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# Summary

## Minnesota Department of Human Rights: Complaint Resolution Process

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### Key Facts and Findings:

- The Minnesota Human Rights Act says that residents of the state should be free from illegal discrimination. (p. 3)
- The Minnesota Department of Human Rights is responsible for enforcing the act by investigating discrimination complaints and determining whether they have merit, among other duties. (pp. 5-6)
- At the end of Fiscal Year 2019, the Minnesota Department of Human Rights reported having a large backlog of alleged discrimination cases awaiting determination. (p. 9)
- In recent years, the Minnesota Department of Human Rights has not met important timeliness requirements outlined in law. (p. 59)
- The Minnesota Department of Human Rights' lack of timely investigations makes it more difficult to conduct effective investigations and negatively affects parties. (pp. 61-62)
- Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of discrimination complaints before accepting them as cases. (pp. 18-19)
- By law, the Minnesota Department of Human Rights must prioritize investigating certain cases; however, the department has done so inconsistently. (pp. 50-52)
- The Minnesota Department of Human Rights does not have an effective case triage process to help allocate its limited resources. (p. 55)
- While the Minnesota Department of Human Rights has taken steps since 2019 to increase its oversight of some aspects of its investigations, the department has adopted few policies to ensure investigators take a consistent approach to their work. (p. 21)
- Statutes outline requirements for appeals made by individuals alleging discrimination, but not for appeals made by those accused of discrimination. (p. 36)

### Key Recommendations:

- The Minnesota Department of Human Rights should develop a plan for meeting statutory timeliness requirements and submit it to the Legislature. (pp. 63-64)
- The Minnesota Department of Human Rights should prioritize cases, as required by law. (p. 56)
- The Minnesota Department of Human Rights should establish a case triage process to more effectively allocate its investigation resources. (p. 57)
- The Legislature should amend statutes to include the right to appeal the department's determination for both parties and establish parameters regarding the timeliness of all appeals. (p. 37)

**In recent years, the Minnesota Department of Human Rights has struggled to process alleged discrimination cases in a timely manner, yet the department has adopted few strategies to manage its workload.**

## Report Summary

According to state law, discrimination “threatens the rights and privileges” of Minnesotans and “menaces the institutions and foundations of democracy.”<sup>1</sup> Discrimination can happen at any time, in any place, and to anyone. The Minnesota Human Rights Act is the state’s civil rights law intended to protect Minnesotans from discrimination.

The word “discrimination” can have multiple meanings. However, for an action to be illegal under the Minnesota Human Rights Act, it must be committed against a person because of a particular personal characteristic listed in the act, such as their race, religion, or sex (referred to as a “protected class”). In addition, the action must be committed in a specified “area” of life, such as employment or housing.

When Minnesota residents believe they have been subjected to discrimination, they may contact the Minnesota Department of Human Rights (MDHR) to file a charge of alleged discrimination. Statutes direct MDHR to investigate these cases and issue a “determination” indicating whether or not discrimination probably occurred.

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**At the end of Fiscal Year 2019, the department reported it had a large backlog of cases awaiting determination.**

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Complainants filed a total of more than 675 cases with MDHR, on average, in the past several fiscal years. However, during that time period, the department was only able to close, on average, 575 cases.

As a result, the total number of cases pending determination has generally increased in recent years. At the end of Fiscal Year 2019, the department reported there were nearly 800 cases awaiting determination, the highest number of cases awaiting determination since 2013.

During the same period, the caseloads for MDHR investigators generally increased.

MDHR reported that investigators’ average caseload at the end of Fiscal Year 2019 was 61 cases, an increase from an average of 32 cases per investigator reported at the end of Fiscal Year 2015. Investigators told us that there are far more cases assigned to them than they could hope to investigate at any one time.

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**In recent years, the Minnesota Department of Human Rights has not conducted timely investigations for the majority of cases.**

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Statutes outline a number of requirements regarding the speed with which MDHR must complete its investigative activities. For example, statutes generally require that MDHR issue a determination indicating whether or not there is probable cause to believe discrimination occurred within one year of an individual filing a charge of discrimination with the department.

We found that among discrimination complaints reported to MDHR in fiscal years 2016 through 2018, MDHR issued a timely determination for only 40 percent of cases. For some of those cases, MDHR took substantially longer to issue a determination than the time permitted in law. For example, MDHR issued a determination more than 180 days *after* the statutory deadline for 16 percent of the cases.

Both MDHR staff and attorneys representing parties named in discrimination complaints told us that delays can negatively impact the department’s ability to conduct investigations. For example, the longer it takes to investigate a case, the more likely it is that witnesses are no longer available or that parties did not retain relevant documentation. Attorneys commented that delays negatively affect their clients.

We recommend that MDHR develop a clear plan for meeting statutory timeliness requirements and submit it to the Legislature. The Legislature should review MDHR’s plan and ensure it reflects the needs and priorities of the state.

**For the majority of cases in recent years, the Minnesota Department of Human Rights did not determine in a timely manner whether or not discrimination probably occurred.**

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<sup>1</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1(b).

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**Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of discrimination complaints before accepting them as cases.**

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Before accepting a case for investigation, staff must evaluate whether complaints have met certain basic criteria. For example, most complainants must make a *prima facie* case of discrimination.<sup>2</sup> The criteria necessary to make a *prima facie* case vary from case to case. Generally, the complainant must indicate they are a member of a protected class, and that they were subject to an adverse action because of their class. However, investigation supervisors told us staff have inconsistently evaluated whether cases meet the *prima facie* criteria.

Typically, if a complainant files a case with MDHR, the department investigates it. As discussed above, investigator caseloads have grown in recent years, and MDHR has struggled to conduct timely investigations. One way MDHR could manage its workload is by accepting fewer cases from the outset.

In 2019, MDHR took some steps to improve its complaint screening process. For example, MDHR implemented a protocol to help ensure that staff collect information necessary to determine whether a complaint meets basic screening criteria. We commend the department for these changes and recommend that MDHR continue to take steps to ensure it accepts only cases that meet at least the basic screening criteria.

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**The department has not consistently prioritized cases as required by law and does not have an effective triage process to allocate its limited resources.**

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Given the large number of cases MDHR accepts, it is reasonable to expect it to establish priorities to manage its workload. Statutes require MDHR to prioritize certain types of cases. For example, statutes require

MDHR to prioritize frivolous cases in order to quickly dismiss them. Many MDHR staff, however, told us they do not consistently prioritize cases as indicated in law. For example, investigators told us that they do not alter their investigation practices for frivolous cases.

While statutes prioritize some cases, the majority of cases MDHR receives do not fall under one of the priorities listed in law. The department generally does not have a strategy for how investigators should triage these cases. For example, MDHR could alleviate its workload by choosing not to investigate all cases or by conducting less in-depth investigations for certain cases. However, MDHR has not chosen to do so.

A number of MDHR investigators told us the department should triage cases to more strategically use the department's limited resources. Several investigators told us that in recent years, they spent time investigating cases they considered to be frivolous, which took time and resources away from investigating more meritorious cases.

We recommend that MDHR prioritize investigating cases as required by law. In addition, given the department's difficulty meeting timeliness requirements in law, we recommend MDHR establish a triage process to more effectively allocate its investigation resources.

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**Without clear policies or standards, it was difficult to determine if the variation we encountered across investigations was appropriate.**

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While state law outlines a number of requirements pertaining to the timeliness of MDHR's investigatory work, it provides no guidance about the activities investigators must undertake during their investigation. For example, statutes do not require investigators to interview parties or review documents. While MDHR took steps in 2019 to increase its oversight of some aspects of its investigations, the department

**The Minnesota Department of Human Rights should adopt case prioritization strategies to help it more effectively manage its workload.**

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<sup>2</sup> Generally, making a *prima facie* case means the complainant's claims are sufficient for someone to presume discrimination occurred, unless the complainant's claims are disproved or rebutted.

**The Legislature should clarify aspects of the Minnesota Human Rights Act, such as the discrimination complaint appeals process.**

has adopted few written policies or standards to ensure investigators take a consistent approach to their work.

Overall, we found that investigators are somewhat inconsistent in how they conduct investigations. While MDHR generally has not established written policies for investigations, MDHR staff told us of two unwritten expectations. Staff told us investigators are always supposed to thoroughly document their investigation and interview the person who filed the charge of discrimination. However, we found that investigators did not always do so.

MDHR staff and attorneys representing parties named in discrimination complaints commented that investigations—or at least aspects of investigations—vary by investigator. For example, they said that the overall quality of the investigation varies by investigator and that some investigators are more likely than others to determine that discrimination probably occurred.

Absent standards in law or clear departmental policies, investigators have significant discretion to decide how they conduct their work. Without standards, it was difficult to determine the extent to which an investigator appropriately used this discretion. While we think it would be difficult to craft policies guiding all investigative activities, we recommend that MDHR adopt policies for certain activities or processes that are relevant to most cases.

**Statutes outline requirements for appeals made by individuals alleging discrimination, but not for appeals by those accused of discrimination.**

If a party is dissatisfied with MDHR's determination, they may choose to appeal. While administrative rules grant both parties the right to appeal, only individuals alleging discrimination are granted the right to appeal in statutes.

In addition, statutes stipulate timeliness requirements for appeals submitted by one party, but not the other. For example, statutes require individuals alleging discrimination to submit their appeal request to MDHR within ten days of receiving the determination. In contrast, neither statutes nor rules indicate how long entities accused of discrimination have to submit their appeal request to MDHR. Likewise, statutes and rules outline timeliness requirements regarding how quickly MDHR must make a decision on an appeal submitted by someone alleging discrimination, but not someone accused of it.

The appeals process provides parties with an opportunity to request that MDHR reexamine its initial determination—an important step in providing due process. We recommend the Legislature amend statutes to include both parties' right to appeal and outline for both parties similar requirements regarding the timeliness of appeals activities.

## Summary of Agency Response

*In a letter dated February 26, 2020, the Minnesota Department of Human Rights Commissioner Rebecca Lucero said that of the 11 recommendations OLA makes for MDHR, "all were identified [by the department] as areas of focus at the beginning of 2019." The Commissioner indicated that the department has already implemented a number of changes related to the recommendations highlighted in the OLA report, noting that OLA's recommendations "align with progress the Department has already made to improve processes and procedures to ensure the civil rights of Minnesotans are protected and advanced." She further stated that MDHR "looks forward to continuing to work with the Administration, Legislature, community partners, and staff to achieve bold, transformational goals."*

The full evaluation report, *Minnesota Department of Human Rights: Complaint Resolution Process*, is available at 651-296-4708 or:

**[www.auditor.leg.state.mn.us/ped/2020/humanrights.htm](http://www.auditor.leg.state.mn.us/ped/2020/humanrights.htm)**