

JOINT RESOLUTION NO. 3

A JOINT RESOLUTION creating a commission to study sexual assault, misconduct, and harassment in this State's correctional facilities.

WHEREAS, The Edna Mahan Correctional Facility for Women (Edna Mahan) is the only all-female correctional facility in this State in which more than 600 adult female offenders currently are incarcerated; and

WHEREAS, Eight employees at Edna Mahan were terminated for sexual misconduct between 2010 and 2016; three in 2010 and five in 2016; six employees have been criminally charged with sexual abuse and official misconduct in the last two years; and the Attorney General subsequently has hired legal counsel to analyze the "administrative protocols and investigatory responses" at Edna Mahan; and

WHEREAS, In January 2017, the Hunterdon County Prosecutor's Office announced as part of an "ongoing investigation" that four Edna Mahan corrections officers were indicted for a total of 26 counts involving sexual abuse and official misconduct; and

WHEREAS, At least one corrections officer and a trade instructor employed at Edna Mahan have been convicted of official misconduct; and

WHEREAS, In February 2018, based on allegations that a corrections officer engaged in a sexual relationship with three inmates, the Hunterdon County Prosecutor's Office charged the officer with seven counts of second degree official misconduct, two counts of second degree sexual assault, two counts of second degree conspiracy to commit sexual assault, one count of second degree pattern of official misconduct, and three counts of fourth degree criminal sexual contact; and

WHEREAS, On May 9, 2018, a Hunterdon County jury found a senior corrections officer at Edna Mahan guilty of five counts of sexual assault, criminal sexual contact, and official misconduct; and

WHEREAS, Two male Edna Mahan corrections officers pled guilty to official misconduct charges, one in July 2018 who admitted to sexually abusing three different inmates and one in January 2019 who admitted to sexually abusing two inmates over a several year period; and

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

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

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

WHEREAS, The DOC has installed updated camera systems designed to eliminate "blind spots" where sexual assault and sexual misconduct may go undetected; and

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

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

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

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

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

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

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

1. There is established the "Commission to Protect New Jersey Inmates from Sexual Assault and Sexual Misconduct." The commission shall consist of the following 17 members:
 - a. four legislative members, who shall include two members of the Senate, who shall not be of same political party, and two members of the General Assembly, who shall not be of the same political party. The President of the Senate, the Speaker of the General Assembly, the Minority Leader of the Senate, and the Minority Leader of the General Assembly each shall appoint one legislative member.
 - b. four ex officio members or their designees, who shall include the following: the Commissioner of Corrections, the Attorney General, the Director of the Division on Women in the Department of Children and Families, and the Public Defender.
 - c. nine public members appointed by the Governor, who shall include the following: a former inmate of the Edna Mahan Correctional Facility for Women, a victims' rights advocate, a representative of an organization that defends civil rights or promotes social justice, a faculty member of a college or university located in this State with expertise in women's issues, a representative of a collective bargaining unit representing correctional police officers, a representative of the New Jersey Coalition Against Sexual Assault, a person with expertise on the PREA, a representative of a Quaker organization promoting lasting peace with justice, and a representative of an organization working for racial, social, and economic justice, and greater unity in the community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- c. explore the feasibility of increasing the female to male staff ratio in Edna Mahan and determine if the current policy governing cross gender searches and surveillance should include further protections for female inmates;
- d. consider whether it would be appropriate to establish a citizen oversight board to monitor a facility;
- e. research the availability of additional training and technical assistance from the PREA Research Center;
- f. consider issues concerning the sexual victimization of inmates by correctional police officers, employees, contractors, and volunteers in this State's correctional facilities for males; and
- g. study any other issue it deems relevant to enhance the safety and security of the inmates in State correctional facilities.

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

5. This joint resolution shall take effect immediately.

Approved September 14, 2020.