

Maine provides compassionate release to incarcerated individuals with severely incapacitating or terminal medical conditions through **Supervised Community Confinement**.¹

SUPERVISED COMMUNITY CONFINEMENT

I. ELIGIBILITY

Medical Condition – To be eligible, an incarcerated person must have a severely incapacitating or terminal medical condition for which care outside a correctional facility is medically appropriate.²

- State law and Department of Corrections (Department) policy do not provide definitions or criteria for “severely incapacitating” or “terminal” conditions.

Exclusions – The general “time served” eligibility requirements for Supervised Community Confinement do not apply to individuals with severely incapacitating or terminal medical conditions.³

- Note that Maine policy includes conflicting statements regarding eligibility and exclusions:
 - The Supervised Community Confinement statute says that individuals must have a minimum-security classification to be eligible;⁴ however, the corresponding Department policy indicates that a minimum-security classification is one of the general eligibility requirements that does **not** apply to individuals applying based on severe incapacitation or terminal illness.⁵
 - The Department’s Supervised Community Confinement rules state that any individual likely to have contact with a previous victim of domestic violence, a sex offense, or child abuse may not be transferred to Supervised Community Confinement unless the Commissioner has granted a waiver.⁶ However, the section covering individuals who are severely incapacitated or terminally ill appears to state that the waiver requirement, just like the other general eligibility requirements, does **not** apply.⁷

II. APPLICATION/REFERRAL

The Chief Administrative Officer of each adult correctional facility is responsible for maintaining a process that allows eligible individuals to apply for participation in the Supervised Community Confinement program.⁸ However, the Department rules do not currently provide detailed guidance on establishing such a process.

To start the general Supervised Community Confinement process, Department rules state that an incarcerated individual must submit an application to the facility's Community Programs Coordinator or other designated staff at least two months in advance of the proposed transfer.⁹

- The rules do not provide information on whether the application process is different for an incarcerated person who is severely incapacitated or terminally ill.
- The rules also do not address whether someone else can submit an application on behalf of an individual.

III. DOCUMENTATION AND ASSESSMENT

Medical Determination: Director of Medical Care – The Department's Director of Medical Care is responsible for determining whether individuals have a severely incapacitating or terminal medical condition and whether care outside of the correctional facility is medically appropriate.¹⁰

- Department rules state that the Commissioner may approve a transfer to Supervised Community Confinement for an individual who is severely incapacitated or terminally ill "through any process" determined to be appropriate.¹¹ However, the process described in the rules is not specific to those with medical conditions and appears to apply to all requests for Supervised Community Confinement.
- It is not clear from Department rules whether the required medical determination happens before, after, or simultaneously with the general process involving the evaluation and review processes discussed below.

Initial Determination: Community Program Coordinator – The facility's Community Program Coordinator or other designated staff member makes an initial determination as to whether an individual is eligible for Supervised Community Confinement. If so, the application is referred to the Unit Management Team.¹²

Review: Unit Management Team – In considering an individual for transfer to Supervised Community Confinement, the Unit Management Team reviews all of the following:¹³

- Institutional adjustment;
- Compliance with individualized case plans;
- Criminal history;

- History of revocation while on supervision in the community;
- History of violating conditions of release;
- Any previous violations of a community transition program or the Supervised Community Confinement program;
- Community risk assessment;
- Safety of the public and the individual;
- Behavior, conduct, and “social” attitudes;
- Work record;
- Mental and emotional stability;
- Suitability of the proposed residence;
- Adequacy of the plan for work, education, and/or treatment; and
- Any other relevant factors.

IV. DECISION

Decision-Maker – The Department Commissioner, or the Commissioner’s designee, makes all decisions to approve or deny requests for Supervised Community Confinement.¹⁴

Conditions

- **Environment** – Incarcerated individuals transferred to Supervised Community Confinement are generally required to live in an approved hospital or other care facility, such as a nursing home, residential care facility, or a licensed hospice program.¹⁵ Individuals must consent to a transfer from the correctional facility to the proposed setting.¹⁶
 - If the Commissioner approves, individuals can also receive approved hospice services or other care services at home.¹⁷
- **Other Conditions** – Maine law includes a list of mandatory conditions for those transferred to Supervised Community Confinement, including curfews, travel restrictions, and work requirements.¹⁸ The Department Commissioner can exempt those who are transferred to Supervised Community Confinement for medical reasons from any of the otherwise mandatory

conditions that are not appropriate or applicable.¹⁹

- Note that one of those mandatory conditions is that individuals must pay for their own health care.²⁰

V. POST-DECISION

Denials and Appeal Rights – All decisions related to Supervised Community Confinement transfers are at the complete discretion of the Commissioner (or the Commissioner’s designee) and may not be appealed.²¹

Supervision – The Regional Correctional Administrator of each adult community corrections region is responsible for supervising individuals while on Supervised Community Confinement.²²

Medical Updates – Individuals transferred to Supervised Community Confinement must provide information about their medical conditions or care at any time the Commissioner requests.²³

Revocation/Termination – The Commissioner can revoke Supervised Community Confinement if: (1) an individual fails to comply with a request for medical or care information; (2) the Department’s Director of Medical Care determines that an individual no longer has a severely incapacitating or terminal medical condition; or (3) care outside a correctional facility is not medically appropriate.²⁴

VI. REPORTING/STATISTICS

The Department reported the following statistics:

- In 2019, the Department approved 67 individuals (32 men and 35 women) for Supervised Community Confinement.²⁵ However, the Department did not specify the number of placements it granted due to severe incapacitation or terminal illness and did not respond to FAIMM’s request for that information.
- In 2020, the Department approved 168 individuals (100 men and 68 women) for Supervised Community confinement.²⁶ Again, the Department did not specify the number of placements it granted due to severe incapacitation or terminal illness and did not respond to FAIMM’s request for that information.

MAINE COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

SUPERVISED COMMUNITY CONFINEMENT

Statute

Maine Revised Statutes, Title 34-A, § 3036-A (10) (2020), available through the Maine Legislature, <http://legislature.maine.gov/statutes/34-A/title34-Asec3036-A.html>.

Agency Policy

Maine Department of Corrections, Chapter 27: Release Preparation, Policy 27.2-Supervised Community Confinement (2017), § VI-Procedures: Procedure I-Supervised Community Confinement for a Terminally Ill or Severely Incapacitated Prisoner, <https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/27.02%20%28AF%29%20-%20SUPERVISED%20COMMUNITY%20CONFINEMENT.pdf>.

NOTES

* *Id.* means see prior note.

¹ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); Maine Department of Corrections, Chapter 27: Release Preparation, Policy 27.2-Supervised Community Confinement (2017) (DOC Policy 27.2), § VI-Procedures: Procedure I-Supervised Community Confinement for a Terminally Ill or Severely Incapacitated Prisoner, <https://www.maine.gov/corrections/policies-procedures-proposed-rules>.

² *Id.*

³ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); DOC Policy 27.2, § VI, Procedure I (1).

⁴ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10). See also Maine Rev. Stat. Ann. tit.34-A, § 3036-A (2) (D).

⁵ DOC Policy 27.2, § VI, Procedure I (1).

⁶ *Id.* at Procedure B (12).

⁷ *Id.* at Procedure I (1).

⁸ *Id.* at Procedure A (5).

⁹ *Id.* at Procedure D (2), referencing Attachment A: Supervised Community Confinement Application.

¹⁰ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); DOC Policy 27.2, § VI, Procedure I (1).

¹¹ DOC Policy 27.2, § VI, Procedure I (2).

¹² Id. at Procedure D (8).

¹³ Id. at Procedure D (10) (a) through (10) (m).

¹⁴ Maine Rev. Stat. Ann. tit.34-A, §§ 3036-A (2) and (10); DOC Policy 27.2, § VI, Procedure I (2).

¹⁵ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); DOC Policy 27.2, § VI-Procedure I (1) (a).

¹⁶ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10).

¹⁷ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); DOC Policy 27.2, § VI-Procedure I (1) (b).

¹⁸ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (3).

¹⁹ Maine Rev. Stat. Ann. tit.34-A, § 3036-A (10); DOC Policy 27.2, § VI-Procedure I (2).

²⁰ DOC Policy 27.2, § VI-Procedure F (21).

²¹ Id. at Procedure I (2).

²² Id. at Procedure A (7).

²³ Maine Rev. Stat. Ann. Tit.34-A at(10); DOC Policy 27.2, § VI-Procedure I (3).

²⁴ Id.

²⁵ Maine Department of Corrections, 2019 Year End MDOC Adult Data Report (Feb. 6, 2020), 29 <https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/2019%20Monthly%20Year%20End%20Adult%20Data%20Report.pdf>.

²⁶ Maine Department of Corrections, 2020 Year End MDOC Adult Data Report (March 17, 2021), 31, <https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/2020%20Year%20End%20Adult%20Data%20Report.pdf>.