from their position as a result of an inappropriate relationship with an inmate, or who was discovered after their resignation, retirement or termination to have been engaged in an inappropriate relationship with an inmate; or
 - (k) Is a former non-employee service provider whose facility access has been denied as a result of an inappropriate relationship with an inmate.
- (3) Minor Children Who Qualify as Victims of Designated Crimes: Notwithstanding OAR 291-127-0415(2), a minor child who is identified in official records reviewed by the Department of Corrections as a victim of a person felony or person Class A misdemeanor as defined in the Oregon Criminal Justice Commission's rules on Definitions (OAR 213-003-0001) may be approved by the Assistant Director of Correctional Services or designee to visit with their incarcerated AIC parent if the Department of Human Services provides the Department of Corrections written support for the visitation to take place or notifies the Department of Corrections that a juvenile court order has been issued that approves or recommends the visitation.
- (4) A person who is on probation, parole or post-prison supervision will be eligible to apply for visiting with the written consent of the person's parole/probation officer, or in the case of court-supervised probation, with the written consent

of the supervising judge, and the approval of the superintendent or designee, subject to all eligibility requirements in this rule.

(5) Current Department of Corrections employees, volunteers and contractors are ineligible to visit an inmate unless the inmate is a member of the employee's, volunteer's, or contractor's immediate family as defined in these rules.

(6) A prospective visitor may not be on more than one inmate's approved visiting list at the facility where the inmate is confined, unless the prospective visitor is an immediate family member to both inmates.

(7) Non-employee service providers may be approved to visit more than one inmate in the same facility if approved by the Social Support Services Administrator or Designee.

(8) Non-employee service providers may not visit any inmates at the same facility in which they are volunteering or providing services unless approved by the superintendent.

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: 291-127-0515

RULE TITLE: Administrative Review

RULE SUMMARY: Amends rule to modify and define the administrative review process and to expand the timeline for submission of requests for administrative review.

RULE TEXT:

(1) Request for Administrative Review by Director's Designee

(a) An inmate or prospective visitor may request administrative review of a decision denying a visiting application by submitting a completed Administrative Review form (CD 1594) to the Inmate Services Unit. The administrative review request must include information supporting reversal or modification of the decision and be submitted with copies of any documents or official records in support of the same. The administrative review request must be received by the Inmate Services Unit within 60 days of the date of the visiting application denial letter.

(b) Upon the Inmate Services Unit's timely receipt of a completed Administrative Review Request Form (CD1594) together with copies of any supporting documents or updated official records, the Director's designee will review the decision denying the visiting application and either affirm, reverse or otherwise modify the decision as circumstances warrant. The Director's designee may request additional information from the inmate, prospective visitor, law enforcement agency or other reliable resource in order to complete the review.

(c) Reversal or Modification of a Decision Denying a Visiting Application: A decision denying a visiting application may be reversed or modified by the Director's designee on in the following circumstances:

(A) The initial decision is determined by the Director's designee to have been made in error based on incorrect information, or an incorrect application of these rules; or

(B) Circumstances impacting visiting eligibility changed since the date of the decision denying the visiting application under review.

(d) The Director's designee's decision on administrative review shall be applied consistently to all Department facilities, unless otherwise stated in the decision, and will be noted in the DOC Visitor Tracking System.

(e) The Director's designee's decision shall be final and not subject to further review.

(2) Administrative Review by Assistant Director of Correctional Services for Extraordinary Circumstances:

(a) Notwithstanding any other provision of these rules, the Assistant Director of Correctional Services may, in their sole discretion, reverse or modify a decision denying an application for visiting between and inmate and an immediate family member of the inmate for extraordinary circumstances based upon recommendation of the superintendent or designee.

(b) The Assistant Director's decision shall be final and not subject to further review.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075