

ASSEMBLY JOINT RESOLUTION

No. 167

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 1, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

Assemblywoman Mosquera

SYNOPSIS

Creates commission to study sexual assault, misconduct, and harassment by staff against inmates in State correctional facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/30/2020)

1 **A JOINT RESOLUTION** creating a commission to study sexual
2 assault, misconduct, and harassment in this State’s correctional
3 facilities.
4
5 **WHEREAS,** The Edna Mahan Correctional Facility for Women
6 (Edna Mahan) is the only all-female correctional facility in this
7 State in which more than 600 adult female offenders currently
8 are incarcerated; and
9 **WHEREAS,** Eight employees at Edna Mahan were terminated for
10 sexual misconduct between 2010 and 2016; three in 2010 and
11 five in 2016; six employees have been criminally charged with
12 sexual abuse and official misconduct in the last two years; and
13 the Attorney General subsequently has hired legal counsel to
14 analyze the “administrative protocols and investigatory
15 responses” at Edna Mahan; and
16 **WHEREAS,** In January 2017, the Hunterdon County Prosecutor’s
17 Office announced as part of an “ongoing investigation” that four
18 Edna Mahan corrections officers were indicted for a total of 26
19 counts involving sexual abuse and official misconduct; and
20 **WHEREAS,** At least one corrections officer and a trade instructor
21 employed at Edna Mahan have been convicted of official
22 misconduct; and
23 **WHEREAS,** In February 2018, based on allegations that a
24 corrections officer engaged in a sexual relationship with three
25 inmates, the Hunterdon County Prosecutor’s Office charged the
26 officer with seven counts of second degree official misconduct,
27 two counts of second degree sexual assault, two counts of second
28 degree conspiracy to commit sexual assault, one count of second
29 degree pattern of official misconduct, and three counts of fourth
30 degree criminal sexual contact; and
31 **WHEREAS,** On May 9, 2018, a Hunterdon County jury found a
32 senior corrections officer at Edna Mahan guilty of five counts of
33 sexual assault, criminal sexual contact, and official misconduct;
34 and
35 **WHEREAS,** Two male Edna Mahan corrections officers pled guilty
36 to official misconduct charges, one in July 2018 who admitted to
37 sexually abusing three different inmates and one in January 2019
38 who admitted to sexually abusing two inmates over a several
39 year period; and
40 **WHEREAS,** Further, in November 2019, a female Edna Mahan
41 corrections officer pled guilty to criminal sexual contact for
42 engaging in sexual conduct with an inmate; and
43 **WHEREAS,** At least five civil lawsuits recently have been filed by
44 Edna Mahan inmates against the Department of Corrections
45 (DOC), corrections officers, and others, claiming sexual assault
46 and sexual harassment: one in November 2017 in the Superior
47 Court of New Jersey-Law Division, Hunterdon County; two in
48 December 2017 in the Superior Court of New Jersey-Law

1 Division, Mercer County, including a class action lawsuit
2 claiming systemic, inappropriate, and illegal treatment of the
3 plaintiff inmates resulting from a long-standing, prison-wide
4 culture of sexual abuse; one in December 2017 in the United
5 States District Court, District of New Jersey; and one in February
6 2018 in the Superior Court of New Jersey-Law Division,
7 Hunterdon County; and

8 **WHEREAS**, The DOC has adopted a policy of “Zero Tolerance of
9 Prison Sexual Assault” as required under the federal Prison Rape
10 Elimination Act of 2003 (PREA) pursuant to which sexual
11 misconduct reporting and investigatory procedures have been
12 established, unscheduled tours are being conducted by
13 supervisory staff to detect unusual or unwarranted staff behavior,
14 and employees are receiving pre-service and annual in-service
15 training on sexual assault and sexual misconduct; and

16 **WHEREAS**, The DOC has installed updated camera systems
17 designed to eliminate “blind spots” where sexual assault and
18 sexual misconduct may go undetected; and

19 **WHEREAS**, DOC facilities undergo certain audits to ensure
20 compliance with federal PREA standards and an audit in 2016
21 determined that Edna Mahan complied with all relevant federal
22 standards and exceeded those standards with respect to employee
23 training; and

24 **WHEREAS**, Notwithstanding the audit’s findings, the DOC’s actions
25 to combat sexual assault and sexual misconduct in State
26 correctional facilities, and the safety and security of inmates in
27 Edna Mahan remains an on-going problem that must be
28 addressed; and

29 **WHEREAS**, Sexual violence is recognized by the Federal Bureau of
30 Investigation (FBI) as the second most violent crime, and the
31 systemic abuse and mistreatment of inmates in this State’s
32 correctional facilities, as well as its concealment, is unacceptable
33 and prohibited by law; and

34 **WHEREAS**, This State recognizes that dominant culture often causes
35 men or gender non-conforming inmates to also be at risk for the
36 systemic abuse and mistreatment as experienced by female
37 inmates in Edna Mahan; and

38 **WHEREAS**, In the April 2020 report entitled, the “Investigation of
39 the Edna Mahan Correctional Facility for Women (Union
40 Township, New Jersey), the Civil Rights Division of the United
41 States Department of Justice and the District of New Jersey
42 United States Attorney’s Office concluded that the New Jersey
43 Department of Corrections fails to keep inmates in Edna Mahan
44 safe from sexual abuse by facility staff in violation of the Eighth
45 Amendment of the United States Constitution; and

46 **WHEREAS**, Based on past and recent criminal convictions, pending
47 criminal charges, and civil lawsuits against Edna Mahan staff
48 and the DOC, it is fitting and proper for the Legislature to

1 establish a commission to identify the causes and consequences
2 of sexual assault in Edna Mahan, as well as in correctional
3 facilities for male inmates in this State, and analyze current DOC
4 policy and procedures to determine how they can be modified to
5 improve the safety and well-being of these incarcerated inmates;
6 now, therefore,
7

8 **BE IT RESOLVED** *by the Senate and General Assembly of the*
9 *State of New Jersey:*
10

11 1. There is established the “Commission to Protect New Jersey
12 Inmates from Sexual Assault and Sexual Misconduct.” The
13 commission shall consist of the following 17 members:

14 a. four legislative members, who shall include two members of
15 the Senate, who shall not be of same political party, and two members
16 of the General Assembly, who shall not be of the same political party.
17 The President of the Senate, the Speaker of the General Assembly, the
18 Minority Leader of the Senate, and the Minority Leader of the General
19 Assembly each shall appoint one legislative member;

20 b. four ex officio members or their designees, who shall include
21 the following: the Commissioner of Corrections, the Attorney General,
22 the Director of the Division on Women in the Department of Children
23 and Families, and the Public Defender.

24 c. nine public members appointed by the Governor, who shall
25 include the following: a former inmate of the Edna Mahan
26 Correctional Facility for Women, a victims’ rights advocate, a
27 representative of an organization that defends civil rights or promotes
28 social justice, a faculty member of a college or university located in
29 this State with expertise in women’s issues, a representative of a
30 collective bargaining unit representing correctional police officers, a
31 representative of the New Jersey Coalition Against Sexual Assault, a
32 person with expertise on the PREA, a representative of a Quaker
33 organization promoting lasting peace with justice, and a representative
34 of an organization working for racial, social, and economic justice, and
35 greater unity in the community.

36
37 2. a. The commission shall organize within 30 days of the
38 appointment of its members. The commission shall elect a
39 chairperson from among its members, and the chairperson shall
40 select a secretary who need not be a member of the commission.

41 b. The commission may meet at the call of its chairperson at
42 the times and in the places it may deem appropriate and necessary
43 to fulfill its duties, and may conduct public hearings at any place it
44 shall designate.

45 c. The commission may request at these hearings the
46 appearance of officials of any State agency or political subdivision
47 of the State and may solicit testimony of interested groups and the
48 general public, including but not limited to officials, employees,

1 contractors, volunteers, and former and current inmates of State
2 correctional facilities.

3 d. The commission shall be entitled to call to its assistance and
4 avail itself of the services of the employees of any State, county, or
5 municipal department, board, bureau, commission, or agency as it
6 may require and as may be available to it for its purposes, including
7 a State university or college, and to employ stenographic and
8 clerical assistance and incur traveling and other miscellaneous
9 expenses necessary to perform its duties, within the limits of funds
10 appropriated or otherwise made available to it for its purposes.

11 e. Seven members of the commission shall constitute a quorum
12 for the transaction of business.

13 f. Members of the commission shall serve without
14 compensation, but shall be reimbursed for necessary expenses
15 actually incurred in the performance of their duties as members of
16 the commission.

17

18 3. The commission shall examine issues affecting the safety
19 and rights of inmates in State correctional facilities, including, but
20 not limited to, matters concerning official misconduct convictions,
21 pending criminal charges, and civil allegations by Edna Mahan
22 inmates of sexual assault, sexual misconduct, and sexual harassment
23 against correctional police officers, other staff members,
24 contractors, and volunteers working in the facility. The commission
25 specifically shall:

26 a. assess the degree of a facility's compliance with the
27 provisions of PREA, including the PREA audit process and whether
28 these audits should be unannounced, and determine how current
29 standards can be strengthened to further protect the inmates from
30 sexual assault and sexual misconduct;

31 b. ascertain the current policy and procedures for investigating
32 allegations of crimes and offenses by an inmate of sexual assault
33 and sexual misconduct against correctional police officers, other
34 staff members, contractors, and volunteers, including, but not
35 limited to:

36 (1) the current means of reporting allegations of sexual
37 misconduct, including complaints made via existing hotlines, and
38 whether the allegations should be reported to a neutral third party
39 that is not an employee of the DOC;

40 (2) the parameters governing the investigation of a complaint
41 and how it is determined if an allegation is substantiated or
42 unsubstantiated and whether the Special Investigations Division of
43 the DOC can fairly and impartially conduct these investigations;

44 (3) whether the inmates' due process rights are being protected
45 during the investigation;

46 (4) how the facility prevents retaliation by a DOC employee
47 against whom there is an allegation of sexual misconduct or other
48 criminal act and whether the employee is or should be suspended,

- 1 either with or without pay, pending the completion of an
2 investigation; and
3 (5) whether an inmate is receiving adequate services to deal
4 with the trauma resulting from the sexual misconduct or other
5 criminal act of the staff;
6 c. explore the feasibility of increasing the female to male staff
7 ratio in Edna Mahan and determine if the current policy governing
8 cross gender searches and surveillance should include further
9 protections for female inmates;
10 d. consider whether it would be appropriate to establish a
11 citizen oversight board to monitor a facility;
12 e. research the availability of additional training and technical
13 assistance from the PREA Research Center;
14 f. consider issues concerning the sexual victimization of
15 inmates by correctional police officers, employees, contractors, and
16 volunteers in this State’s correctional facilities for males; and
17 g. study any other issue it deems relevant to enhance the safety
18 and security of the inmates in State correctional facilities.
19

20 4. The commission shall prepare and submit to the Governor
21 and to the Legislature pursuant to section 2 of P.L.1991, c.164
22 (C.52:14-19.1) a preliminary report of its findings and
23 recommendations no later than six months after the organizational
24 meeting of the commission, and a final report, including legislative
25 proposals, no later than one year after the organizational meeting.
26 The commission shall expire upon submission of the final report,
27 unless it deems further deliberations are necessary, in which case it
28 may be extended for two subsequent periods of six months.
29

30 5. This joint resolution shall take effect immediately.
31
32

33 STATEMENT
34

35 This resolution establishes the “Commission to Protect New
36 Jersey Inmates from Sexual Assault and Sexual Misconduct” to
37 research issues concerning the sexual victimization of inmates by
38 correctional police officers, employees, contractors, and volunteers
39 in this State’s correctional facilities.

40 The 17-member commission is to be comprised of two Senators
41 from different parties and two members of the General Assembly,
42 also of different parties, as well four ex officio members or their
43 designees, including the Commissioner of Corrections, the Attorney
44 General, the Director of the Division on Women, and the Public
45 Defender. The nine public members that are to be appointed by the
46 Governor are to include: a former inmate of the Edna Mahan
47 Correctional Facility for Women, a victims’ rights advocate, a
48 representative of an organization that defends civil rights or

1 promotes social justice, a faculty member of a college or university
2 located in this State with expertise in women's issues, a
3 representative of a collective bargaining unit representing
4 correctional police officers, a representative of the New Jersey
5 Coalition Against Sexual Assault, a person with expertise on the
6 federal Prison Rape Elimination Act of 2003 (PREA), a
7 representative of a Quaker organization promoting lasting peace
8 with justice, and a representative of an organization working for
9 racial, social, and economic justice, as well as greater unity in the
10 community.

11 The joint resolution specifically directs the commission to:

12 (1) assess the degree of a facility's compliance with the
13 provisions of the PREA, including the PREA audit process and
14 whether these audits should be unannounced, and determine how
15 current standards can be strengthened to further protect the inmates
16 from sexual assault and sexual misconduct;

17 (2) ascertain the current policy and procedures for investigating
18 allegations of crimes and offenses by an inmate of sexual assault,
19 sexual misconduct, and other criminal acts by correctional police
20 officers, other staff members, contractors, and volunteers including
21 the current means of reporting these allegations and whether they
22 should be reported to a neutral third party that is not an employee of
23 the Department of Corrections (DOC); the parameters governing the
24 investigation of the complaint and how it is determined if an
25 allegation is substantiated or unsubstantiated and whether the
26 Special Investigations Division (SID) of the DOC can fairly and
27 impartially conduct these investigations; whether the inmates' due
28 process rights are being protected during the investigation; how the
29 facility prevents retaliation by a DOC employee against whom there
30 is an allegation of sexual misconduct and whether the employee is
31 or should be suspended, either with or without pay; and whether an
32 inmate is receiving adequate services to deal with the trauma
33 resulting from the sexual misconduct;

34 (3) explore the feasibility of increasing the female to male staff
35 ratio in Edna Mahan Correctional Facility for Women and
36 determine if the current policy governing cross gender searches and
37 surveillance should include further protections for inmates;

38 (4) consider whether it would be appropriate to establish a
39 citizen oversight board to monitor a facility;

40 (5) research the availability of additional training and technical
41 assistance from the PREA Research Center;

42 (6) consider issues concerning the sexual victimization of
43 inmates by correctional police officers, employees, contractors, and
44 volunteers in this State's correctional facilities for males;

45 (7) study any other issue it deems relevant to enhance the safety
46 and security of inmates in State correctional facilities.

47 The commission is required to organize within 30 days of the
48 appointment of its members. The commission is to select a

1 chairperson from among its members. Seven members of the
2 commission would constitute a quorum for the transaction of
3 business. Members of the commission are to serve without
4 compensation, but they are to be reimbursed for necessary expenses
5 incurred in performing their duties for the commission.

6 The commission is required to issue to the Governor and the
7 Legislature a preliminary report of its findings and
8 recommendations six months from the commission's organizational
9 meeting and a final report, including legislative proposals, within
10 one year of the meeting. The commission would expire upon
11 submission of the final report, unless it deems further deliberations
12 are necessary, in which case it may be extended for two subsequent
13 periods of six months.

14 Based on past and present criminal convictions, pending criminal
15 charges, and civil lawsuits against Edna Mahan staff and the DOC,
16 it is fitting and proper for the Legislature to establish a commission
17 to identify the causes and consequences of sexual assault in Edna
18 Mahan, as well as in correctional facilities for male inmates in this
19 State, and analyze current DOC policy and procedures to determine
20 how they can be modified to improve the safety and well-being of
21 these incarcerated inmates.