

Notice of Agency Rulemaking Proposal

AGENCY: Maine Department of Corrections

CHAPTER NUMBER AND TITLE: Ch. 1, Detention and Correctional Standards for Counties and Municipalities

TYPE OF RULE (*check one*): ☒ Routine Technical ☐ Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: The primary reason for amending the current rule is to add and revise jail standards to fulfill recent statutory requirements related to the follow subjects as they affect jail inmates: affirmation of a transgender inmate's consistently held gender identity; grievance process for complaints of violations of jail standards; transportation of females to and from medical appointments and privacy during appointments; access to menstrual products; protection of confidential attorney-client communications; and additional requirements for approval of home release monitoring for domestic violence offenders.

Copies of the proposed amended rule are available upon request by contacting the Department contact person or on the Department of Corrections website at

<https://www.maine.gov/corrections/policies>. Pursuant to Maine law, interested parties are publicly notified of the proposed rulemaking and are provided an opportunity for comment.

Date, time, and location of PUBLIC HEARING (*if any*): December 4, 2023, 1:00 p.m. to 3:00 p.m. This hearing will be conducted via a Microsoft Teams virtual meeting. Anyone wishing to attend should join the Microsoft Teams meeting accessible at this link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjhmYTBjN2YtMGVhOC00MGmWLTgzNzQtN2YxZmMzNTZjZDkx%40thread.v2/0?context=%7b%22Tid%22%3a%22413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%22%2c%22Oid%22%3a%2242c132ed-0ac6-4d91-b911-cee298c26912%22%7d

In addition, directions on how to attend the hearing will be posted on the Department of Corrections website and sent upon request to interested persons.

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before November 27, 2023.

COMMENT DEADLINE: December 15, 2023

Written comments may be submitted by mail, e-mail, or fax to the contact person before the end of the comment period. To ensure the comments are considered, they must include the name of the commenter and the organization represented, if any.

CONTACT PERSON FOR THIS FILING *(include name, mailing address, telephone, fax, TTY, email)*:

Mary Lucia, Policy Development Coordinator
Department of Correction
111 SHS
Augusta ME 04333
Phone: (207) 530-0983
TTY: Relay Service Dial 711
Fax: (207) 287-4370
mary.a.lucia@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: Title 34-A, sections 1208 & 1208-B

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Title 30-A, sections 1561-A, 1565, & 1659-A, Title 34-A, section 1402(5)

AGENCY WEBSITE: <https://www.maine.gov/corrections/>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: mary.a.lucia@maine.gov

* Check one of the following two boxes.

☒ The summary provided above is for publication in both the newspaper and website notices.

☐ The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC

Notice of Agency Rulemaking Proposal

Additional Information for the Web *(if any)*

DETAILED SUMMARY:

BASIS STATEMENT

The jail standards need to be amended to reflect the following statutory requirements:

1. affirmation of a transgender inmate's consistently held gender identity by ensuring housing placements and search practices are consistent with the inmate's consistently held gender identity except when such placement or search would present significant management or security problems to the jail or threaten the health and safety of the inmate;
2. affirmation of a transgender inmate's consistently held gender identity by providing access to commissary items, clothing, personal property, programming and educational materials that are consistent with the inmate's consistently held gender identity;
3. affirmation of a transgender inmate's consistently held gender identity by ensuring staff address the inmate in a manner that is consistent with the inmate's consistently held gender identity;
4. existence of a grievance process for complaints about violations of jail standards;
5. ensuring to the greatest extent practicable the presence of a female corrections officer during the transportation of a female inmate to and from a medical appointment;
6. ensuring a female inmate is afforded the greatest amount of privacy practicable during the appointment consistent with safety and security considerations;
7. ensuring comprehensive access to menstrual products, including, but not limited to, sanitary pads and tampons, provided and available at all times and without inconvenience or charge;
8. establishment of processes to protect and ensure confidentiality of attorney-client communications
9. establishment of processes to be followed in the event that there is a breach of attorney-client confidentiality;
10. designation of a space within the jail for attorney-client meetings and for the exchange of case materials, with that space to be made available on a timely basis;
11. not allowing a domestic violence offender to be approved to participate in a community confinement monitoring program unless the jail administrator certifies that they have met specified requirements for determining that the inmate is not reasonably likely to pose a risk to the safety of others in the community; and
12. not allowing a domestic violence offender to participate in a community confinement monitoring program unless the sheriff ensures there has been made a good faith attempt to notify the victim of the crime at least 10 days prior to the inmate being released from the jail to participate in the program.

See new and amended standards C.16, E.4, E.12, E.14, G.2, G.5, J.20, J.21, J.23, K.22, K.23, M.4, M.7, N.1, and HREM.10

.