

**Chapter XX: CHANGE OF USE, DOWNSIZING, OR CLOSURE OF CORRECTIONAL FACILITIES**

**Summary:** This chapter outlines the process and standards governing any change of use, including the reassignment of services, downsizing, or closure of a state adult correctional facility or county jail, pursuant to 34-A MRSA §1803, sub-§2.

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**SECTION 1. PURPOSE AND DEFINITIONS****1. Purpose**

The primary purpose of this Chapter is to establish the process and standards the Board of Corrections uses: 1) to determine the use of state correctional facilities and county jails, 2) to determine if a state correctional facility or county jail should be assigned a new service responsibility, or 3) to determine if a state correctional facility or county jail should be downsized or closed.

This Chapter is based on the goals of the Act to Better Coordinate and Reduce the Cost of the Delivery of State and County Correctional Services, Public Law 2008 chapter 653.

**2. Definitions**

The following terms, as used in this Chapter, have the following meanings unless the context indicates otherwise:

- A. Act. "Act" means the Act to Better Coordinate and Reduce the Cost of the Delivery of State and County Correctional Services, Public Law 2008 chapter 653.
- B. Board of Corrections or board. "Board of Corrections or board" means the Board of Corrections established under 34-A MRSA §1801.
- C. Correctional facility. "Correctional facility" means any state correctional facility or county jail that falls under the jurisdiction of the board. It does not include a facility operated exclusively for juveniles.
- D. Correctional Service Region. "Correctional Service Region" means a geographic section of the State as established by the Board of Corrections (Southern, Northern, Central, and Coastal)
- E. County: "County or counties" means one or more of the sixteen counties.
- F. County jail: "County jail" means a jail administered by a county or by a Regional Jail Authority.
- G. Department: "Department" means the Department of Corrections
- H. Holding facility: "Holding facility" means a facility, or part of a building, used for the detention of adult pretrial detainees prior to arraignment, release or transfer to another facility or authority for periods of up to 48 hours. It also means a county jail or part of a jail used for the detention of adult inmates, whether detained

pending a trial or other court proceeding or sentenced, for periods of up to 72 hours, excluding Saturday, Sunday, and legal holidays and excluding days during which the inmate is at court.

- I. Jail. "Jail" means a specially constructed or modified facility regularly used for the detention of adult pretrial detainees prior to arraignment, release or transfer to another facility or authority for periods beyond 72 hours, regardless of whether it is also used as a holding facility. It also means a specially constructed or modified facility regularly used for the confinement of adults serving sentences up to 364 days.
- J. Regional jail authority. "Regional jail authority" means a quasi-governmental entity empowered to operate a correctional facility within a Correctional Service Region.
- K. State correctional facility. "State correctional facility" means an adult correctional facility administered by the Department of Corrections.

## **SECTION 2. PROCESS AND STANDARDS**

### **1. Frequency of Review**

Decisions regarding a correctional facility must be made as follows:

#### **A. Periodic Review.**

At least every 5 years, or sooner if determined appropriate by the board, the board shall review the use and size of each correctional facility to determine the unified correctional system's needs and capacities.

#### **B. Upon Request of a Correctional Facility.**

The commissioner of corrections or the county commissioners of one or more counties may request in writing a change of use, including the reassignment of services, downsizing, or closure of a correctional facility for which the requestor is responsible. Such a request may be submitted to the board at any time.

### **2. Standards**

#### **A. In conducting its review, the board shall:**

- 1. Determine individual correctional facility use, including the location of specialty units which may include medical, mental health, women's and substance abuse units, other specialty units, and housing of pretrial and sentenced populations;
- 2. Determine individual correctional facility size;
- 3. Review staffing levels at the correctional facility to ensure that safe conditions exist for staff, inmates and others;

4. Request the recommendations of the Correctional Working Group for consideration; and
  5. Provide opportunity for input from stakeholders and other interested parties and public comment.
- B. The board shall consider whether the correctional facility meets the following criteria in making its decisions concerning the use and size of a correctional facility:
1. Accomplishes the goals of the Act;
  2. Meets the needs for bed space capacity and services within the Correctional Service Region in which the facility is located;
  3. Meets the needs for bed space capacity and services at the statewide level;
  4. Achieves cost efficiencies and future savings;
  5. Avoids the need for constructing new correctional facilities;
  6. Preserves the capacity of individual Correctional Service Regions to address local public safety needs; and
  7. Implements Evidence-Based Practices.

### **3. Corrections Working Group review and recommendations to the board**

- A. The Corrections Working Group shall review and make recommendations to the board with respect to use and size of each correctional facility in advance of the board's periodic review, using the same criteria as the board.
- B. The Corrections Working Group shall review and make recommendations to the board with respect to individual facility use and size in advance of the board's consideration of a request for review made to the board by the commissioner of corrections or the county commissioners.
- C. Record of Recommendations

The record prepared by the Corrections Working Group in the course of a review must contain the following:

1. In the case of a request for review made by the commissioner of corrections or the county commissioners, the request and any other materials submitted by the requestor for the purpose of making those documents part of the record of the review;
2. All information generated by or for the Working Group in the course of assisting it in making its recommendation and the board in making its decision. This information may include, without limitation, the reports of consultants, letters, memoranda and other documents from agencies and officers of state, county or local government,

3. Stenographic or electronic recordings of any public hearing held by the Corrections Working Group;
4. Any documents submitted by any interested party or member of the public for the purpose of making those documents part of the record of the review; and
5. Preliminary and final analyses of the information reviewed by the working group, including its recommendations to the board.

#### **4. Board Review and Decisionmaking Process**

##### **A. Notification**

1. The board shall provide written notification of the board's intent to conduct a periodic review or a review requested by the commissioner of corrections or the county commissioners. In the case of a state correctional facility, the written notification must be provided to commissioner of corrections. In the case of a county jail, the written notification must be provided to the sheriff, jail administrator, county commissioners, and the regional jail authority, if applicable. In addition, the board shall cause notification to be published in the same publications as used by the Secretary of State for notice of rulemaking.
2. The written notification shall include:
  - (a) The name and location of the facility or service being considered;
  - (b) A description of any change of use, including any reassignment of services, downsizing, or closure being considered;
  - (c) A description of the reason(s) for what is being considered;
  - (d) The anticipated impact, including costs and benefits, to the Correctional Service Region(s) affected and to the unified correctional system;
  - (e) The process and time frame for receiving input from stakeholders and other interested parties and public comment;

##### **B. Input and Comment Solicitation**

The Board shall encourage written input from stakeholders and other interested parties and written comments from the public. Input and comments must be received within twenty (20) business days of the Board's published notification.

##### **C. Public hearing**

The board shall hold at least one public hearing before making a decision regarding any change of use, including any reassignment of services, downsizing, or closure. In the case of a major change in use, major downsizing, or closure of a correctional

facility, the board shall hold at least one public hearing in the Correctional Service Region in which the facility is located.

- D. The Board of Corrections shall make the final decision concerning any change of use, including any reassignment of services, downsizing, or closure of a correctional facility. The board shall make its decision within 90 days after the last public hearing.
- E. Along with the record prepared by Corrections Working Group, the board shall include in its record any written input from stakeholders and other interested parties and written comments from the public, stenographic or electronic recordings of any public hearings held by the Corrections Working Group, and its decision and the reasons for the decision.

#### **5. Notification of board decision and right of appeal**

The board shall provide written notification to the county or the department of its final decision concerning any change of use, including any reassignment of services, downsizing, or closure of a correctional facility, and of the county or department's ability to seek judicial review of the decision. The Board shall also notify the legislative committee of jurisdiction of its decision. Only the department or a county aggrieved by a final decision of the board is entitled to judicial review pursuant to Title 5 MRSA section 1101. Such review must be limited to errors of law.

STATUTORY AUTHORITY: 34-A M.R.S.A. §1803, sub-§2.