Department of Corrections

Summary of Public Comments and Responses

The Maine Department of Corrections proposed an amendment of Rule Chapter 1, Detention and Correctional Standards for Counties and Municipalities.

The Department of Corrections held a public hearing on October 25, 2024 and then a second public hearing on December 5, 2025 due to IT difficulties with the first hearing. Written comments were accepted through December 16, 2024.

This document combines all oral and written comments received during the public comment period ending December 16, 2024 and the responses thereto. Note: In addition to substantive changes made to the rule amendment in response to comments received as explained below, several typos, outdated cross references to the appendix, and spacing and font issues have been fixed in the adopted rule.

The following persons attended one or both hearings on behalf of themselves or their organizations:

Person/Organization Representing
1. Bryan Slaney, Jail Administrator, Kennebec County Correctional Facility
2. Carrie Kipfer
3. Charles Rumsey, Chief, Maine Chiefs of Police Association
4. Dale Lancaster, Sheriff, Somerset County Sheriff's Office
5. Eric Samson, Sheriff, Androscoggin County Sheriff's Office
6. Gordon Smith, Director, Governor's Office of Policy Innovation and the Future (GOPIF)
7. James Bailey, Jail Administrator, Two Bridges Regional Jail
8. Jeff Chute, County Administrator, Androscoggin County
9. Joel Merry, Sheriff, Sagadahoc County
10. Ken Mason, Sheriff, Androscoggin County Sheriff's Office
11. Kevin Joyce, Sheriff, Cumberland County
12. Lane Feldman, Jail Administrator, Androscoggin County Sheriff’s Office
13. Laurie Copithorne, President, Maine Academy Nutrition Dietetics Association
14. Mary Zidalis, Lt., Washington County Sheriff’s Office
15. Mary-Anne LaMarre, Ex. Dir, Maine Sheriffs Assn.
16. Michael Johnston, Lt., Maine State Police
17. Randall Liberty, Commissioner, Department of Corrections
18. Rebecca Graham, Senior Legislative Advocate, Maine Municipal Association
19. Steven French, Manager of Correctional Operations/Compliance
20. Steve Gordon, Commissioner, Cumberland County

21. Tim Curtis, County Administrator, Somerset County
22. Tim Kortes, Jail Administrator, Cumberland County Jail
23. Todd Brackett, Sheriff, Two Bridges Regional Jail
24. Troy Morton, Sheriff, Penobscot County
25. William Bonney, Chief, Waterville Police Dept.
26. William King

The following persons submitted comments on behalf of their organizations:

Person/Organization Representing	Person/Organization Representing
1. Alicia Rea, American Civil Liberties Union of Maine	2. Charla Burill and Laurie Copithorne,, Maine Academy of Nutrition & Dietetics
3. James Cloutier and James Gailey (County Manager), Cumberland County Commissioners	4. Lance Harvell, Terrance Brann, Robert Carlton, Franklin County Commissioners
5. Jeff Chute, Androscoggin County Administrator	6. Andrew Torbett, Paul Davis, and Wayne Erkiknen, Piscataquis County Commissioners
7. Michael Johnston, Maine State Police	8. Michael Tracy and Charles Rumsey, Maine Chiefs of Police Association
9. Rebecca Graham, County Corrections Professional Standards Council	10. Rebecca Graham, Maine Municipal Association
11. Robert Sezak, Scott Seekins, John Alsop, Cyprien Johnson, and Joel Stetkis, Somerset County Commissioners	12. Timothy Richardson, Jail Administrator, Hancock County
13. William Bonney, Waterville Police Department	14. Todd Brackett, Joel Merry, and James Bailey, Two Bridges Regional Jail
15. Troy Morton, Penobscot County Sheriff	16. Jan Collins, Maine Prisoner Advocacy Coalition

The Department of Corrections (DOC) thanks all commenters for providing oral and/or written comments.

Comments and Responses (no comments were received specific to the proposes amendment to standard D.3)

1. **Comment:** The Maine Academy of Nutrition & Dietetics comments on several food service standards.

   Response: The DOC is not responding to the specific comments as these standards were not proposed to be amended and because the rulemaking proposal was not for a repeal and replace of the entire rule but for amendments to selected standards that did not include the ones being commented on.

2. **Comment:** The Maine Prisoner Advocacy Coalition (MPAC) comments that it supports the proposed amendment to standard C.12, which, among other things, requires that counts of inmates include observing living breathing flesh (the rise and fall of each inmate's chest). However, to avoid interrupting sleep, which it says can adversely affect rehabilitation, recovery, and social interactions, it

would like to see language added to the effect of "as much as possible avoid waking sleeping individuals."

Response: The DOC appreciates this suggestion. However, there are too many variations in situations to come up with suitable additional, enforceable language. For example, would new language apply to just "normal" sleeping hours or anytime an inmate is sleeping? What if an inmate is lying chest down and needs to be woken to tell if they are breathing? What if they appear to be completely covered in bedding and need to be woken to see if they are actually there? Also, the ordinary noise of walking or the light from a flashlight reflecting off a window might wake some individuals.

3. **Comment:** The American Civil Liberties Union of Maine (ACLU) comments on the proposed amendment to standard J.2., which concern incoming general mail processing.

   Specifically, the ACLU comments that the "concerns for public safety" wording in the proposed J.2. (which concerns non-legal mail) is ambiguous, and the ACLU does not agree with third party vendor processing of this mail, especially if it results in physical mail being scanned into a digital format.

   Response: The DOC responds that the wording "concerns for public safety" is not ambiguous because it is conditioned by the phrase "due to the introduction of contraband by incoming mail." Unfortunately, the introduction of drugs in physical mail is a significant problem that has led to serious risks to the safety of both inmates and staff of jails (elsewhere, it has even led to death). One way of combatting this is to not allow residents to have physical mail. While jails could copy the physical mail and provide the copies to inmates, that is a resource intensive process and contracting with third party vendors to process mail by digitizing it is more practical and less expensive.

4. **Comment:** MPAC comments that all of the standard proposals are excellent. However, it would like to see standard J.2. made into a mandatory standard so that the timeline (for delivery of incoming non-legal mail within 2 business days) will not become meaningless.

   Response: Just because a standard is not designated as mandatory does not mean it is meaningless. Every standard is reviewed by the DOC for compliance. The difference is that all mandatory standards have to be complied with, while 90% of other standards have to be complied with. Designating a standard as mandatory is reserved for those standards that are required by federal or state law (constitutional or statutory) or that directly impact safety, health, or security. This standard does not meet any of these criteria.

5. **Comment:** The ACLU comments that proposed J.4. (which concerns legal mail) does not contain any directions to jails about the protections needed to uphold the attorney-client privilege when opening incoming legal mail, specifically that the mail needs to be opened in the inmate's presence and that it needs not to be read.

   Response: However, this standard even without the proposed amendment clearly covers this with the language "shall be opened in the presence of the inmate concerned and only to inspect for contraband."

6. **Comment:** MPAC comments that standard K.16, which relates to the providing of health care records and information upon transfer of an inmate, should be made mandatory because of the essential nature of this information.

   Response: The DOC agrees with this comment and, in fact, had proposed that "should" be changed to "shall" in this standard. Therefore, this will be designated as a mandatory standard.

7. **Comment:** The ACLU comments on the proposed amendment to standard K.19. This amendment requires jails to submit reports of participation in medication assisted treatment for substance use disorder (MAT) to the DOC on a quarterly basis as determined by the DOC and using the reporting form required by the DOC. The ACLU states this should require a jail to not simply track MAT participation numbers but also compare this data against the number of individuals who entered the jail each quarter and pair the data with demographic information.

Response: When the DOC creates the reporting form, it will consider what data to require (e.g., raw numbers, percentage of intakes, etc.). As this could vary over time, it will not include the specifics in this standard.

8. **Comment:** The Cumberland County Commissioners, Franklin County Commissioners, Piscataquis County Commissioners, Somerset County Commissioners, Somerset County Sheriff, and Hancock County Jail Administrator, as well as the County Corrections Professional Standards Council, also comment on the proposed amendment to standard K.19. All argue that this amendment would bypass the role of the County Corrections Professional Standards Council as set out in 34-A M.R.S.A. section 1208-B(5) and most state that it would add to the unfunded mandate of the statute passed several years ago requiring the provision of MAT by the jails. The Two Bridges Regional Jail does not go as far, stating that the DOC's proposed standard amendment would duplicate the statutory requirement for rules to be developed by the Council with respect to reporting of data, which would mean that two data sets would have to be submitted. The Jail asks that the DOC defer to the Council and let the latter develop the form.

   Response: The DOC is not in a position to second guess the Legislature and so it will not respond as to whether any statute created an unfunded mandate. However, this standard's proposed reporting requirement is clearly not such a mandate. There is no reason to believe, and the Commissioners provide no evidence to support, that it will cost the jails any extra expense to report data that it already has ready access to.

   As for the role of the County Corrections Professional Standards Council as set out in the cited statutory provision, while it is true that it includes a requirement for the Council to adopt rules governing the collection and reporting of data by jails (a requirement which the Council has so far failed to comply with), that requirement, as relevant to this discussion, is specified to be a requirement for the jails to report the funds used for substance use disorder programs and services, including MAT. This is not a requirement which is either mutually exclusive with or duplicative of a requirement adopted by the DOC for the jails to report how many jail inmates have participated in MAT. It is the DOC that is charged by statute, in 34-A M.R.S.A. section 1208-B, with adopting and enforcing the jail standards, including standards related to MAT. Further, in 34-A M.R.S.A. section 1208-B(1)(A), the rules adopted by the DOC must address reporting related to substance use disorder programs. Therefore, the DOC is not bypassing the statute but implementing it.

9. **Comment:** The Waterville Police Department supports amending standard K.19 as proposed by the DOC, commenting that the reports will help track and likely show that treatment reduces recidivism and that reducing recidivism through treatment is one step that can be taken to reduce jail overpopulation.

   Response: The DOC agrees with this comment.

10. **Comment:** The ACLU comments on the proposed amendment to standard P.9 (which sets the criteria for determining a jail's rated capacity) and the addition of standard P.31 (which requires the jail to take certain steps if it exceeds its rated capacity but prohibits a jail from refusing to detain arrestees, with one exception). The ACLU believes that the former standard would be weakened by the amendment since it would no longer state that a jail should not exceed its rated capacity. It believes that this purported weakening, in combination with the latter standard's lack of description as to what a jail is to do if the steps outlined in that standard do not result in the jail keeping below its rated capacity, will lead to overcrowding and a consequent violation of inmates' rights. The ACLU states that it has become increasingly difficult for jails to safely accept all arrestees, and the ACLU cites to media articles about overcrowding in the jails, at least one of which is 10 years old. It urges the DOC to "edit" its proposals by including timing for the review of rated capacity, and it says: "[t]he Department should create a rule that provides for the real-world process of accepting intakes while keeping the jail population below the jail's rated capacity."

Response: The ACLU is incorrect in stating that P.9 would be weakened under this proposal. To the contrary, the statement in the current P.9 that a jail should not exceed its rated capacity was proposed to be moved to new standard P.31, with the "should not" changed to "shall not." In any event, as explained below, the "should not" language will be restored (though still moved). There is also no need to add anything about the timing for review of rated capacity. The capacity is set in accordance with easy to determine criteria. Each jail's rated capacity is reflected in the license it receives from the DOC. As for standard P.31 (which, as explained below, will be split into two new standards, one mandatory and one not), it includes a proviso for a jail to contact the DOC if it needs assistance with dealing with overcrowding. It is also worth noting that the situation now is not as it was 10 years ago, and there is now a substantial excess of beds when the jail system is looked at as a whole, which is why transfers to other jails is one viable solution to any one jail's overcrowding issue. In fact, since the year 2021, there have been a minimum of 500 excess beds in the jail system at any one time, and often many hundreds more.

11. **Comment:** MPAC agrees with the addition of standard P.31. As for standard P.9, MPAC comments that it should be a mandatory standard. Otherwise, they believe, the guidelines for safe jail capacity are meaningless and unsafe conditions could easily result.

    Response: The DOC agrees with this comment and will be making P.9. a mandatory standard.

12. **Comment**: The Waterville Police Department supports adding standard P.31, saying it is a common sense proposal that will ensure the jail complies with the law. In particular, it supports the part of the standard requiring jails to accept all arrestees with the exception of a situation coming within current standard E.2, which says a jail is not allowed to accept an arrestee if the individual is unconscious or shows sign of or complains of other serious injury or wounds until they have been seen by a physician. The Waterville Police Department provides three examples of instances in which a jail refused to accept an arrestee despite that standard E.2. was not implicated. It believes that new standard P.31 will prevent these instances from happening in the future.

    Response: The DOC agrees with this comment, though this part of the proposed standard will now be separated into a new P.32.

13. **Comment:** The Maine Chiefs of Police Association comments that it is in support of the new standard P.31, specifically the requirement that all arrestees be admitted (with the one exception coming within standard E.2). It states that "this rule is necessary because it is the responsibility of the members of our Association to maintain good public order and public safety in our communities, and when necessary, to enforce state law through the power of arrest to achieve these goals. We also believe that local, county, and state law enforcement agencies have, and will, work to accommodate requests from county Sheriffs to minimize transports to the jail when necessary to alleviate pressure from overcrowding, understaffing, and health concerns. Ultimately, however, when our law enforcement officers arrest an individual to achieve the goals stated above, that arrestee must be admitted into jail."

    Response: The DOC agrees with this comment, though this part of the proposed standard will now be separated into a new P.32.

14. **Comment:** The Maine State Police comment that it is in support of the new standard P.31, specifically the requirement that all arrestees be admitted (with the one exception coming within standard E.2). It states that to the extent possible troopers work with jail officials to try and help address their issues and give two examples: a trooper having the lawful authority to make a custodial arrest but using their discretion to instead issue a summons in lieu of making an arrest and a trooper taking an arrestee to Maine State Police barracks or a local police department and calling a bail commissioner to complete the process there. However, the Maine Police say: "[t]here are times when bringing them to the county correctional facility may be the only recourse available as circumstances may render the other options

impracticable. Such as in a case where the crime is particularly serious, the arrestee is uncooperative, or the offender is habitual."

Response: The DOC agrees with this comment. As a result of this comment, the DOC is adding to P.31. the option for a jail to contact law enforcement agencies to request that, where appropriate and practicable, those agencies use the summons and/or bail processes instead of arresting and transporting arrestees to the jail.

15. **Comment:** The Androscoggin County Administrator, Cumberland County Commissioners, Franklin County Commissioners, Hancock County Jail Administrator, Maine Municipal Association, Penobscot County Sheriff, Piscataquis County Commissioners, Somerset County Commissioners, Somerset County Sheriff, Two Bridges Regional Jail, and County Corrections Professional Standards Council all comment that they disagree with the addition of standard P.31 and some comment that they disagree with the amendment to standard P.9. Various arguments are raised, each of which is responded to below.

    Response: One argument is that the input of the County Corrections Professional Standards Council into the proposed rules was ignored and dismissed. This is not true. The council's input was considered, but there is a difference between considering input and agreeing with it. The latter may or may not follow the former.

    Another argument raised is that this is a major substantive rule and, therefore, needs to be approved by the Legislature in order to be adopted. This is not correct. Whether a rule is routine technical or major substantive does not depend on its content; it depends on when it was authorized and how the Legislature designates it. Under 5 MRSA §8071, all state agency rules which were authorized by the Legislature on or before January 1, 1996, are considered routine technical rules. This means any jail standards adopted pursuant to 34-A MRSA §1208 are routine technical, as the adoption of rules under that section was authorized in 1983. Rules authorized by the Legislature after January 1, 1996, may be either routine technical rules or major substantive rules. While 5 MRSA §8071 describes the characteristics of routine technical rules versus major substantive rules, it is the Legislature itself which determines whether a particular rule authorized by it after January 1, 1996, is a routine technical rule or a major substantive rule. This determination is made right in the authorizing legislation. The Legislature has designated any jail standards adopted pursuant to 34-A MRSA §1208-B as routine technical. See section 1208-B(2).

    A third argument raised is that one or both of the standards, separately or in combination, create an unfunded mandate in violation of the Maine Constitution, Article IX, section 21 (which, by 30-A MRSA §5685(1)(C), was made effective on November 23, 1992).

    Several commenters stated that the language of standard P.9 had been "stiffened," requiring older jails to make costly accommodations. The Androscoggin County Administrator claims that infrastructure upgrades, specifically with respect to the number of showers, will be needed. As a result of this latter comment, the ratio of showers that helps determine rated capacity will be changed to be less stringent. However, the rest of the infrastructure criteria set out in this standard are, if anything, less stringent than in previous standards going back to 1982 and, so, will remain unchanged. As noted above, this standard will be made mandatory (as it was in several previous standards, including the 1982 standards). This will not create an unfunded mandate because these criteria are the same as or less stringent than prior criteria and because merely requiring that rated capacity be determined in a certain way, when combined with the removal of the mandate not to exceed rated capacity (see below), will not "require [any jail] to expand or modify [the jail's] activity so as to necessitate additional expenditures from [the jail's] local revenues." *See* 30-A MRSA §5685(1)(C).

All the above commenters believe that new standard P.31 would create an unfunded mandate, either by requiring increased expenditures (e.g., in the form of payments for boarding detainees or sentenced inmates in other jails) or by requiring the foregoing of revenues for accepting federal boarders. To the extent that proposed P.31 would have prohibited jails from exceeding their rated capacities, this concern will be resolved by making it a nonmandatory standard and substituting "should" for "shall." Other, minor changes in wording will also soften this part of the standard. For example, instead of requiring that a jail complete the options listed in standard P.31 to help alleviate overcrowding before requesting assistance from the DOC, it is asking only that they be considered. Also, to be clear, the assistance that may be requested is technical assistance. Contrary to the suggestion of the Council, the DOC accepting inmates from an overcrowded jail instead of them being sent to another jail will not be added as an option. DOC facilities, unlike jails, are not designed to hold either detainees awaiting court proceedings or sentenced inmates on short-term sentences. The DOC also declines the suggestion of the Council to specify the types of assistance that may be offered, as this will vary too much depending on the situation at hand.

However, the part of P.31 requiring the jails to detain all arrestees will be retained and moved to a new, mandatory standard P.32. This does not create an unfunded mandate as this has been the law since 1990 by virtue of 25 MRSA §1502, which provides, in relevant part: "Municipal and county jails shall at all times be available for detention of persons arrested by state or any other law enforcement officers." Further, the Council claims that this has been the ongoing practice. The Council stated that excluding federal arrestees from this standard is contrary to the statute The DOC agrees and will add this to the standard. Also, this statutory provision will be added as a new Appendix M.

The above changes will also address the argument that new standard P.31 as originally proposed does not make sense because it would require that jails accept detainees from all agencies without the ability to operate above rated capacity. A jail will not be prohibited by the adopted standards from operating above rated capacity, inadvisable as it might be to operate an overcrowded jail especially if the options listed in the standard for reducing overcrowding are not followed.