

§3036-A. Supervised community confinement program

1. Establishment. The commissioner shall adopt rules establishing and governing a supervised community confinement program for certain prisoners committed to the department. [PL 2021, c. 376, §1 (AMD).]

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

A. A transfer to supervised community confinement may be granted only subject to rules adopted by the commissioner. [PL 2021, c. 376, §2 (AMD).]

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. [PL 2019, c. 113, Pt. C, §91 (AMD).]

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 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. [PL 2021, c. 376, §2 (AMD).]

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 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. [PL 2021, c. 376, §2 (AMD).]

D. A prisoner may not be transferred to supervised community confinement if the prisoner has a custody classification level higher than minimum. [PL 2021, c. 376, §2 (AMD).]
[PL 2021, c. 376, §2 (AMD).]

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. [PL 2021, c. 376, §3 (NEW).]

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. [PL 2021, c. 376, §3 (NEW).]

[PL 2021, c. 376, §3 (NEW).]

3. Mandatory conditions for supervised community confinement. Prisoners transferred to supervised community confinement are subject to the following mandatory conditions.

A. The prisoner must be involved in a program of work or education that is approved by the commissioner together with any treatment program that the commissioner might require. The commissioner may waive the requirement of involvement in a program of work or education for a prisoner who is involved in an approved full-time treatment program. [PL 2007, c. 536, §4 (AMD).]

B. The prisoner must live in a residence that is approved by the commissioner. [PL 1991, c. 845, §4 (NEW).]

C. The prisoner must be subject to a curfew set by the commissioner during which time the prisoner must be at the approved residence. [PL 1991, c. 845, §4 (NEW).]

D. The prisoner must be subject to travel or movement restrictions set by the commissioner limiting the prisoner's travel to times and places directly related to approved employment, education, treatment or such other specific purposes as are approved in advance by the commissioner. [PL 1991, c. 845, §4 (NEW).]

E. The prisoner must be subject to searches of the prisoner's person, residence, papers and effects without a warrant and without probable cause, for items prohibited by law or by the conditions of supervised community confinement or otherwise subject to seizure, upon the request of the commissioner. The commissioner may prohibit the prisoner from residing with anyone who does not consent to a search of the residence to the extent necessary to search the prisoner's person, residence, papers and effects. [PL 1991, c. 845, §4 (NEW).]

F. The prisoner may not possess or use illegal drugs or other illegal substances, may not possess or use alcohol and may not misuse any other legal substance. [PL 2017, c. 407, Pt. A, §154 (AMD).]

G. The prisoner must submit to urinalysis, breath testing or other chemical tests without probable cause at the request of the commissioner. [PL 1991, c. 845, §4 (NEW).]

H. The prisoner must notify any law enforcement officer, if stopped, of the prisoner's status as a prisoner on supervised community confinement and notify the commissioner within 8 hours of any such contact with any law enforcement officer. [PL 1991, c. 845, §4 (NEW).]

I. The prisoner may not violate state or federal criminal law. [PL 1991, c. 845, §4 (NEW).]

J. When required by the commissioner and to the extent that the commissioner determines that the prisoner has the financial resources, the prisoner must pay part or all of the costs of the prisoner's participation in the supervised community confinement program. [PL 1991, c. 845, §4 (NEW).]
[PL 2017, c. 407, Pt. A, §154 (AMD).]

4. Additional conditions. In addition to the mandatory conditions, the conditions of supervised community confinement that may be imposed on a prisoner at any time include:

A. Any condition that may be imposed as a condition of probation pursuant to Title 17-A, section 1807; and [PL 2019, c. 113, Pt. C, §94 (AMD).]

B. Any condition that would be appropriate for the prisoner and the supervised community confinement program. The conditions imposed may be as stringent or restrictive as, but not more stringent or restrictive than, those that may be constitutionally imposed if the prisoner were actually housed at a maximum security institution. [PL 1991, c. 845, §4 (NEW).]
[PL 2019, c. 113, Pt. C, §94 (AMD).]

5. Copy of rules. Copies of rules must be provided to prisoners as follows.

A. The commissioner shall provide to any prisoner permitted to participate in the supervised community confinement program under this section a copy of the rules applicable to the program. [PL 1991, c. 845, §4 (NEW).]

B. The prisoner shall attest to the receipt of the copy of the rules. [PL 1991, c. 845, §4 (NEW).]
[PL 1991, c. 845, §4 (NEW).]

6. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person 18 years of age or older is guilty of interference with supervised community confinement if that person intentionally or knowingly obstructs, intimidates or otherwise abets any prisoner participating in the supervised community confinement program under this section and intentionally contributes or causes the prisoner to violate any term of supervised community confinement program participation, after having been warned by the commissioner to end the offending activity. [PL 1991, c. 845, §4 (NEW).]

B. Interference with supervised community confinement is a Class D crime. [PL 1991, c. 845, §4 (NEW).]
[PL 1991, c. 845, §4 (NEW).]

7. Investigation of compliance. The commissioner, at any time and in any manner the commissioner determines appropriate, may investigate compliance with the conditions imposed. The means of investigation may include, but are not limited to, the following:

A. Personal contact with the prisoner at the prisoner's residence, place of employment or any other place; [PL 1991, c. 845, §4 (NEW).]

B. Direct inquiry of the prisoner's employer, school or any other person or entity; [PL 1991, c. 845, §4 (NEW).]

C. Criminal, court and law enforcement agency investigations; and [PL 2021, c. 376, §4 (AMD).]

D. Credit and other financial inquiries. [PL 1991, c. 845, §4 (NEW).]
[PL 2021, c. 376, §4 (AMD).]

8. Funding. Funds generated pursuant to this section must be deposited into the Supervised Community Confinement Account established by the department, except that where authorized by the department, a person participating in the supervised community confinement program may be required to pay fees directly to a provider of electronic monitoring, drug testing or other services. Funds from this account, which may not lapse, must be used to pay for the costs of the supervised community confinement program.

[PL 1993, c. 503, §1 (AMD).]

9. Probation violation; revocation. If a prisoner on supervised community confinement violates a condition of supervised community confinement imposed on the prisoner and if the violation conduct is also a violation of a condition of probation imposed as part of the sentence the prisoner is serving while on supervised community confinement, a probation officer may file with any court a motion for revocation of probation and the court may revoke probation as specified in Title 17-A, section 1812.

[PL 2019, c. 113, Pt. C, §95 (AMD).]

10. Terminally ill or incapacitated prisoner. With the consent of the prisoner, the commissioner may transfer a prisoner committed to the department 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 or has a worsening prognosis that is likely to result in 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 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 a worsening prognosis that is likely to result in 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.

[PL 2023, c. 659, §2 (AMD).]

11. Revocation of transfer. The commissioner may revoke a transfer to supervised community confinement at any time for any reason in the commissioner's discretion.

[PL 2009, c. 391, §17 (NEW).]

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. The department shall include information about the determination and approval process for prisoners who have a terminal or severely incapacitating medical condition or have a worsening prognosis that is likely to result in a terminal or severely incapacitating medical condition and for whom care outside a correctional facility is medically appropriate. The department shall publish this information on its publicly accessible website.

[PL 2023, c. 659, §3 (AMD).]

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. The department also shall track data for all prisoners who are transferred to supervised community confinement under subsection 10. 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. The department shall publish monthly on its publicly accessible website the data tracked pursuant to

this subsection in a manner that does not violate the confidentiality requirements of section 1216 or any other provision of state or federal law.

[PL 2023, c. 659, §4 (AMD).]

SECTION HISTORY

PL 1991, c. 845, §4 (NEW). PL 1993, c. 170, §1 (AMD). PL 1993, c. 503, §1 (AMD). PL 1997, c. 464, §12 (AMD). PL 2001, c. 141, §§1,2 (AMD). PL 2003, c. 205, §13 (AMD). PL 2003, c. 711, §§A21,22 (AMD). PL 2003, c. 711, §D2 (AFF). PL 2005, c. 68, §2 (AMD). PL 2007, c. 240, Pt. ZZZ, §2 (AMD). PL 2007, c. 536, §4 (AMD). PL 2009, c. 391, §§16, 17 (AMD). PL 2017, c. 407, Pt. A, §154 (AMD). PL 2019, c. 113, Pt. C, §§91-95 (AMD). PL 2021, c. 376, §§1-7 (AMD). PL 2023, c. 399, §§1, 2 (AMD). PL 2023, c. 659, §§2-4 (AMD).

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