

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
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
Chapter number/title: Ch. 1, Detention and Correctional Standards for Counties and Municipalities
Filing number: 2020-201
Effective date: 8/28/2020
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The Department of Corrections (Department) adopts the following emergency rule amendment in 03-201 CMR ch. 1, *Detention and Correctional Standards for Counties and Municipalities*. The following mandatory standard is being added:

K.18. MANDATORY

The Sheriff or Multi-County Jail Authority or Administrator, in consultation with the medical care provider, shall develop policies and procedures and a written communicable and infectious disease prevention and control program which is reviewed by the Department of Corrections and the Maine Center for Disease Control and Prevention (CDC) and which shall include, at a minimum, prevention measures, an exposure control plan, standard isolation and other precautions for inmates and staff, and requirements for reporting outbreaks. The policies and procedures and program shall cover coronavirus and shall be reviewed at least annually and updated as necessary consistent with Maine CDC and other applicable guidelines. In the event there is an outbreak of coronavirus, the Sheriff or Multi-County Jail Authority or Administrator shall report such outbreak to the Department of Corrections and the CDC and provide a copy of the written plan for responding to the outbreak.

Evidence of Compliance: Written policy and procedures. Written disease control program. Records of reporting. Written response plan. Inmate records. Facility logs. Interviews. Observations.

The Department is adopting this rule on an emergency basis to immediately ensure that all jails in the State of Maine have communicable and infectious disease prevention and control plans that will address any potential outbreak of COVID-19. This change is necessary in light of several reported cases of COVID-19 in jails, including the recent outbreak of at least 18 positive COVID-19 cases at the York County Jail. This emergency rule adoption is necessary to protect the health of those individuals incarcerated in and working in the jails and to protect against the spread of COVID-19 among individuals in those jails. Standard rulemaking procedures, including prior public notice, receipt of and response to public comments, and a public hearing, are not being followed due to the urgency of the need to respond to the COVID-19 pandemic. This emergency rulemaking will take effect upon filing with the Secretary of State and will remain in effect for ninety days. 5 MRS §§ 8052(6), 8054(3).

Fiscal impact of rule: None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3032
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 20.2, Drug and Alcohol Testing
Filing number: 2020-033
Effective date: 3/4/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule was repealed and replaced to create a rule that governs adult facility prisoners only, removing provisions from the current rule that apply to adults under supervision in the community, and also to update the previous rule, which was adopted in 2002 that has not been revised since.

Basis statement:

The adopted rule has been updated in numerous respects, including, but not limited to, by adding definitions and other clarifying provisions. Also, the reasons for testing has been expanded to add testing upon intake; prior to transfer to a minimum security facility or minimum security housing unit; and being housed in a minimum security facility or minimum security housing unit. Also, reasons for testing: random basis; condition of being in a substance abuse program; condition of being in a community program; and reasonable suspicion was retained from the previous rule. Further explanation has been added to what constitutes reasonable suspicion for testing. Provisions have been added to describe the possible consequences of testing positive for a nonprescribed drug or for alcohol, testing negative for a prescribed drug prone to trafficking, refusing to submit to a test, tampering with a test, etc.

Regarding the testing process, provisions have been added that cross-reference the DOC's policy on search of transgender and intersex prisoners; incorporate the new classes of disciplinary violations that relate to drug testing; and reflect the latest recommendations on providing water to prisoners who fail to produce a urine specimen immediately. Provisions are also added to encourage prisoners to admit the accuracy of test results. If prisoners do not admit the accuracy of urine results and there is no other evidence of drug or alcohol use, confirmation testing is required. The alcohol breath testing process has also been updated.

Fiscal impact of rule:

None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1403, 3048
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 24.3, Religious Services
Filing number: 2020-206
Effective date: 9/21/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The primary reason this rule was adopted was to repeal and replace the previous rule, which was adopted in 2009, and has not been updated since. The adopted rule creates a rule governing many aspects of religious services for adult facility prisoners. It explains, while not requiring a prisoner to designate a religious preference, how a prisoner may designate a religious preference or change a religious preference. The adopted rule, among other things, provides procedures for a prisoner to practice his or her religion either individually or in a group setting; outlines the responsibilities of a facility chaplain; addresses the scheduling of religious activities; includes a process for a prisoner to request a religious accommodation; makes provisions for approved volunteers to provide religious services; establishes a Faith Review Committee; addresses religious dietary requirements; describes how a prisoner may acquire approved religious property; allows the Commissioner to establish advisory groups; and lists unauthorized activities.

Fiscal impact of rule:
None.

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3039
Chapter number/title: Ch. 11, Policy and Procedures Manual – Adult and Juvenile:
Subsection 2.12, Prisoner and Resident Accounts
Filing number: 2020-001
Effective date: 1/7/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reason this rule is being proposed for repeal and replacement is to make changes to the procedure governing prisoner savings accounts, lessening the percentage and limiting the source of prisoner funds taken to pay back monies disbursed from his or her savings account, and expanding the ability of a prisoner to opt out of the savings plan requirement.

Other changes are being proposed for clarification purposes and to reflect current terminology and practices.

Basis statement:

Under this adopted rule, a prisoner who borrows money from his or her prisoner savings account (personal escrow savings account) or who has money collected from that account for an obligation is no longer required to pay back the account at the rate of 50% from all incoming monies but only has to pay back the account at the rate of 10% and only from future earnings. Provisions related to disbursements from that account have been added for clarifications purposes. Also, a prisoner who would be 75 years of age or older at the earliest possible release date from his or her sentence is able to opt out of the savings account requirement instead of the prior rule's stipulation that the prisoner must be one who would be 90 years or older at the earliest possible release date.

A provision is added to reflect the statute's requirement and current practice that only monies earmarked for a prisoner's or resident's phone account may be placed into that account, instead of the prisoner's or resident's general account. A provision is added that financial transactions are not allowed between a prisoner or resident and a person with whom the prisoner or resident is prohibited from having contact unless there is a court order allowing the transaction. A provision is added that direct deposits through a web-based credit card system will be treated the same as other direct deposits. The provisions allowing the head of a facility to place a hold on a deposit (which would not ordinarily have a hold), place a longer hold on a deposit, or block a transaction based on reasonable suspicion have been expanded and clarified. The provision for providing indigent prisoners with free certified account statements for filing with a court has been clarified. Finally, an unnecessary provision relating to the meaning of indigency under other policies has been deleted.

Fiscal impact of rule:

None.