

P.L. 2020, Joint Resolution No. 3, *approved September 14, 2020*
Senate Joint Resolution No. 79 (*First Reprint*)

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**, ¹**[Most recently, on]** On¹ May 9, 2018, a Hunterdon
32 County jury found a senior corrections officer at Edna Mahan
33 guilty of five counts of sexual assault, criminal sexual contact,
34 and official misconduct; and
35 ¹**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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLP committee amendments adopted May 11, 2020.

1 WHEREAS, Further, in November 2019, a female Edna Mahan
2 corrections officer pled guilty to criminal sexual contact for
3 engaging in sexual conduct with an inmate; and¹

4 **WHEREAS,** At least five civil lawsuits recently have been filed by
5 Edna Mahan inmates against the Department of Corrections
6 (DOC), corrections officers, and others, claiming sexual assault
7 and sexual harassment: one in November 2017 in the Superior
8 Court of New Jersey-Law Division, Hunterdon County; two in
9 December 2017 in the Superior Court of New Jersey-Law
10 Division, Mercer County, including a class action lawsuit
11 claiming systemic, inappropriate, and illegal treatment of the
12 plaintiff inmates resulting from a long-standing, prison-wide
13 culture of sexual abuse; one in December 2017 in the United
14 States District Court, District of New Jersey; and one in February
15 2018 in the Superior Court of New Jersey-Law Division,
16 Hunterdon County; and

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

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

28 **WHEREAS,** DOC facilities undergo certain audits to ensure
29 compliance with federal PREA standards and an audit in 2016
30 determined that Edna Mahan complied with all relevant federal
31 standards and exceeded those standards with respect to employee
32 training; and

33 **WHEREAS,** Notwithstanding the audit’s findings, the DOC’s actions
34 to combat sexual assault and sexual misconduct in State
35 correctional facilities, and the safety and security of inmates in
36 Edna Mahan remains an on-going problem that must be
37 addressed; and

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

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

47 ¹**WHEREAS,** In the April 2020 report entitled, the “Investigation of
48 the Edna Mahan Correctional Facility for Women (Union

1 Township, New Jersey), the Civil Rights Division of the United
2 States Department of Justice and the District of New Jersey
3 United States Attorney's Office concluded that the New Jersey
4 Department of Corrections fails to keep inmates in Edna Mahan
5 safe from sexual abuse by facility staff in violation of the Eighth
6 Amendment of the United States Constitution; and¹

7 **WHEREAS**, Based on past and recent criminal convictions, pending
8 criminal charges, and civil lawsuits against Edna Mahan staff
9 and the DOC, it is fitting and proper for the Legislature to
10 establish a commission to identify the causes and consequences
11 of sexual assault in Edna Mahan, as well as in correctional
12 facilities for '[males] male'¹ inmates in this State, and analyze
13 current DOC policy and procedures to determine how they can
14 be modified to improve the safety and well-being of these
15 incarcerated inmates; now, therefore,

16
17 **BE IT RESOLVED** *by the Senate and General Assembly of the*
18 *State of New Jersey:*

19
20 1. There is established the "Commission to Protect New Jersey
21 Inmates from Sexual Assault and Sexual Misconduct." The
22 commission shall consist of the following 17 members:

23 a. four legislative members, who shall include two members of
24 the Senate, who shall not be of same political party, and two members
25 of the General Assembly, who shall not be of the same political party.
26 The President of the Senate, the Speaker of the General Assembly, the
27 Minority Leader of the Senate, and the Minority Leader of the General
28 Assembly each shall appoint one legislative member;

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

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

45
46 2. a. The commission shall organize within 30 days of the
47 appointment of its members. The commission shall elect a

1 chairperson from among its members, and the chairperson shall
2 select a secretary who need not be a member of the commission.

3 b. The commission may meet at the call of its chairperson at
4 the times and in the places it may deem appropriate and necessary
5 to fulfill its duties, and may conduct public hearings at any place it
6 shall designate.

7 c. The commission may request at these hearings the
8 appearance of officials of any State agency or political subdivision
9 of the State and may solicit testimony of interested groups and the
10 general public, including but not limited to officials, employees,
11 contractors, volunteers, and former and current inmates of State
12 correctional facilities.

13 d. The commission shall be entitled to call to its assistance and
14 avail itself of the services of the employees of any State, county, or
15 municipal department, board, bureau, commission, or agency as it
16 may require and as may be available to it for its purposes, including
17 a State university or college, and to employ stenographic and
18 clerical assistance and incur traveling and other miscellaneous
19 expenses necessary to perform its duties, within the limits of funds
20 appropriated or otherwise made available to it for its purposes.

21 e. Seven members of the commission shall constitute a quorum
22 for the transaction of business.

23 f. Members of the commission shall serve without
24 compensation, but shall be reimbursed for necessary expenses
25 actually incurred in the performance of their duties as members of
26 the commission.

27
28 3. The commission shall examine issues affecting the safety
29 and rights of inmates in State correctional facilities, including, but
30 not limited to, matters concerning official misconduct convictions,
31 pending criminal charges, and civil allegations by Edna Mahan
32 inmates of sexual assault, sexual misconduct, and sexual harassment
33 against correctional police officers, other staff members,
34 contractors, and volunteers working in the facility. The commission
35 specifically shall:

36 a. assess the degree of a facility's compliance with the
37 provisions of PREA, including the PREA audit process and whether
38 these audits should be unannounced, and determine how current
39 standards can be strengthened to further protect the inmates from
40 sexual assault and sexual misconduct;

41 b. ascertain the current policy and procedures for investigating
42 allegations of crimes and offenses by an inmate of sexual assault
43 and sexual misconduct against correctional police officers, other
44 staff members, contractors, and volunteers, including, but not
45 limited to:

46 (1) the current means of reporting allegations of sexual
47 misconduct, including complaints made via existing hotlines, and

1 whether the allegations should be reported to a neutral third party
2 that is not an employee of the DOC;

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

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

9 (4) how the facility prevents retaliation by a DOC employee
10 against whom there is an allegation of sexual misconduct or other
11 criminal act and whether the employee is or should be suspended,
12 either with or without pay, pending the completion of an
13 investigation; and

14 (5) whether an inmate is receiving adequate services to deal
15 with the trauma resulting from the sexual misconduct or other
16 criminal act of the staff;

17 c. explore the feasibility of increasing the female to male staff
18 ratio in Edna Mahan and determine if the current policy governing
19 cross gender searches and surveillance should include further
20 protections for female inmates;

21 d. consider whether it would be appropriate to establish a
22 citizen oversight board to monitor a facility;

23 e. research the availability of additional training and technical
24 assistance from the PREA Research Center;

25 f. consider issues concerning the sexual victimization of
26 inmates by correctional police officers, employees, contractors, and
27 volunteers in this State's correctional facilities for males; and

28 g. study any other issue it deems relevant to enhance the safety
29 and security of the inmates in State correctional facilities.

30

31 4. The commission shall prepare and submit to the Governor
32 and to the Legislature pursuant to section 2 of P.L.1991, c.164
33 (C.52:14-19.1) a preliminary report of its findings and
34 recommendations no later than six months after the organizational
35 meeting of the commission, and a final report, including legislative
36 proposals, no later than one year after the organizational meeting.
37 The commission shall expire upon submission of the final report,
38 unless it deems further deliberations are necessary, in which case it
39 may be extended for two subsequent periods of six months.

40

41 5. This joint resolution shall take effect immediately.

42

43

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45

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