

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-050
Effective date: 3/13/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

A prisoner to be transferred to supervised community confinement requires a life-saving organ transplant that is only available out-of-state and is currently high on the transplant list.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3103
Chapter number/title: Ch. 11, Policy and Procedure Manual – Adult and Juvenile:
Subsection 18.19.1, Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident
Filing number: 2017-061
Effective date: 4/14/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule needs to be adopted on an emergency basis as it has proven impossible to have a security supervisor present on every transport of every pregnant prisoner due to the lack of enough supervisory security staff for both these transports and to maintain security at the facility.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3103
Chapter number/title: Ch. 11, Policy and Procedure Manual – Adult and Juvenile:
Subsection 18.19.1, Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident
Filing number: 2017-086
Effective date: 6/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule permanently adopts the emergency rule that the Maine Department of Corrections adopted on 4/13/2017. The rule allows the Chief Administrative Officer, or designee, to determine whether a security supervisor needs to be present during the transport of a pregnant prisoner or resident or if other security staff is appropriate. Regardless of whether a security supervisor is present or not, the use of mechanical restraints will still require a decision by a security supervisor.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-090
Effective date: 6/17/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To formally adopt the emergency rule that was implemented on March 13, 2017 allowing a prisoner on supervised community confinement to go out of state for medical treatment not available in Maine and to make other changes to clarify the supervised community confinement process.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §1208
Chapter number/title: Ch. 1, Detention and Correctional Standards for Counties and Municipalities
Filing number: 2017-150
Effective date: 9/24/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Repeal and replacement of this rule to update the Maine standards for county and municipal detention facilities to conform to more recent federal and state law changes (ex. *Prison Rape Elimination Act*, Maine 30-A §1582. *Restraint of Pregnant Prisoners and Pregnant Juveniles*, etc.) and to adopt national prevailing industry standards (American Correctional Association).

Basis statement / Significant Changes:

- Following each standard, “*Evidence of Compliance*” has been added. “*Evidence of Compliance*” represents the supporting information that the jail inspector will likely be looking for to prove compliance. It is intended to assist the jails in proving compliance.
- Standards referencing “Sheriff” now reference “Sheriff or Multi-County Jail Authority” to ensure that Two Bridges Regional Jail is included.
- **A.8. MANDATORY (Added)**
The Administrator shall employ or designate a supervisory level Prison Rape Elimination Act (PREA) Coordinator with sufficient time and authority to develop, implement, and oversee facility efforts to comply with the PREA standards.
- **C.14. MANDATORY (Added)**
Leg or waist restraints may not be used at any time on a pregnant inmate. No restraints may be used on an inmate while in labor or during childbirth. If wrist restraints are used on a pregnant inmate at another time, the corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary. The Administrator or designee shall produce written findings within 10 days as to the extraordinary circumstance (substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the pregnant inmate) that required the use of the restraints.
- **E.17 MANDATORY (Added)**
If it is known that an inmate being released has an existing warrant or other hold, the facility shall provide notification prior to release to the agency responsible for the warrant or other hold.
- **E.18. MANDATORY (Added)**
If it is known that the inmate being released to probation or supervised release for sex offenders has an existing warrant or other hold, the facility shall provide notification prior to release to a Department of Corrections Regional Correctional Administrator and/or Regional Correctional Manager in the region in which the inmate intends to reside.
(Contact information can be found at <http://www.maine.gov/corrections/adult/index.htm> .)
- **E.19. MANDATORY (Added)**
Written policy, procedure and practice provide that inmates who have a court order or probation, supervised release for sex offenders, or conditional release condition of no

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contact with a victim shall be notified of such conditions prior to release. Notification shall be documented.

- **G.2. MANDATORY (Added)**

Decisions on whether to house a transgender inmate with male or female inmates shall be made on a case by case basis, with consideration being given to the inmate's preference and security concerns.

- **Note:** Throughout the standards update many redundant standards were not changed, however were merged to minimize paper and time during inspection. For example in the 2005 manual there were separate standards for toilet, shower, and wash basin ratios. Now it reads:

The inmate population should not exceed the facility's rated capacity, which should be established by the Sheriff or Multi-County Jail Authority or Administrator and approved by the Department of Corrections using the following criteria:

- a.) The ratio of showers to inmates should not exceed 1 to 12.
 - b.) The ratio of wash basins to inmates should not exceed 1 to 12.
 - c.) In medium and minimum security cells, rooms, or dorms, there should be no less than one toilet for every 12 male inmates. Urinals may be substituted for up to one-half of the toilets for males in common bathroom areas.
 - d.) In medium and minimum security cells, rooms, or dorms, there should be no less than one toilet for every 8 female inmates.
 - e.) Each housing area should have its own day space which provides each inmate with a minimum of 35 square feet of space. Day space should not be less than 100 square feet.
 - f.) In multiple-occupancy cells, rooms, or dormitories, a minimum of 35 square feet per inmate should be provided.
- **Section IV. b. COMMUNITY CORRECTIONS: ALTERNATIVE SENTENCING PROGRAMS** is a new section. Alternative Sentencing Programs have always been inspected, however they were inspected under the Minimum Security Residential Facility standards. It seemed to make more sense to provide Alternative Sentencing with an independent section because they are in fact different from minimum security correctional facilities.

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: 2017-172
Effective date: 11/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 15, Batterer Intervention Program Certification, is repealed and replaced to include recommendations based upon a review of the Batterer Intervention Program Certification standards that the Maine Department of Corrections conducted in consultation with the Maine Commission on Domestic and Sexual Abuse per statutory requirements.

Basis statement:

The Maine Department of Corrections staff, in consultation with the Maine Commission on Domestic and Sexual Abuse, reviewed rule Ch. 15, *Batterer Intervention Program Certification*, and has adopted a repealed and replacement of the Batterer Intervention Program Certification. The revisions are listed below.

1. Includes the Wabanaki Women's Coalition (WWC) as a domestic violence coalition that includes the five tribal domestic violence centers in Maine, in addition to the Maine Coalition to End Domestic Violence (MCEDV).
2. Changes the term domestic violence to domestic abuse to align terminology with statute.
3. Changes the terms family violence project and domestic violence project to domestic violence centers (DVC).
4. Changes the term facilitator to educator.
5. Allows an offender to accept federal, state, or charitable funding, if available.
6. Allows the program director to approve exceptions to accommodate special circumstances, including but not limited to, illness, vacation, weather, etc.
7. Eliminates references between excused and unexcused absences and raises the absences from three (3) to five (5) in a 48 week BIP program.
8. Allows an offender to request a medical or other leave of absence for good cause.
9. Sets the limit of being discharged from a BIP program for failing to pay for up to four (4) sessions of missed payments.
10. Changes in the notification requirements when an offender is discharged or leaves the BIP program in that the victim does not have to be notified if doing so would jeopardize the safety of the offender or violate federal or state confidentiality laws.
11. Provides additional options for re-admission to the program after discharge.
12. Provides clarification on transfer of credits from one certified program to another certified program.
13. Record keeping is expanded.
14. Monitoring is amended to be provided at least quarterly.
15. Provides a procedure for a victim to file a complaint against a BIP program.
16. Adds a requirement that the Maine Association of Batterer Intervention Programs, MCEDV and WWC develop criteria for third party monitors.
17. Eliminates a program in a jail and/or correctional facility for eligibility as a certified BIP program because programs in institutional settings lack a coordinated community response.

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18. Includes a section on waivers that aligns the waiver application process with the statute that all waivers for working agreements between the Batterer's Intervention Program and the local Domestic Violence Center must be directed to the DOC's Victims Services Coordinator and contain specific reasons for the waiver request. The rule also clarifies the waiver process when a waiver is allowed in the standards.
19. Adds duty to warn, mandatory reporting, and ethics requirements.

Fiscal impact of rule:

(No response.)

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Statutory authority: 34-A MRS §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-185
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Supervised Community Confinement rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to transfer to supervised community confinement unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not be transferred to supervised community confinement unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from abiding by a curfew, residence, time or travel condition, or returning to the facility when directed to do so, the prisoner shall notify the probation officer as soon as possible for instructions.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3035
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.3, Community Transition Program
Filing number: 2017-186
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception for any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Community Transition Program rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to participate in a community transition program unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not participate in a community transition program unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from going to the location specified, remaining at the specified location during the specified period, or returning from a release by the specified time, the prisoner shall notify the facility as soon as possible for instructions.

An American Correction Association (ACA) standard that addresses that a job on work release provide compensation to prisoners at the prevailing wage rate for that position in the community is included in the rule.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3035
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.4, Furlough Pass / Furlough Leave Program
Filing number: 2017-187
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception for any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Furlough Pass/Furlough Leave rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to participate in a furlough unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not participate in a furlough unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from going to the location specified, remaining at the specified location during the specified period, or returning from a furlough by the specified time, the prisoner shall notify the facility as soon as possible for instructions.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.