

## **34-A §1208. STANDARDS FOR COUNTY AND MUNICIPAL DETENTION FACILITIES**

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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. [1983, c. 581, §§ 10 and 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.

[ 1983, c. 581, §§ 10 and 59 (NEW) .]

**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. [1983, c. 581, §§ 10 and 59 (NEW) .]

B. The commissioner shall conduct no fewer than 3 additional inspections of each county and municipal detention facility during the period between each comprehensive inspection, in order to determine continued compliance with standards. [1983, §§ 10 and 59 (NEW) .]

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

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

[ 2007, c. 102, §6 (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. [1983, c. 581, §§ 10 and 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. [1983, c. 581, §§ 10 and 59 (NEW).]

[ 1983, c. 581, §§ 10 and 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. [1983, c. 581, §§ 10 and 59 (NEW).]

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

[ 1983, c. 581, §§ 10 and 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. [1983, c. 581, §§ 10 and 59 (NEW).]

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

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

[ 1983, c. 581, §§ 10 and 59 (NEW) .]

**6. Advisory review.** The commissioner shall create and maintain a county and municipal detention facility advisory committee.

A. The committee shall consist of representatives of the Department of Corrections, Maine Sheriffs' Association, Maine County Commissioners' Association, Maine Chiefs of Police Association, Attorney General, Legislature and citizens. [1983, c. 581, §§ 10 and 59 (NEW).]

B. The terms of members of this committee shall be one year. [1983, c. 581, §§ 10 and 59 (NEW).]

C. Members of the county and municipal detention facility advisory committee are eligible for reappointment at the expiration of their term. [1983, c. 581, §§ 10 and 59 (NEW).]

D. The commissioner shall consult the committee when promulgating standards and may consult the committee when variances are sought, when actions are contemplated by the commissioner in response to a failure to comply with standards and when the commissioner determines that the consultation is necessary for other reasons. [1983, c. 581, §§ 10 and 59 (NEW).]

[ 1983, c. 581, §§ 10 and 59 (NEW) .]

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

[ 1983, c. 581, §§ 10 and 59 (NEW) .]

#### SECTION HISTORY

1983, c. 581, §§10,59 (NEW). 2007, c. 102, §6 (AMD).

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