

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1208, 1208-B
Chapter number/title: Ch. 1, Detention and Correctional Standards for Counties and Municipalities
Filing number: 2021-029
Effective date: 1/20/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reasons were to amend the current rule to make permanent and expand the emergency amendment governing plans to prevent and control outbreaks of coronavirus and other infectious and communicable diseases; to make the rule consistent with a recently passed statute governing visits to jail inmates; and to add provisions governing pregnancy services, medication-assisted treatment, naloxone, and use of force.

Basis statement:

The primary reasons this rule was adopted included to amend the prior rule so that the jails will be required to have plans in place to prevent and control the outbreak of infectious and communicable diseases that are reviewed by the Department of Corrections and the Maine CDC and will be required to report any such outbreaks to the Department and the CDC; will be required to provide the opportunity for in-person and contact visitation to jail inmates unless one of the exceptions set out in statute exists; will be required to provide female inmates with pregnancy prevention and management services; will be required to provide inmates with a substance use disorder with medication assisted treatment if medically necessary; and will be required to have naloxone available. Also, the rule was amended to require that each jail separately or jointly with other jails appoint a board of visitors. Finally, a primary reason was to require that the jails implement policies, procedures, and practices to prevent the use of excessive force, to include a prohibition on strangleholds, chokeholds, carotid holds, and other techniques that physically compromise the airway, breathing, or blood flow to the head in circumstances where non-deadly force is appropriate; duty to intervene in instances of excessive force; and lack of bias in the use of force.

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §1403
Chapter number/title: **Ch. 2** (*Repeal*), Change of Use, Downsizing, or Closure of Correctional Facilities
Filing number: **2021-198**
Effective date: 10/6/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The rule, ch. 2, *Change of Use, Downsizing, or Closure of Correctional Facilities*, will be repealed because the State Board of Corrections and its statutory authority no longer exist, and the rule is therefore unenforceable. The original purpose of the rule was to outline the process and standards governing any change of use, including the reassignment of services, downsizing, or closure of a state adult correctional facility or county jail pursuant to 34-A MRS §1803 sub-§2, which has been repealed.

Fiscal impact of rule:
None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 5 MRS §9001; 34-A MRS §1403
Chapter number/title: Ch. 5 (New), Advisory Rulings
Filing number: 2021-167
Effective date: 8/24/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The purpose of the rule is to develop a process for the submission, consideration, and disposition of requests for advisory rulings submitted by interested persons as required by 5 MRS §9001.

Fiscal impact of rule:
None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: PL 2021-ch. 376
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2021-215
Effective date: 10/18/2021
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

In accordance with 5 MRS §8054, the Department is amending CMR 03-201 ch. 10 §27.2, “Supervised Community Confinement”, on an emergency basis to immediately implement the eligibility revisions enacted in Section 2 of PL 2021 ch. 376, entitled “An Act To Provide Pathways to Rehabilitation, Reentry and Reintegration.” This emergency rule is necessary to ensure that the provisions in the Department’s rule governing who is eligible for transfer to supervised community confinement are consistent with the expanded eligibility in this new legislation and in light of the continued COVID-19 pandemic, which poses an immediate threat to public health, safety, and general welfare. Specifically, the Department’s emergency rule adopts Section 2 of PL 2021 ch. 376, on an emergency basis to expand the number of prisoners who are eligible for transfer to supervised community confinement.

This emergency rule is being adopted without notice of proposed rulemaking and without public comment or hearing, in light of the statute taking effect on October 18, 2021, the Department’s consequent inability to engage in rulemaking before that date, and the Department’s need to change the rule on that date due to the above stated emergency.

This emergency rule is a routine technical rule that will remain in effect for up to ninety (90) days pursuant to 5 M.S §8054(3). To avoid any lapse of the new eligibility rule, the Department is planning to engage in the standard rulemaking process, which will, in addition to other non-emergency changes, propose these changes to become permanent.

Fiscal impact of rule:
None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 19-A MRS §4014
Chapter number/title: Ch. 15, Batterer Intervention Program Certification
Filing number: 2021-002
Effective date: 1/15/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reason is to amend the current rule to add provisions designed to help certified batterer intervention programs deliver their classes safely during the COVID-19 pandemic and similar emergencies.

Basis statement:

The primary reason this rule was adopted was to amend the prior rule to add provisions designed to help certified batterer intervention programs deliver their classes safely during the COVID-19 pandemic and similar emergencies. A new section is added to the rule (section 11) for certified batterer intervention programs to deliver their classes via video conferencing groups if they are not able to offer in-person groups that comply with health and safety guidelines when a State of Emergency has been declared by the Governor or at the discretion of the Department of Corrections. There is also a provision for allowing an individual participant for whom there are health and safety concerns to attend a group via video conferencing. There is a provision for such a participant who does not have access to video conferencing technology to attend via phone until access to video conferencing technology is gained. There are provisions for notification to victims and others when participants are not attending in person. Finally, there are provisions that allow recordings of groups by educators and monitors for quality assurance purposes.

Fiscal impact of rule:

(No response)