


<b>POLICY TITLE: ADVISORY RULINGS</b>		<b>PAGE 1 OF 4</b>
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<b>CHAPTER 1: ADMINISTRATION, ORGANIZATION, AND MANAGEMENT</b>		
	<b>STATE of MAINE</b> <b>DEPARTMENT of CORRECTIONS</b>  <b>Approved by Commissioner:</b> <hr/>	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VIII</b>
	<b>EFFECTIVE DATE:</b> <b>TBD</b>	<b>LATEST REVISION:</b>

**I. AUTHORITY**

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 5 M.R.S.A. Section 9001 and 34-A M.R.S.A. Section 1403.

**II. APPLICABILITY**

Entire Maine Department of Corrections

**III. POLICY**

The Commissioner of Corrections as required by 5 M.R.S.A. Section [9001](#) establishes this rule to provide the procedure for the submission, consideration, and disposition of requests for advisory rulings.

**IV. DEFINITIONS**

1. Advisory ruling – a clarification made by the Commissioner, or designee, with respect to the applicability of any statute or rule administered by the Department of Corrections.
2. Interested person - a person who is affected by the statute or rule for which an advisory ruling is requested.
3. Rule - the whole or any part of every regulation, standard, code, statement of policy, or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency. A rule does not include:
  - a. policies or memoranda concerning only the internal management of an agency or the State Government and not judicially enforceable;
  - b. advisory rulings;
  - c. decisions issued in adjudicatory proceedings; or

- d. any form, instruction or explanatory statement of policy that in itself is not judicially enforceable, and that is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges.

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**VI. ATTACHMENTS**

None

**VII. PROCEDURES**

**Procedure A: Authority and Scope**

1. The Commissioner, or designee, may make an advisory ruling with respect to the applicability of any statute or rule administered by the Department of Corrections upon a written request from an interested person, pertaining to that person, his or her property, or an existing factual situation or actual state of facts.
2. An advisory ruling may be issued at the discretion of the Commissioner, or designee.
3. An advisory ruling shall not be binding upon the Department, including in any subsequent enforcement action initiated by the Department, provided that any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.
4. All the Department's rules are on the Secretary of State public website and designated as such on the Department's public website.

**Procedure B: Submission of Request for an Advisory Ruling**

1. Any interested person may make a written request to the Department's Policy Development Coordinator, or designee, for an advisory ruling. The request must include the statute or rule administered by the Department subject to the request for an advisory ruling and must include in detail facts pertinent to the request.
2. The Department's Policy Development Coordinator, or designee, shall retain the original request and forward a copy to the Commissioner, or designee.

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**Procedure C: Consideration**

1. The Commissioner, or designee, shall review an advisory ruling request and may:
  - a. issue an advisory ruling;
  - b. decline to issue an advisory ruling:
    - 1) if the person requesting an advisory ruling does not meet the definition of an interested person;
    - 2) if the person requests an advisory ruling pertaining to a hypothetical situation or set of facts;
    - 3) if there is insufficient experience or information upon which to base a ruling;
    - 4) if it is not in the best interests of the Department to make a ruling; or
    - 5) for any other reason the Commissioner, or designee, deems appropriate; or
  - c. request additional information from the requesting person before making a decision whether to issue an advisory ruling.
2. If the Commissioner, or designee, determines an advisory ruling will be issued, he or she shall issue an advisory ruling in writing to include a statement of the facts or assumptions, or both, upon which the ruling is based within sixty (60) days of receipt of the request. A copy of the ruling shall be provided to the Department's Policy Development Coordinator, or designee.
3. If the Commissioner, or designee, determines an advisory ruling will not be issued, he or she shall notify the requesting person in writing that a ruling will not be made and include the reason(s) within fourteen (14) days of receipt of the request. A copy of this decision shall also be provided to the Department's Policy Development Coordinator, or designee.
4. If the Commissioner, or designee, determines that additional information is necessary, he or she shall notify the requesting person in writing to provide the additional information within a specified number of days. A copy of that notification and any response from the requesting person shall be provided to the Department's Policy Development Coordinator, or designee.
5. Failure to provide the requested additional information within the time specified shall be cause for the Commissioner, or designee, to deny a request to issue a ruling. The Commissioner, or designee, shall notify the requesting person in writing of the denial. A copy of that denial shall be provided to the Department's Policy Development Coordinator, or designee.
6. If the requested additional information is received within the time specified, the Commissioner, or designee, shall review the information to determine whether to issue an advisory ruling. If he or she determines an advisory ruling will:

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- a. be issued, he or she shall issue an advisory ruling in writing to include a statement of the facts or assumptions, or both, upon which the ruling is based within sixty (60) days of the receipt of additional information and provide a copy of the ruling to the Department’s Policy Development Coordinator, or designee, or
- b. not be issued, he or she shall notify the requesting person in writing that a ruling will not be made and include the reason(s) within fourteen days of receipt of the additional information and provide a copy of this decision to the Department’s Policy Development Coordinator, or designee.

**Procedure D: Disposition and Publication**

- 1. An advisory ruling is a public document unless the Commissioner, or designee, determines otherwise in accordance with any law making the information contained in the ruling confidential.
- 2. The Commissioner, or designee, shall provide the advisory ruling to the requesting person and provide a copy to the Department’s Policy Development Coordinator, or designee.
- 3. The Department’s Policy Development Coordinator, or designee, shall retain a copy of the advisory ruling in the Department’s document management system and may publish advisory rulings on the Maine Department of Corrections public website if the ruling is not confidential.

**Procedure E: Maintenance of Advisory Ruling Records**

- 1. The Department’s Policy Development Coordinator, or designee, shall maintain the following documents pertaining to advisory ruling records:
  - a. advisory ruling requests;
  - b. any request for additional information by the Commissioner, or designee, and any response from the requesting person;
  - c. the advisory ruling, if applicable; and
  - d. the decision to not make a ruling, if applicable.
- 2. Advisory ruling records shall be maintained in accordance with the applicable records retention schedule.

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