

SENATE JOINT RESOLUTION

No. 79

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senator Gopal

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: 5/11/2020)

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 corrections
24 officer engaged in a sexual relationship with three inmates, the
25 Hunterdon County Prosecutor’s Office charged the officer with
26 seven counts of second degree official misconduct, two counts of
27 second degree sexual assault, two counts of second degree
28 conspiracy to commit sexual assault, one count of second degree
29 pattern of official misconduct, and three counts of fourth degree
30 criminal sexual contact; and
31 **WHEREAS,** Most recently, on May 9, 2018, a Hunterdon County
32 jury found a senior corrections officer at Edna Mahan guilty of
33 five counts of sexual assault, criminal sexual contact, and official
34 misconduct; and
35 **WHEREAS,** At least five civil lawsuits recently have been filed by
36 Edna Mahan inmates against the Department of Corrections
37 (DOC), corrections officers, and others, claiming sexual assault
38 and sexual harassment: one in November 2017 in the Superior
39 Court of New Jersey-Law Division, Hunterdon County; two in
40 December 2017 in the Superior Court of New Jersey-Law
41 Division, Mercer County, including a class action lawsuit
42 claiming systemic, inappropriate, and illegal treatment of the
43 plaintiff inmates resulting from a long-standing, prison-wide
44 culture of sexual abuse; one in December 2017 in the United
45 States District Court, District of New Jersey; and one in February
46 2018 in the Superior Court of New Jersey-Law Division,
47 Hunterdon County; and

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

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

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

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

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

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

29 **WHEREAS**, Based on past and present criminal convictions, pending
30 criminal charges, and civil lawsuits against Edna Mahan staff and
31 the DOC, it is fitting and proper for the Legislature to establish a
32 commission to identify the causes and consequences of sexual
33 assault in Edna Mahan, as well as in correctional facilities for males
34 inmates in this State, and analyze current DOC policy and
35 procedures to determine how they can be modified to improve the
36 safety and well-being of these incarcerated inmates; now, therefore,
37

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

40

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

44 a. four legislative members, who shall include two members of
45 the Senate, who shall not be of same political party, and two members
46 of the General Assembly, who shall not be of the same political party.
47 The President of the Senate, the Speaker of the General Assembly, the

- 1 Minority Leader of the Senate, and the Minority Leader of the General
2 Assembly each shall appoint one legislative member;
- 3 b. four ex officio members or their designees, who shall include
4 the following: the Commissioner of Corrections, the Attorney General,
5 the Director of the Division on Women in the Department of Children
6 and Families, and the Public Defender.
- 7 c. nine public members appointed by the Governor, who shall
8 include the following: a former inmate of the Edna Mahan
9 Correctional Facility for Women, a victims' rights advocate, a
10 representative of an organization that defends civil rights or promotes
11 social justice, a faculty member of a college or university located in
12 this State with expertise in women's issues, a representative of a
13 collective bargaining unit representing correctional police officers, a
14 representative of the New Jersey Coalition Against Sexual Assault, a
15 person with expertise on the PREA, a representative of a Quaker
16 organization promoting lasting peace with justice, and a representative
17 of an organization working for racial, social, and economic justice, and
18 greater unity in the community.
19
- 20 2. a. The commission shall organize within 30 days of the
21 appointment of its members. The commission shall elect a
22 chairperson from among its members, and the chairperson shall
23 select a secretary who need not be a member of the commission.
- 24 b. The commission may meet at the call of its chairperson at
25 the times and in the places it may deem appropriate and necessary
26 to fulfill its duties, and may conduct public hearings at any place it
27 shall designate.
- 28 c. The commission may request at these hearings the
29 appearance of officials of any State agency or political subdivision
30 of the State and may solicit testimony of interested groups and the
31 general public, including but not limited to officials, employees,
32 contractors, volunteers, and former and current inmates of State
33 correctional facilities.
- 34 d. The commission shall be entitled to call to its assistance and
35 avail itself of the services of the employees of any State, county, or
36 municipal department, board, bureau, commission, or agency as it
37 may require and as may be available to it for its purposes, including
38 a State university or college, and to employ stenographic and
39 clerical assistance and incur traveling and other miscellaneous
40 expenses necessary to perform its duties, within the limits of funds
41 appropriated or otherwise made available to it for its purposes.
- 42 e. Seven members of the commission shall constitute a quorum
43 for the transaction of business.
- 44 f. Members of the commission shall serve without
45 compensation, but shall be reimbursed for necessary expenses
46 actually incurred in the performance of their duties as members of
47 the commission.

- 1 3. The commission shall examine issues affecting the safety
- 2 and rights of inmates in State correctional facilities, including, but
- 3 not limited to, matters concerning official misconduct convictions,
- 4 pending criminal charges, and civil allegations by Edna Mahan
- 5 inmates of sexual assault, sexual misconduct, and sexual harassment
- 6 against correctional police officers, other staff members,
- 7 contractors, and volunteers working in the facility. The commission
- 8 specifically shall:
 - 9 a. assess the degree of a facility's compliance with the
 - 10 provisions of PREA, including the PREA audit process and whether
 - 11 these audits should be unannounced, and determine how current
 - 12 standards can be strengthened to further protect the inmates from
 - 13 sexual assault and sexual misconduct;
 - 14 b. ascertain the current policy and procedures for investigating
 - 15 allegations of crimes and offenses by an inmate of sexual assault
 - 16 and sexual misconduct against correctional police officers, other
 - 17 staff members, contractors, and volunteers, including, but not
 - 18 limited to:
 - 19 (1) the current means of reporting allegations of sexual
 - 20 misconduct, including complaints made via existing hotlines, and
 - 21 whether the allegations should be reported to a neutral third party
 - 22 that is not an employee of the DOC;
 - 23 (2) the parameters governing the investigation of a complaint
 - 24 and how it is determined if an allegation is substantiated or
 - 25 unsubstantiated and whether the Special Investigations Division of
 - 26 the DOC can fairly and impartially conduct these investigations;
 - 27 (3) whether the inmates' due process rights are being protected
 - 28 during the investigation;
 - 29 (4) how the facility prevents retaliation by a DOC employee
 - 30 against whom there is an allegation of sexual misconduct or other
 - 31 criminal act and whether the employee is or should be suspended,
 - 32 either with or without pay, pending the completion of an
 - 33 investigation; and
 - 34 (5) whether an inmate is receiving adequate services to deal
 - 35 with the trauma resulting from the sexual misconduct or other
 - 36 criminal act of the staff;
 - 37 c. explore the feasibility of increasing the female to male staff
 - 38 ratio in Edna Mahan and determine if the current policy governing
 - 39 cross gender searches and surveillance should include further
 - 40 protections for female inmates;
 - 41 d. consider whether it would be appropriate to establish a
 - 42 citizen oversight board to monitor a facility;
 - 43 e. research the availability of additional training and technical
 - 44 assistance from the PREA Research Center;
 - 45 f. consider issues concerning the sexual victimization of
 - 46 inmates by correctional police officers, employees, contractors, and
 - 47 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.

STATEMENT

This joint resolution establishes the “Commission to Protect New Jersey Inmates from Sexual Assault and Sexual Misconduct” and requires the commission to research issues concerning the sexual victimization of inmates by correctional police officers, employees, contractors, and volunteers in this State’s correctional facilities for males.

The 17-member commission is to be comprised of two Senators from different parties and two members of the General Assembly, also of different parties, as well four ex officio members or their designees, including the Commissioner of Corrections, the Attorney General, the Director of the Division on Women, and the Public Defender. The nine public members that are to be appointed by the Governor are to include: 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 federal Prison Rape Elimination Act of 2003 (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, as well as greater unity in the community.

The joint resolution specifically directs the commission to:

(1) assess the degree of a facility's compliance with the provisions of the PREA, including the PREA audit process and whether these audits should be unannounced, and determine how

1 current standards can be strengthened to further protect the inmates
2 from sexual assault and sexual misconduct;

3 (2) ascertain the current policy and procedures for investigating
4 allegations of crimes and offenses by an inmate of sexual assault,
5 sexual misconduct, and other criminal acts by correctional police
6 officers, other staff members, contractors, and volunteers including
7 the current means of reporting these allegations and whether they
8 should be reported to a neutral third party that is not an employee of
9 the Department of Corrections (DOC), including complaints made
10 via existing hotlines; the parameters governing the investigation of
11 the complaint and how it is determined if an allegation is
12 substantiated or unsubstantiated and whether the Special
13 Investigations Division of the DOC can fairly and impartially
14 conduct these investigations; whether the inmates' due process
15 rights are being protected during the investigation; how the facility
16 prevents retaliation by a DOC employee against whom there is an
17 allegation of sexual misconduct and whether the employee is or
18 should be suspended, either with or without pay; and whether an
19 inmate is receiving adequate services to deal with the trauma
20 resulting from the sexual misconduct;

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

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

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

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

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

34 The commission is required to organize within 30 days of the
35 appointment of its members. The commission is to select a
36 chairperson from among its members. Seven members of the
37 commission would constitute a quorum for the transaction of
38 business. Members of the commission are to serve without
39 compensation, but they are to be reimbursed for necessary expenses
40 incurred in performing their duties for the commission.

41 The commission is required to issue to the Governor and the
42 Legislature a preliminary report of its findings and
43 recommendations six months from the commission's organizational
44 meeting and a final report, including legislative proposals, within
45 one year of the meeting. The commission would expire upon
46 submission of the final report, unless it deems further deliberations
47 are necessary, in which case it may be extended for two subsequent
48 periods of six months.

1 Based on past and present criminal convictions, pending criminal
2 charges, and civil lawsuits against Edna Mahan staff and the DOC,
3 it is fitting and proper for the Legislature to establish a commission
4 to identify the causes and consequences of sexual assault in Edna
5 Mahan, as well as in correctional facilities for males inmates in this
6 State, and analyze current DOC policy and procedures to determine
7 how they can be modified to improve the safety and well-being of
8 these incarcerated inmates.