

The department has overstepped the bounds of its authority via two of the mandated provisions proposed. P.31 provisions directly contravene state statute. **M.S.R.A. 25 §1502** states “Municipal and county jails *shall at all times* be available for detention of persons arrested by state or *any other* law enforcement officers.” [emphasis added] *PL 1989, c. 757 (AMD)*. The department’s proposed mandated rule is an overreach of its statutory authority by excluding the acceptance of only federal arrestees by nature of their arresting agency at the expense of the public safety need linked to complex local criminal behavior.

As drafted, the rule change requested in **P. 31** leaves the burden for state failures to adequately resource the justice system to remain hidden, unaddressed and solely on the property tax to shoulder. Further, a prescribed approach that fails to account for known pressures beyond a facility’s control will result in a decision process that elevates a physical space standard above the needs and obligations to victims and the rights of alleged perpetrators and potentially encumbers property taxpayers of other communities to address those needs simply because there is a perception of space available in another facility.

**K. 19** as drafted lacks input from individuals tasked with the development of the form required for reporting and entirely bypasses council authority to establish reporting standards for county jails as required under **34 A -1208 B Subsection 5**.

Finally, as the council indicated in several meetings regarding recommendations on the proposed rulemaking, the proposed rules have a significant financial impact on a local unit of government that must constitutionally be reviewed by the legislature and either funded or overridden by a vote of two-thirds of the elected members of both bodies of state government.

**The council finds that the Commissioner ignored council statements of significant financial impact and has inaccurately classified rules that are in fact “major and substantive” and minimized the known fiscal impact to enable a process that labels them “routine and technical”.**

**The council rejects the Commissioner’s authority to adopted all of the standards as drafted in sections P. 31 and K. 19 of the proposed rules, and suggests that the recommendations below be submitted to the 132<sup>nd</sup> legislature for their necessary constitutional and transparent review.**

The key obligation of all justice system responses is to protect the general public from threat, protect individual victims from retaliation or harm at the hands of an alleged perpetrator and to protect the health, rights, and welfare of the accused while the system decides their how it will address their personal responsibility for violations of criminal law.

The general approach adopted by facilities to address overcrowding are to use risk-based assessments in concert with their judicial partners to ensure appropriate release of individuals who have agency, and capacity to meet their personal obligations to answer for their charges on pre-trial release, while not presenting a threat to those they have victimized or the general public. **As proposed, P. 31 sections 1 & 2** already occur on a regular basis.

Facilities that are overpopulated with inmates who are too risky to released and fail to meet an assessment of risk to the general public or victims, are unable to be released until the courts process their case adequately and in a timely fashion. As drafted, the rules place a barrier between

county facilities and their state partners instead requiring a prescriptive list of fiscal burdens to be pursued before the department of corrections can be consulted for assistance. There is no obligation upon the state to remove residents who are being housed for violations of state-imposed conditions of release from a state facility, and instead a requirement that a facility board those residents to other county facilities at local expense.

**The council suggests amending and clarifying section 3 of P. 31 to read:**

**3. *Arrange the immediate transfer of sentenced inmates and those held on violations of conditions of their release from a state facility directly to state correctional facilities.***

**Section 4 of P. 31** requires that supplemental county budget funds are available to offset the cost of housing inmates in another facility and assumes that facilities with open beds have adequate staffing resources to address additional population. This is not the case as many facilities are struggling to recruit and retain correctional officers and are unable to safely accept additional residents from other facilities without prioritizing the needs of their staff and existing residents in balance with their budgeted operations. Again, counties are prohibited by statute from establishing reserve accounts to address dynamic pressures because those funds come directly from the local property tax base via annual assessment.

**The council suggests amending Section 4 of P. 31 to enable the mutual assistance of other facilities without transferring or expanding the existing taxpayer burden in neighboring communities. The proposed standard should read:**

**4. *Arrange the transfer of detainees to other jails able to accept an individual without additional unplanned local expenditure.***

As proposed, **section 5 of P. 31** requires a county to terminate a fiscal contract to house an inmate arrested locally, simply because the arresting agency is federal, and the facility is over an established rated capacity later. Standardized federal contracts require 30 days' notice to remove a federal prisoner to another facility. These contracts and their anticipated revenue are committed at the time of annual budget adoption. The proposed rule requires the removal of those prisoners causing a county to break a fiscal contract with federal partners at a cost to the local taxpayer with no reference in the rule to how long a facility is in this state before requiring such action. There are no triggers in the proposed standard for the number of days a facility has remained over its rated capacity to cause such a trigger failing to account for large scale arrest events.

This is not only a fiscal burden on the property taxpayer without legislative review, but also creates a different class of inmate, violating their rights to be housed locally not based on risk or location of criminal activity, but instead based on arresting agency and a future facility capacity. As stated previously, this is in violation of the statutory requirements for municipal and county jails to be available to all persons presented by the state or any other arresting agency. This provision unnecessarily demands that the property taxpayer of a county forgo the committed federal revenue received for their services and house or board state prisoners at their own expense instead.

Federal inmates are a small portion of the county jail population and have a similar right to family contact as all other inmates. They should not be targeted as a population for removal without additional filters like residency, safety of staff, adequacy of an accepting facility to meet their

needs, and the proportion of their population compared to other residents sentenced to state facilities awaiting disposition of new charges. Instead of the current practice where all inmates are accepted when the arresting/transporting officer meets the requirements under **E.2**., the proposed standard sets a precedent that arresting agency alone establishes a reason to refuse an inmate.

**The council suggest striking the language that requires a jail administrator to remove existing federal prisoners but retain the language that requires a facility over its rated capacity to notify federal authorities of the situation if a facility remains over its rated capacity for a period of more than 90 days. Sec. 5 should read:**

**5. *If applicable, inform the U.S. Marshal's Services and other relevant federal agencies of the situation to allow informed decision making for discretionary arrests.***

Finally, a proposed mandatory standard that provides a detailed process before asking for assistance from the Department of Corrections should have an equally prescriptive list of solutions that are able to be offered to the requesting facility.

**The Council recommends the following additional language be included in the mandatory standard if adopted by the legislature:**

***If all of the above steps have been completed, the jail may contact the Department of Corrections for assistance that shall not be limited to:***

- 1. *Assistance in locating a cost neutral placement of an individual in another facility;***
- 2. *Assistance in staffing, funding or the provision of services and transport in a facility with space to include the possibility of a designated overflow space to serve all county facilities;***
- 3. *Direct transfer to a state facility of individuals held due to a violation of conditions of release from a state facility, or charged with a class A crime who are unable to be released and pose a significant risk to public safety while awaiting trial.***