



**DEPARTMENT OF CORRECTIONS  
Inspections**



<b>Title:</b>	<b>Investigations</b>	<b>DOC Policy: 70.1.4</b>
<b>Effective:</b>	<b>10/14/20</b>	<b>Supersedes: 11/20/18</b>
<b>Applicability:</b>	<b>DOC employees, contractors, volunteer and OCE employees</b>	
<b>Directives Cross-Reference:</b>	<b>Rules: 291-041 Searches (Adult in Custody)</b> <b>Policies: 20.1.3 Code of Conduct</b> <b>70.1.3 Criminal and Administrative Evidence Handling</b> <b>40.1.8 Critical Incident</b> <b>60.1.2 Electronic Mail, Internet Usage and Computer Investigations</b> <b>70.1.1 Escapes</b> <b>70.1.5 Use of Electronic Surveillance Devices</b> <b>40.1.13 Prison Rape Elimination Act (PREA)</b> <b>20.1.7 Promotion and Maintenance of a Respectful Workplace</b>	
<b>Attachments:</b>	<b>Investigations Decision Chart</b>	

**I. PURPOSE**

The purpose of this policy is to identify who is responsible for assigning investigations to the appropriate investigative body, and to set forth the criteria for determining the appropriate investigative body to conduct an investigation based on the nature of the complaint/allegation and the role in the Department of the person to be investigated; to establish how investigations are conducted and to ensure that employees assigned to investigative functions utilize approved investigative techniques in accordance with Department of Corrections expectations, policies, procedures, rules, and state and federal law.

**PRINCIPLES:** The basic principles which underlie this policy are that an investigation must be assigned in such a way that an objective, neutral, and thorough investigation will be conducted in a timely manner. The authorities mentioned as assigning responsibility for conducting investigations are expected to communicate with one another to assure the most effective entity within the Department, or in exceptional cases outside the Department, is investigating the matter.

**II. DEFINITIONS**

A. **Adult in Custody (AIC):** Any person under the supervision of the Oregon Department of Corrections who is not on parole, probation, or post-prison supervision status.

B. **Confidential Informant:** Any person, other than a DOC or OCE employee, contractor, or

volunteer who provides verifiable, credible information to staff on issues that could affect the safety or security of another person, institution, or facility and who has been designated as a confidential informant.

- C. Conflict of Interest: A conflict of interest is a set of circumstances that creates a risk that an investigator's professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest. This secondary interest could be a familial, personal, or organizational relationship to the subject of the investigation that would make an objective and reasonable person perceive that the primary interest in a fair and unbiased investigation cannot be obtained or realized.
- D. Contraband: Any article or thing which an AIC is prohibited by statute, rule or order from obtaining or possessing or which the AIC is not specifically authorized to obtain or possess, or which the AIC alters without authorization.
- E. Contractors: Any person under contractual arrangement to provide services to DOC or OCE; any person employed by a private or public sector agency who is serving under DOC or OCE sanctioned assignment to provide services or support to DOC or OCE.
- F. Controlled Substance:
  - 1. A drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this paragraph does not control and is not controlled by the use of the term "precursor" in ORS 475.752 to 475.980.
  - 2. Controlled substance does not include:
    - a. The plant Cannabis family Cannabaceae;
    - b. Any part of the plant Cannabis family Cannabaceae, whether growing or not;
    - c. Resin extracted from any part of the plant Cannabis family Cannabaceae;
    - d. The seeds of the plant Cannabis family Cannabaceae; or
    - e. Any compound, manufacture, salt, derivative, mixture or preparation of a plant, part of a plant, resin or seed described in this paragraph.
- G. Department of Corrections (DOC) Employee: Any person employed full-time, part-time or under temporary appointment of DOC.
- H. Electronic Surveillance Devices: Video or audio recording devices used in an investigation to monitor the activities of DOC AICs or DOC or OCE employees, contractors, or volunteers that is not part of the security system of a DOC or OCE institution or facility.
- I. Functional Unit Manager: Any person within DOC who reports to the Director, Deputy Director, an Assistant Director, or an administrator and has responsibility for delivery of program services or the coordination of program operations. In an institution, the superintendent is the functional unit manager.

- J. High-Risk Conduct: Any act or omission of an act by an AIC, DOC or OCE employee, contractor, or volunteer that exposes DOC or OCE or its employees or AICs to injury or potential criminal or civil penalties, including but not limited to, felony crimes and misdemeanors which threaten the safety or security of DOC institutions and other facilities, AICs, DOC or OCE employees, contractors, volunteers, or visitors , and conduct that exposes DOC to significant legal liability.
- K. Investigation: A fact finding activity for the specific purpose of reviewing complaints or allegations. Investigations may include, but are not limited to interviews, surveillance, review of electronic and paper records, correspondence and other information storage devices of an AIC, DOC or OCE employee, contractor, or volunteer.
- L. Offender: Any person under the supervision of DOC, the local supervisory authority or community corrections who is on probation, parole, or post-prison supervision status.
- M. Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time or part-time, or under temporary appointment by OCE.
- N. Outside Investigator: In certain cases, the nature of the complaint or the departmental authority of the subject of the investigation may require an investigator from an outside entity or a contract investigator be assigned to assist the Department in fulfilling the principles and objectives of this policy.
- O. Volunteer: An approved person who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the Department. Volunteers serve at the pleasure of the Department and are not considered employees.

### III. POLICY

#### A. Expectations of Employees

All employees, contractors, and volunteers are expected to report any conduct which appears to involve illegal activity, mistreatment of adults in custody, sexual misconduct, discrimination, or harassment. Based on such a report, an investigation may be initiated in accordance with this policy.

#### B. Expectations of Persons Assigned to Conduct Investigations

It is the policy of the Department of Corrections that persons authorized to conduct investigations will:

1. Conduct objective, neutral, and thorough investigations;
2. Exercise professionalism at all times during the course of an investigation;
3. Employ sound investigative techniques in accordance with state and federal law, DOC rules, policies and procedures and expectations; and

4. Communicate to the assigning authority if a potential conflict or perception of a conflict of interest exists and, where appropriate, recuse themselves from the investigation.

**C. Process for Reporting Misconduct**

1. Reporting of misconduct by a DOC or OCE employee, contractor or volunteer who is not a functional unit manager, can be made through their immediate supervisor or human resources manager whenever practicable.
  - a. If the immediate supervisor is the subject of the alleged misconduct, the employee, contractor, or volunteer may go to the next level supervisor and report.
  - b. An employee, contractor or volunteer may also report directly to the functional unit manager, the Human Resources Director, or to the Office of the Inspector General, especially if the allegation involves high-risk conduct or the employee, contractor or volunteer feels uncomfortable reporting up the chain-of-command.
  - c. Misconduct may also be reported utilizing the Inspector General hotline which will be reviewed each business day.
  - d. Allegations of fraud, waste, or abuse may be made by contacting the Secretary of State via mail, website, or hotline.
2. An allegation against a DOC or OCE employee, contractor, volunteer or AIC from any source may be verbal or in writing. Information from the reporting party should be detailed to the greatest extent possible. Additional information shall be sought from the reporting party if there is insufficient information for an investigation to be considered.
3. All complaints and allegations will be reviewed, however not all complaints and allegations must be formally investigated. It is the responsibility of the functional unit manager, the Inspector General or designee, Human Resources Director or designee, or Internal Audit Administrator to determine if initiating a formal investigation is reasonable, or if a review is sufficient to address an issue. A formal investigation is usually always required if failure to do so could compromise security, endanger employees, AICs and other persons or create a work environment that is contrary to law or policy.

**D. Investigation Responsibility**

The entities named below will communicate with each other and work together to determine which entity will lead an investigation. The entities will focus on the nature of the complaint or allegation, the subject of the investigation, and apply this policy in making the decision as to which entity will lead the investigation. It is the expectation that all entities will work together and coordinate to complete the investigation in an efficient manner and, where feasible, avoid duplication of efforts.

When uncertainty arises as to who should lead an investigation, it is the duty of the Inspector

General or designee to work with the Human Resources Director and the functional unit manager, if appropriate, to determine the appropriate investigative entity.

1. **Human Resources Division** personnel are responsible for the investigation of issues relating to:
  - a. Labor relations;
  - b. Unprofessional conduct toward employees, customers, clients, contractors and visitors as defined in policy 20.6.1 (Promotion and Maintenance of a Respectful Workplace);
  - c. Collective bargaining agreement grievances;
  - d. Employment issues such as wage or leave issues; and
  - e. Harassment and discrimination, including hostile work environment, based on protected class.
  
2. **Office of the Inspector General** is responsible for the investigation of:
  - a. Employee misconduct consisting of criminal acts in state correctional facilities which require collaboration with the Oregon State Police pursuant to the Interagency Agreement so that a criminal and administrative investigation can be completed if necessary;
  - b. Significant AIC misconduct, including high-risk conduct, weapons, controlled substances, electronic devices, and other contraband cases, both administrative and criminal, deemed appropriate by the Inspector General or designee.
    - i. The Office of Inspector General shall be notified of AIC misconduct that includes high-risk conduct, weapons, controlled substances, electronic devices, contraband or criminal activity.
    - ii. The Inspector General, or designee of the Inspector General, shall review the allegation of misconduct to determine whether (1) the Office of Inspector General should conduct the investigation; (2) another appropriate investigating body should be notified; or (3) the investigation should remain with the functional unit.
    - iii. The Inspector General, or designee of the Inspector General, shall notify the functional unit manager, or designee, if the investigation is to be conducted at the functional unit level.
  - c. Fugitive apprehension;
  - d. Outside law enforcement agency assists for criminal investigations that occur outside of state correctional facilities in which the subject of the investigation is an employee, contractor, volunteer, or AIC;
  - e. Conducting use of force full reviews;
  - f. Any non-staff related PREA Investigations deemed appropriate by the Inspector General,

PREA Coordinator, or designee of the Inspector General; and

- g. PREA allegations of sexual abuse or sexual harassment by a DOC employee, contractor, or volunteer as defined by DOC policy 40.1.13.
    - i. Following the initial screening, allegations involving DOC or OCE employees, contractors, or volunteers shall be forwarded to the Office of Inspector General for review by the PREA Coordinator or another designee of the Inspector General.
    - ii. The review shall determine whether (1) the Office of Inspector General will conduct the investigation; (2) another appropriate investigating body should be notified; or (3) the investigation will remain with the functional unit.
3. **Functional Unit Managers** or their designees are responsible for investigating issues involving:
- a. Employee conflict and employee misconduct that is less serious than defined in Section 2a of this policy;
  - b. Performance;
  - c. Code of conduct issues;
  - d. Operational issues within their area of responsibility;
  - e. Initial screening of PREA sexual abuse or sexual harassment (including the OIC/PREA Checklist);
  - f. PREA investigations: after the initial screening, allegations of sexual abuse or harassment of an AIC by a DOC or OCE employee, contractor, or volunteer as defined by DOC policy 40.1.13 shall be forwarded to the Office of the Inspector General for review by the PREA Coordinator or another designee of the Inspector General. The functional unit managers or their designees will have responsibility for those investigations not conducted by the Office of the Inspector General after that review; and
  - g. AIC misconduct that is less serious than defined in Section 2b of this policy, or as deemed appropriate by the Inspector General or designee of the Inspector General.
4. **Internal Audit's** primary function is to act in accordance with its charter. In accordance with the charter, Internal Audit will assist the Inspector General's office in support of criminal or administrative investigations including, but not limited to, the following investigative areas:
- a. Purchase, sales, and payroll schemes;
  - b. Complex financial fraud;
  - c. Invoice kickbacks and illegal gratuities;

- d. Asset and revenue irregularities;
  - e. Misuse of inventory/assets; and
  - f. Internal control issues.
5. The **Oregon State Police** have the primary role in certain types of criminal investigations and are the Department of Corrections' primary law enforcement partner in conducting criminal investigations arising from criminal acts alleged to have been committed in state correctional facilities or another property occupied by the Department. The State Police have responsibility for the investigation of:
- a. AIC deaths;
  - b. Crimes as outlined in the interagency agreement with DOC;
  - c. PREA cases that allege a criminal act, including but not limited to: custodial sexual misconduct, rape, sodomy and sexual abuse;
  - d. Deadly use of force;
  - e. Bomb threats and suspicious packages;
  - f. Official misconduct and other employee misconduct constituting criminal acts; and
  - g. Other criminal cases occurring off DOC property with a nexus to state correctional facilities.

#### E. **Investigative Resources**

There are a variety of investigative resources available to investigative entities. Investigators may utilize investigative resources that are appropriate to the type of investigation being conducted.

1. Forensic Examination: The Oregon State Police or other law enforcement agencies provide the investigative resources related to forensic examinations.
  - a. Requests to process forensic evidence must be made in writing. Evidence submitted to a forensic laboratory must be related to an official investigation as authorized by the Inspector General or designee.
  - b. Evidence to be processed for fingerprints must be secured and preserved in accordance with the Department's policy on **Criminal and Administrative Evidence Handling**, 70.1.3.

2. Investigative Electronic Surveillance: The Office of the Inspector General is authorized to use investigative (covert) electronic surveillance for the purpose of conducting investigations in accordance with the Department's policy on **Use of Electronic Surveillance Devices**, 70.1.5. No other division or unit of DOC may possess or utilize covert electronic surveillance devices.
3. Drug Detection Canines: The Office of the Inspector General and DOC Community Corrections officers are authorized to utilize drug and contraband detection canines.
4. Confidential Informants: Confidential informants provide verified credible information to assist DOC in maintaining the safety and security of its facilities. Information obtained from Confidential informants shall be protected to the extent possible to maintain the safety of the informant or other involved persons.
5. Information Technology Services (ITS) Investigations: ITS will assist in an inquiry or an investigation as requested by the office of Human Resources, or the Inspector General or designee in accordance with the Department's policy on **Electronic Mail, Internet Usage and Computer Investigations** 60.1.2.

#### F. General Provisions

1. The Human Resources Division, functional unit managers, Office of the Inspector General, and Internal Audit shall cooperate with the entity responsible for the investigation pursuant to this policy. If the conduct of a DOC or OCE employee, contractor, or volunteer is criminal in nature, the Office of the Inspector General will cooperate with the appropriate law enforcement agency conducting the criminal investigation.
2. When an allegation involving high-risk conduct is made against a DOC or OCE employee, contractor, or volunteer, a member of the DOC or OCE executive management team will be notified as soon as practicable.
3. The Office of Inspector General shall be notified anytime that law enforcement is notified of a crime involving an AIC or DOC or OCE employee, contractor, volunteer, or DOC or OCE property. All notifications required under this policy shall be made in a timely manner.
4. Employee/Contractor/Volunteer Investigations:
  - a. Functional unit managers shall forward all requests for employee, contractor or volunteer investigations to the appropriate investigative entity.
  - b. Investigations of DOC or OCE employees, contractors, or volunteers will be conducted with the knowledge of the supervising functional unit manager unless circumstances dictate otherwise.
  - c. Staff authorized to conduct investigations involving employees, contractors, or volunteers are authorized to interview employees, contractors, volunteers, AICs, and other involved persons regarding administrative matters that could result in



discipline, including dismissal.

- d. Any DOC or OCE employee, contractor, or volunteer who is the subject of an investigation will be afforded all rights under state and federal law and DOC or OCE rules, policies, procedures, and collective bargaining agreements, as applicable.
  - i. When the person subject to an investigative interview is a DOC or OCE employee represented by a labor union or association, and the employee is suspected of actions that the investigator reasonably believes may result in discipline, up to and including dismissal, the investigator or HR Manager shall issue the employee a 24-Hour Notice or other notice as appropriate under the applicable collective bargaining agreements..
  - ii. In the cases where a 24-Hour Notice is issued, a DOC or OCE employee may decline the 24-Hour Notice. The date and time and a note indicating that the employee declined the 24-Hour Notice shall be recorded in writing and presented to the employee for signature.
  - iii. A DOC or OCE employee, contractor, or volunteer who is the subject of an investigation may request to have a representative present during an investigative interview, pursuant to any applicable collective bargaining agreements. Managers and classified non-represented employees may bring a representative as outlined by DAS State Policies 70-000-02 or 70-005-02.
- e. DOC and OCE employees may be compelled to answer questions pursuant to an investigation.
  - i. An investigator may give any employee subject to an investigative interview the *Garrity* advisement if they are compelled to answer questions.
  - ii. Prior to providing the *Garrity* advisement and proceeding with the interview, the investigator shall seek approval from either the Inspector General or the assistant director over the division that the employee subject to the investigative interview is assigned to. The approval shall be noted in the investigative report.
  - iii. When the investigation is the result of a PREA complaint and the quality of evidence appears to support criminal prosecution, compelled interviews will take place only after the Inspector General or designee has consulted with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- f. Investigators will treat materials gathered for employee, contractor, or volunteer investigations with sensitivity and, when possible, strive to maintain the privacy of those affected by or participating in investigations. However, disclosure of information may occur pursuant to rule or law including, but not limited to, public records law, discovery rules, or other circumstance.

5. Fugitive Apprehension:

- a. In general, the Office of the Inspector General is the primary liaison with law

enforcement and will receive all information regarding escapees from the affected institution.

- b. The Office of the Inspector General will coordinate intelligence information regarding escapes.
  - c. All searches or surveillance conducted by the Office of the Inspector General must be approved by an Office of the Inspector General, supervisor or designee in advance. Searches or surveillance conducted off DOC property require coordination with the appropriate law enforcement agency in advance.
  - d. All activity involving the apprehension of fugitives will be done in accordance with the Department's **Escape Policy, 70.1.2.**
6. Drug, Weapon, and Contraband Investigations:
- a. The Office of Inspector General shall be notified of investigations involving drugs, weapons, unauthorized electronic devices, and contraband pursuant to Section III. D. 2. of this policy.
  - b. When investigations lead to non-DOC facilities or persons, the Office of the Inspector General will work with the appropriate law enforcement agency.
  - c. Any controlled substances or contraband of a criminal nature found or seized shall be processed in accordance with the Department's policy on **Criminal and Administrative Evidence Handling 70.1.3.**
7. Investigations regarding PREA allegations:
- a. All allegations of sexual abuse and sexual harassment as defined by DOC policy 40.1.13 shall be investigated.
  - b. Employees shall accept reports made verbally, in writing, anonymously and from third parties, and shall promptly document any verbal reports.
  - c. Investigators shall offer the victim a qualified community-based organization victim advocate or qualified agency staff member. The victim advocate or qualified agency staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews.
  - d. All allegations of sexual abuse or sexual harassment as defined by DOC policy 40.1.13 against a DOC/OCE employee, contractor, or volunteer shall be reviewed by the Inspector General or designee to determine whether the Office of Inspector General or another appropriate investigating body should conduct the investigation
  - e. Every PREA allegation will be assessed and reported to the state PREA coordinator for recording processes.

- f. Nothing in this section shall preclude or delay notification to the Oregon State Police and Special Investigations Unit regarding PREA cases that allege a criminal act.
  - g. Investigators shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
  - h. Evidence acquired during the investigative process will be processed in accordance with the Department policy on **Criminal and Administrative Evidence Handling** 70.1.3
  - i. The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation
  - j. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as an adult in custody or staff.
  - k. Preponderance of the evidence shall be the standard used in determining whether allegations of sexual abuse or sexual harassment are substantiated.
8. Requests for Investigative Assistance:
- a. Requests for assistance by non-DOC public safety agencies, other than assistance to the Oregon State Police provided pursuant to the intergovernmental agreement, must be received in writing and include the following: Name of agency and person making the request, date of request and specific details regarding the nature of the request.
  - b. DOC employees will not provide investigative assistance to private sector agencies/organizations, persons, and the general public unless specifically provided for in state or federal law or DOC rules, policies, or procedures.
9. AICs Investigations:
- a. DOC AICs may be interviewed regarding allegations of criminal misconduct, administrative violations, or routine operational issues and intelligence.
  - b. DOC employees shall follow state and federal law when interviewing AICs on criminal matters. An AIC shall not be forced through threat of punishment or coercion to incriminate themselves in a criminal matter.
  - c. AICs, their cells, work areas, and personal belongings are subject to search without a warrant at any time in accordance with the Department's rule on **Searches (AIC)** (OAR 291-041).
  - d. Evidence of a crime or administrative misconduct shall be handled in accordance

with the Department's policy on **Criminal and Administrative Evidence Handling** 70.1.3 and the Department's rule on **Searches** (OAR 291-041).

10. AIC Death: All AIC deaths shall be reported to the Oregon State Police and the Office of Inspector General.

#### **IV. IMPLEMENTATION**

This policy will be adopted immediately without further modification.

Certified: \_\_signature on file\_\_\_\_\_   
Michelle Mooney, Rules Coordinator

Approved: \_\_signature on file\_\_\_\_\_   
Heidi Steward, Deputy Director