

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND THIRTIETH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 2, 2020 to March 30, 2021**

**FIRST SPECIAL SESSION**  
**April 28, 2021 to July 19, 2021**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2021**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 18, 2021**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2021**

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record ~~of not more than \$15 per hour after the first hour of staff time per request in accordance with this paragraph.~~ Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour.

Sec. 2. 1 MRSA §408-A, sub-§12 is enacted to read:

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section.

See title page for effective date.

CHAPTER 376  
H.P. 1182 - L.D. 1593

An Act To Provide Pathways to  
Rehabilitation, Reentry and  
Reintegration

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 34-A MRSA §3036-A, sub-§1, as enacted by PL 1991, c. 845, §4, is amended to read:

1. **Establishment.** The commissioner ~~may~~ shall adopt rules establishing and governing a supervised community confinement program for certain prisoners committed to the department.

Sec. 2. 34-A MRSA §3036-A, sub-§2, as amended by PL 2019, c. 113, Pt. C, §§91 to 93, is further amended to read:

2. **Participation and eligibility.** The commissioner may transfer any prisoner committed to the department ~~to be transferred~~ from a correctional facility to supervised community confinement subject to the following restrictions.

A. A transfer to supervised community confinement may ~~only~~ be granted only subject to rules adopted by the commissioner.

B. A prisoner may not be transferred to supervised community confinement until the prisoner has served at least 2/3 of the term of imprisonment imposed or, in the case of a split sentence, at least 2/3 of the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section 2302, subsection 1; section 2305; section 2307; section 2308; section

2309; section 2310; or section 2311 if the term of imprisonment or, in the case of a split sentence, the unsuspended portion is more than 5 years. A prisoner may not be transferred to supervised community confinement until the prisoner has served at least 1/2 of the term of imprisonment imposed or, in the case of a split sentence, at least 1/2 of the unsuspended portion after consideration of any deductions that the prisoner has received and retained under Title 17-A, section 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311 if the term of imprisonment or, in the case of a split sentence, the unsuspended portion is 5 years or less.

C. Except as provided in paragraph C-1, a prisoner may not be transferred to supervised community confinement unless the prisoner has no more than ~~18 months~~ 2 years remaining on the term of imprisonment or, in the case of a split sentence, on the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311.

C-1. If the commissioner determines that the average statewide probation case load is no more than 90 probationers to one probation officer, then a prisoner may be transferred to supervised community confinement if that prisoner has no more than ~~2 years~~ 30 months remaining on the term of imprisonment or, in the case of a split sentence, on the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311.

D. A prisoner may not be transferred to supervised community confinement if the prisoner has a ~~security~~ custody classification level higher than minimum.

Sec. 3. 34-A MRSA §3036-A, sub-§2-A is enacted to read:

2-A. Criteria and process. The commissioner shall establish criteria and a process for determining whether a prisoner eligible for transfer to supervised community confinement as provided in subsection 2 is approved for transfer. The primary determining factor for approval must be the prisoner's likelihood of completion of supervised community confinement if transferred.

A. The criteria must be evidence-based and designed to evaluate the likelihood of a prisoner's completion of supervised community confinement if transferred. The criteria must be specific and include, but may not be limited to, fulfillment of

expectations as to conduct, fulfillment of expectations as to work, education and rehabilitation programs assigned in the case plan, other rehabilitative efforts and accomplishments, arrangements for suitable housing in the community, taking into consideration the proximity of this housing to the victim, and the existence of support systems and resources in the community.

B. The process must reflect best practices for evaluating the likelihood of a prisoner’s completion of supervised community confinement if transferred and must provide guidance to department staff as to how to apply the established criteria when conducting the evaluation. The process must require, when information is obtained by the department from persons in the community for the purpose of determining whether to approve a prisoner for transfer to supervised community confinement, that those persons be informed of the prisoner’s fulfillment of expectations as to conduct, fulfillment of expectations as to work, education, and rehabilitation programs assigned in the case plan and other rehabilitative efforts and accomplishments. The process must also include the right of a prisoner who is eligible for transfer to supervised community confinement as provided in subsection 2 but who has not been approved for transfer to appeal that determination to the commissioner.

**Sec. 4. 34-A MRSA §3036-A, sub-§7, ¶C,** as enacted by PL 1991, c. 845, §4, is amended to read:

C. Criminal, court and ~~police~~ law enforcement agency investigations; and

**Sec. 5. 34-A MRSA §3036-A, sub-§10,** as amended by PL 2009, c. 391, §16, is further amended to read:

**10. Terminally ill or incapacitated prisoner.** With the consent of the prisoner, the commissioner may ~~permit transfer~~ a prisoner committed to the department ~~to be transferred~~ from a correctional facility to supervised community confinement without meeting the eligibility requirements of subsection 2, paragraphs B and C and without meeting the criteria or fulfilling the process provided for under subsection 2-A if the department’s director of medical care has determined that the prisoner has a terminal or severely incapacitating medical condition and that care outside a correctional facility is medically appropriate. Except as set out in this subsection, the prisoner ~~shall~~ must live in a hospital or other appropriate care facility, such as a nursing facility, residential care facility or a facility that is a licensed hospice program pursuant to Title 22, section 8622, approved by the commissioner. As approved by the commissioner, the prisoner may receive hospice services from an entity licensed pursuant to Title 22, chapter 1681, subchapter 1 or other care services provided by an entity approved by the commissioner and, subject to approval by the commissioner, may live at

home while receiving these services. The commissioner may exempt a prisoner transferred to supervised community confinement pursuant to this subsection from any mandatory condition under subsection 3 that the commissioner determines to be inapplicable. The prisoner shall provide any information pertaining to the prisoner’s medical condition or care that is requested by the commissioner at any time while the prisoner is on supervised community confinement. If the commissioner determines that the prisoner has failed to fully comply with a request or if at any time the department’s director of medical care determines that the prisoner does not have a terminal or severely incapacitating medical condition or that care outside a correctional facility is not medically appropriate, the commissioner shall revoke the transfer to supervised community confinement.

**Sec. 6. 34-A MRSA §3036-A, sub-§12** is enacted to read:

**12. Information for prisoners.** The department shall make available to all prisoners written information about supervised community confinement, including eligibility requirements, the application process and the criteria and process for determining whether a prisoner eligible for transfer to supervised community confinement may be approved for transfer.

**Sec. 7. 34-A MRSA §3036-A, sub-§13** is enacted to read:

**13. Data tracking.** The department shall track data for all prisoners who apply for supervised community confinement and approval, denial and, if approved, completion of the program. Such data must include, but is not limited to, demographic data regarding race and ethnicity, gender, age and convictions leading to the prisoner’s current incarceration.

See title page for effective date.

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**CHAPTER 377**

**H.P. 590 - L.D. 785**

**An Act To Change the Standard for Taking a Person into Protective Custody**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 34-B MRSA §3862, sub-§1,** as amended by PL 2019, c. 411, Pt. C, §5 and affected by Pt. D, §3, is further amended to read:

**1. Law enforcement officer’s power.** If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person ~~presents a threat of imminent and substantial physical harm to that person or to other persons~~ poses a likelihood of serious harm as defined in section 3801,