

# Michigan Department of Civil Rights Complaint Response

MAMA Advanced Institute Winter Seminar

March 17, 2021

Presented by: Kristen Rewa



# Participant Poll

How often do you handle MDCR complaints?

- a. I have never handled an MDCR complaint
- b. Rarely (one or fewer per year)
- c. Occasionally (fewer than 6 per year)
- d. Frequently (6 or more per year)

# Participant Poll

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## What does the MDCR do?

- Enforce Elliot-Larson Civil Rights Act (ELCRA)
- Enforce Persons with Disabilities Civil Rights Act (PWDCRA)
- Acts as HUD-designated Fair Housing Assistance Program Agency
- Investigates federal discrimination complaints under joint jurisdiction with HUD and EEOC
- Provides outreach and education

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## Complaints of Discrimination based on:

- Religion, race, color, national origin, sex, disability, age, marital status
  - height, weight, arrest record, genetic information (employment)
  - familial status (housing)
  - Retaliation
  - developing law: “because of sex”
- 
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# Participant Poll - Formal Complaints by Basis

What are the top three identified bases for claims filed with the MDCR?

- a. Race, disability, retaliation
- b. Race, sex, age
- c. Race, sex, disability
- d. Race, sex, religion

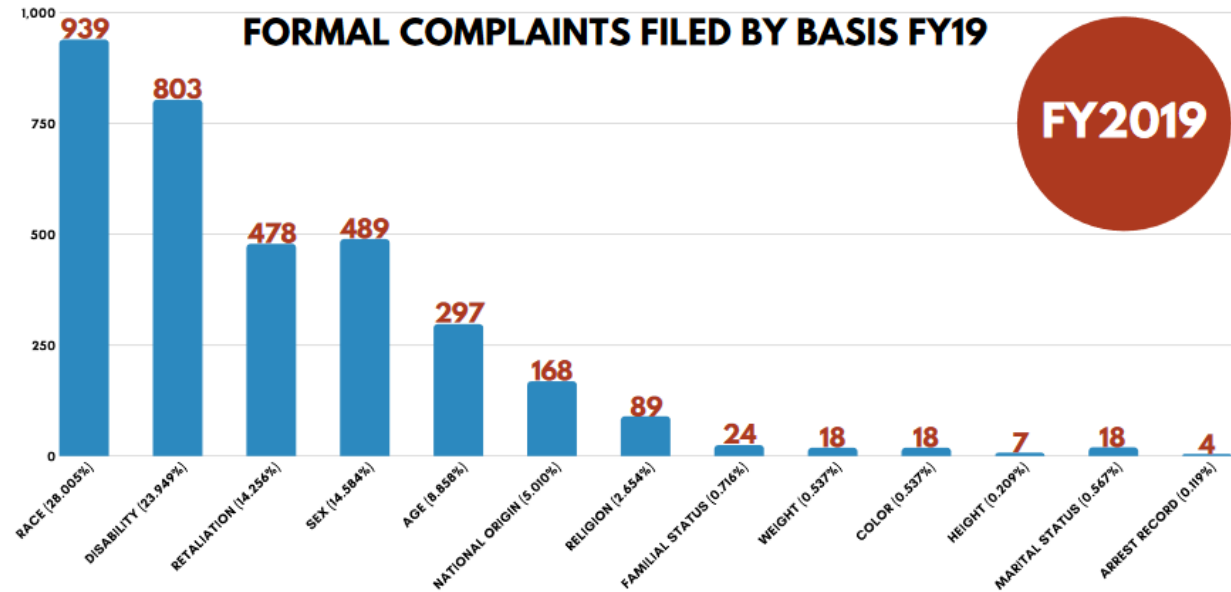
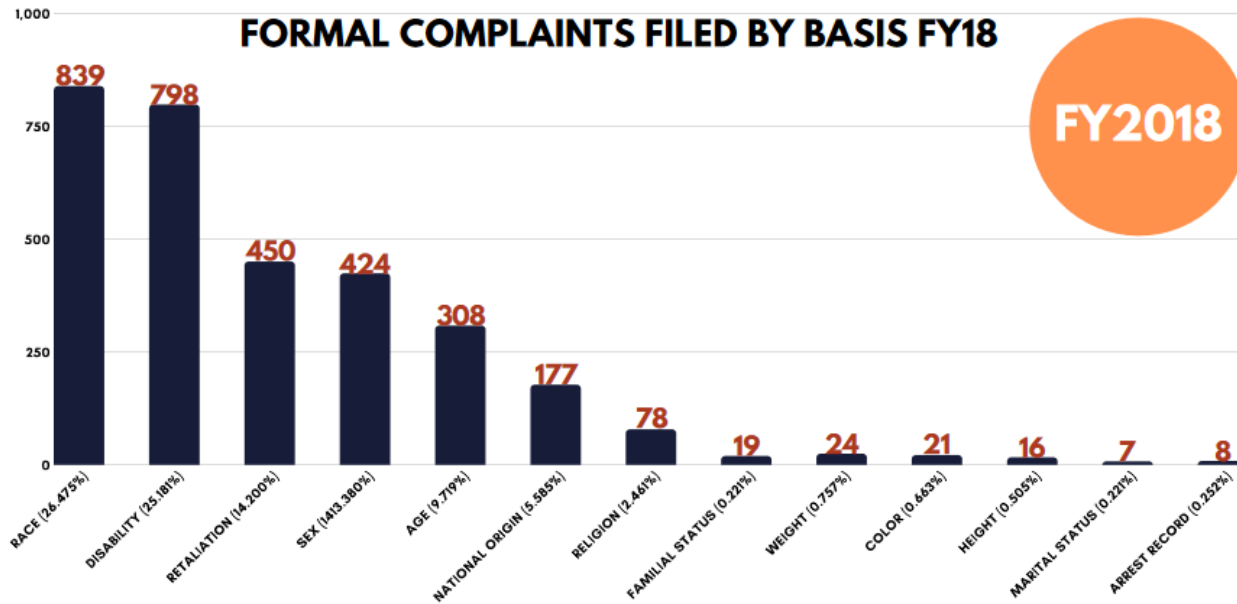
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- c. Race, sex, disability
- d. Race, sex, religion

# Formal Complaints by Basis

- Source: MDCR 2018-2019 annual report
- 2018: closed 1,627 Formal complaints
- 2019: closed 1,626 Formal Complaints





# Participant Poll -Formal Complaints by Area

After Employment, what area has the most MDCR complaints?

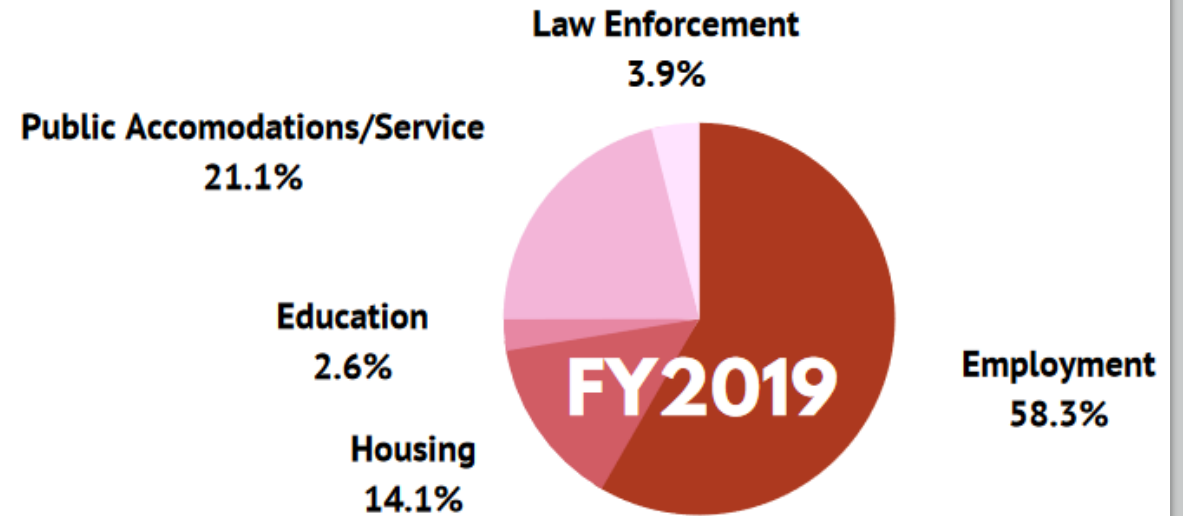
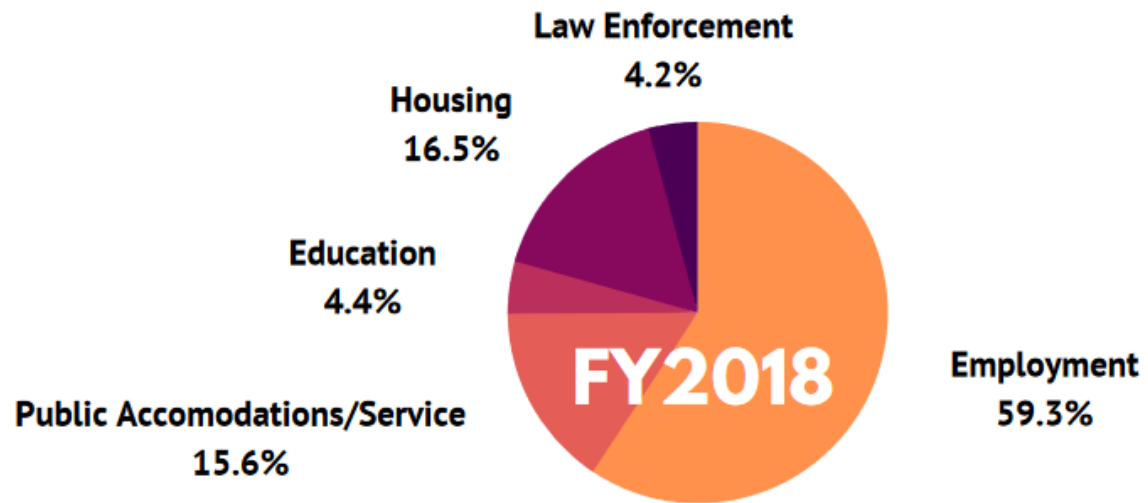
- a. Education
- b. Public Accommodation / Service
- c. Housing

# Participant Poll -Formal Complaints by Area

After Employment, what area has the most MDCR complaints?

- a. Education
- b. Public Accommodation / Service
- c. Housing

# FORMAL COMPLAINTS FILED BY AREA



# MDCR Powers:



Can issue interrogatories/inspect documents



Require attendance of witnesses, administer oaths, take depositions



Has subpoena powers



Can issue “cease and desist” order

# Possible Steps of a Formal Complaint



# Participant Poll – Formal Complaint

A Formal Complaint will contain Complainant's Notarized Signature and:

- a. Protected Basis, Adverse Action, Detailed Statement of Fact
- b. Protected Basis, Date of Harm, Name of Individual Employee
- c. Protected Basis, Adverse Action, Date of Harm
- d. Protected Basis, Date of Harm, Documents Supporting Claim

# Participant Poll – Formal Complaint

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- b. Protected Basis, Date of Harm, Name of Individual Employee
- c. Protected Basis, Adverse Action, Date of Harm
- d. Protected Basis, Date of Harm, Documents Supporting Claim


# The Formal Complaint

Will contain:


1. Date of the harm
2. Protected Basis
3. Adverse Action
4. Notarized Signature

- No Third Party Complaints
- No claims against individual employees\*





# Claimed Adverse action

- Advertising
  - Denied or unequal service / access
  - Sexual harassment
  - Failure to accommodate disability
  - Racial profiling
  - other terms and conditions
- 

# The Formal Complaint Arrives

- Have a process in place before the complaint arrives
- Complaint sent to local government in the mail
- 14 days to respond:
  - Propose a resolution
  - Submit position statement
- Order to Respond to Interrogatories + Request for Documents



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
GRAND RAPIDS

DR. AGUSTIN V. ARBULU  
DIRECTOR

Dear Sir/ Madam:

Enclosed is a copy of a complaint of discrimination. Please submit a detailed position statement with supporting documentation or propose a resolution within 14 days.

If you do not respond you will be required to complete and submit answers to a comprehensive set of interrogatories and/or comply with a request for documents.

The interrogatories and/or request for documents will be accompanied by an Order to comply within 28 days.

Please direct all correspondence and/or questions to:

# Complaint Example #1

Area of Discrimination: **Law Enforcement**

Date of Discrimination: **July 19, 2017**

**Statement of Alleged Discrimination:**

I am African American and I believed I was racially profiled on or around July 18, 2017.

I was pulled over by the respondent's Caucasian officer.

**Racial profiling**

**07/19/2017**

**Race**

On or around July 19, 2017, I was pulled over by the respondent's Caucasian officer due to a false accusation that my tail light was out. I believe I was a victim of racial profiling.

This complaint is based on the following law:

Elliott-Larsen Civil Rights Act No 453, Public Act of 1976, as amended

## Complaint Example #2

Area of Discrimination: **Public Accom / Service**

Date of Discrimination: **March 9, 2019**

**Statement of Alleged Discrimination:**

I am a person with a disability and believe I was subjected to a failure to accommodate most recently on or around March 9, 2019, due to my disability.

I was a recipient of the respondent's services located at \_\_\_\_\_, Michigan.

**Failure to accom. disability**

**03/09/2019**

**Disability**

Most recently on or around March 9, 2019, I allege I requested accommodations and was denied assistance with filling out applications, reading and explaining documents. I also requested advocacy, intervention and coordination services so I may benefit from the resources, referrals and programs provided by the respondent. I believe my medical, counseling, treatment and support needs have been hindered due to respondent's failure to accommodate me. I believe my disability was a factor.

This complaint is based on the following law:

Michigan Persons with Disabilities Act No. 220, Public Acts of 1976, as amended

# INITIAL REVIEW

Initial Contact with client

Gather Facts

Client employee involved?

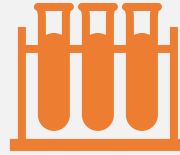
Jurisdictional requirements met?

Other considerations?

# Jurisdictional

- 180 days – state law
- 300 days – EEOC investigations
- Employment claims:
  - State laws: 1+ employee
  - Title VII, ADA: 15 employees
  - ADEA: 20 employees

# Proposed Resolution



Pre-investigation



Submit written proposal / offer  
of resolution



Proposal can be mediation



# The Position Statement

- Submit written appearance
- Confirm deadline
- Format of Position Statement
  - Answer?
  - Written narrative?
  - Legal Brief?
- Email is best

# Participant Poll –Format of Position Statement

How do you typically format your position statement?

- a. Like an Answer to a Complaint
- b. A Written Narrative in Letter Format
- c. Legal Brief with citation to statute/case law
- d. A combination of two or more of the above formats
- e. Interpretive Dance

# Position Statement – Supporting Documents

- Supporting Documents
  - Incident reports
  - Anti-discrimination policies / procedures
  - Are the documents protected by law?



I filed the  
position  
statement.  
Now what?

MDCR reviews material

MDCR conducts follow-up interview with complainant

- *This may include sharing information / documents you provided*

You wait

# Request for Interviews / Documents



Scheduling the interview(s)



Preparing for the interview(s)



Responding to  
document/Information requests

# Conciliation



# Results of MDCR Complaint

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Withdrawn

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Dismissal

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Conciliation

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Administrative Charge

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Final Decision and Order

# Pattern and Practice Investigations

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- Multiple complaints, same entity
- Will take longer
- MDCR investigation will be broader
- State interest v. complainant interest



# What do I do when...

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- There is a criminal case against the complainant?
- There is an open internal investigation filed by complainant?
- Complainant also filed an appeal / complaint to a citizen's review board?
- Employee wants to invoke Weingarten / Garrity Rights?
- Complainant files a lawsuit?

# Questions?

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