

§1208. Standards for county and municipal detention facilities

The commissioner shall establish standards, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, for county and municipal jails, holding facilities and short-term detention areas, referred to in this section as county and municipal detention facilities, as follows and shall enforce them. [PL 1983, c. 581, §§10, 59 (NEW).]

1. Establishment. The commissioner shall establish both mandatory and desirable standards for all county and municipal detention facilities, setting forth requirements for maintaining safe, healthful and secure facilities. Standards adopted pursuant to this subsection must be evidence-based, must take into consideration cost impact and must reflect best practices for the operation and administration of jails.

[PL 2021, c. 171, §1 (AMD).]

2. Inspections. Inspections of county and municipal detention facilities are governed as follows.

A. The commissioner shall conduct a comprehensive inspection of each county and municipal detention facility every 2 years, in order to provide the department with information, verified by on-site inspection, regarding compliance with all department standards. The commissioner may dispense with this inspection if, when it is due, the facility is accredited by a nationally recognized correctional accrediting body. [PL 2013, c. 27, §1 (AMD).]

B. The commissioner shall conduct every 2 years no fewer than 3 inspections of each county and municipal detention facility that are in addition to any comprehensive inspections conducted pursuant to paragraph A in order to determine continued compliance with standards. [PL 2013, c. 27, §2 (AMD).]

C. The commissioner may inspect a county or municipal detention facility at any time, without prior notice, to determine compliance with standards. [PL 1983, c. 581, §§10, 59 (NEW).]

C-1. As part of any inspection, the commissioner may access any records, including, but not limited to, the records of persons detained or committed in the facility, as considered necessary by the commissioner in order to determine compliance with standards. [PL 2007, c. 102, §6 (NEW).]

D. The commissioner shall prepare a written report of each inspection and shall send a copy of the report to appropriate county or municipal officials within 15 days after the inspection.

(1) The report shall summarize inspection findings.

(2) The report shall list the standards with which the facility does not comply and set forth the reasons for noncompliance. [PL 1983, c. 581, §§10, 59 (NEW).]

E. The commissioner shall order the noncomplying county or municipality to respond to this report in accordance with subsection 3. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 2013, c. 27, §§1, 2 (AMD).]

3. Standards compliance. Each county and municipal detention facility shall, unless granted a variance pursuant to subsection 5, comply with the mandatory standards established by the commissioner.

A. Within 60 days from the receipt of an inspection report for each mandatory standard listed in subsection 2, paragraph D, subparagraph (2), the county or municipality shall either:

(1) Correct deficiencies listed in the report and submit to the department a written response listing the corrections made; or

(2) Offer a plan to correct those deficiencies for consideration by the department. [PL 1983, c. 581, §§10, 59 (NEW).]

B. If a county or municipality fails to correct deficiencies and offers no plan of correction, or if the plan of correction offered to the department is determined inadequate by the commissioner, the commissioner shall determine an appropriate action to restrict or modify the operations of the facility, consistent with the nature of the uncorrected deficiencies, which action may include ordering an entire facility closed until the deficiencies have been corrected.

(1) Before any such action is taken, the commissioner shall notify the county or municipality in writing of the planned action and shall offer the opportunity to meet and discuss the planned action.

(2) If a meeting is not requested by the county or municipality within 15 days after the county or municipality receives notice of the planned action, or if a meeting is held and fails to produce a plan of correction acceptable to the commissioner, the commissioner shall take the planned action. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

4. Emergency powers. The commissioner may take immediate action in response to noncompliance with a mandatory standard, if the noncompliance is determined to endanger the safety of the staff, inmates or visitors of any county or municipal detention facility.

A. The commissioner's action under this subsection shall expire within 90 days or upon compliance with the mandatory standard. [PL 1983, c. 581, §§10, 59 (NEW).]

B. After having taken action under this section, the commissioner shall send a written inspection report to the affected facility. [PL 1983, c. 581, §§10, 59 (NEW).]

C. The commissioner shall decide what long-term action to take with respect to the affected facility on the basis of county or municipality response to the inspection report and subsequent meetings. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

5. Variances. The commissioner shall establish written procedures to govern the submission and consideration of requests for variances from established departmental standards, including provisions for department consideration of appeals of decisions.

A. The commissioner may grant a variance only when he determines that the variance will not result in diminishing the safety, health or security of staff, inmates or visitors of a county or municipal detention facility. [PL 1983, c. 581, §§10, 59 (NEW).]

B. The commissioner may grant variances to counties and municipalities for periods of up to 2 years. [PL 1983, c. 581, §§10, 59 (NEW).]

C. County and municipal officials may request variances from mandatory department standards if:

(1) Efforts are underway to achieve compliance and continued failure to comply is only temporary; or

(2) The intent and spirit of the standards may be attained through other means. [PL 1983, c. 581, §§10, 59 (NEW).]

D. The officials applying for a variance have the burden of showing clear justification for the variance. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

6. Advisory review.

[PL 2023, c. 135, §2 (RP).]

7. Technical assistance. The commissioner may provide technical assistance to county and municipal detention facilities to facilitate compliance with standards.

[PL 1983, c. 581, §§10, 59 (NEW).]

8. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

A. By January 1, 2024, for the protection of confidential attorney-client communications by each county and municipal detention facility. The standards must include, at a minimum:

(1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to residents of the facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each facility must proactively and by request of the attorney or the attorney's client who is a resident of the facility confirm the registration of an attorney's name, telephone number and other contact information; and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality; and [PL 2023, c. 394, Pt. A, §13 (NEW).]

B. By January 1, 2024, requiring each county and municipal detention facility to designate space within the facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the facility and their attorneys on a timely basis. [PL 2023, c. 394, Pt. A, §13 (NEW).]

[PL 2023, c. 394, Pt. A, §13 (NEW).]

SECTION HISTORY

PL 1983, c. 581, §§10,59 (NEW). PL 2007, c. 102, §6 (AMD). PL 2013, c. 27, §§1, 2 (AMD). PL 2021, c. 171, §1 (AMD). PL 2023, c. 135, §2 (AMD). PL 2023, c. 394, Pt. A, §13 (AMD).

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