

[First Reprint]

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)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

Senator Gopal and 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 reported by the Senate Law and Public Safety Committee on May 11, 2020, with amendments.



(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**, 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
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; and¹
43 **WHEREAS**, At least five civil lawsuits recently have been filed by
44 Edna Mahan inmates against the Department of Corrections

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 (DOC), corrections officers, and others, claiming sexual assault
2 and sexual harassment: one in November 2017 in the Superior
3 Court of New Jersey-Law Division, Hunterdon County; two in
4 December 2017 in the Superior Court of New Jersey-Law
5 Division, Mercer County, including a class action lawsuit
6 claiming systemic, inappropriate, and illegal treatment of the
7 plaintiff inmates resulting from a long-standing, prison-wide
8 culture of sexual abuse; one in December 2017 in the United
9 States District Court, District of New Jersey; and one in February
10 2018 in the Superior Court of New Jersey-Law Division,
11 Hunterdon County; and

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

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

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

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

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

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

42 **WHEREAS**, In the April 2020 report entitled, the “Investigation of
43 the Edna Mahan Correctional Facility for Women (Union
44 Township, New Jersey), the Civil Rights Division of the United
45 States Department of Justice and the District of New Jersey
46 United States Attorney’s Office concluded that the New Jersey
47 Department of Corrections fails to keep inmates in Edna Mahan

1 safe from sexual abuse by facility staff in violation of the Eighth
2 Amendment of the United States Constitution; and¹

3 **WHEREAS**, Based on past and recent criminal convictions, pending
4 criminal charges, and civil lawsuits against Edna Mahan staff
5 and the DOC, it is fitting and proper for the Legislature to
6 establish a commission to identify the causes and consequences
7 of sexual assault in Edna Mahan, as well as in correctional
8 facilities for ¹~~males~~ male¹ inmates in this State, and analyze
9 current DOC policy and procedures to determine how they can
10 be modified to improve the safety and well-being of these
11 incarcerated inmates; now, therefore,

12
13 **BE IT RESOLVED** *by the Senate and General Assembly of the*
14 *State of New Jersey:*

15
16 1. There is established the “Commission to Protect New Jersey
17 Inmates from Sexual Assault and Sexual Misconduct.” The
18 commission shall consist of the following 17 members:

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

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

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

41
42 2. a. The commission shall organize within 30 days of the
43 appointment of its members. The commission shall elect a
44 chairperson from among its members, and the chairperson shall
45 select a secretary who need not be a member of the commission.

46 b. The commission may meet at the call of its chairperson at
47 the times and in the places it may deem appropriate and necessary

1 to fulfill its duties, and may conduct public hearings at any place it
2 shall designate.

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

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

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

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

23

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

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

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

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

46 (2) the parameters governing the investigation of a complaint
47 and how it is determined if an allegation is substantiated or

- 1 unsubstantiated and whether the Special Investigations Division of
2 the DOC can fairly and impartially conduct these investigations;
- 3 (3) whether the inmates' due process rights are being protected
4 during the investigation;
- 5 (4) how the facility prevents retaliation by a DOC employee
6 against whom there is an allegation of sexual misconduct or other
7 criminal act and whether the employee is or should be suspended,
8 either with or without pay, pending the completion of an
9 investigation; and
- 10 (5) whether an inmate is receiving adequate services to deal
11 with the trauma resulting from the sexual misconduct or other
12 criminal act of the staff;
- 13 c. explore the feasibility of increasing the female to male staff
14 ratio in Edna Mahan and determine if the current policy governing
15 cross gender searches and surveillance should include further
16 protections for female inmates;
- 17 d. consider whether it would be appropriate to establish a
18 citizen oversight board to monitor a facility;
- 19 e. research the availability of additional training and technical
20 assistance from the PREA Research Center;
- 21 f. consider issues concerning the sexual victimization of
22 inmates by correctional police officers, employees, contractors, and
23 volunteers in this State's correctional facilities for males; and
- 24 g. study any other issue it deems relevant to enhance the safety
25 and security of the inmates in State correctional facilities.
- 26
- 27 4. The commission shall prepare and submit to the Governor
28 and to the Legislature pursuant to section 2 of P.L.1991, c.164
29 (C.52:14-19.1) a preliminary report of its findings and
30 recommendations no later than six months after the organizational
31 meeting of the commission, and a final report, including legislative
32 proposals, no later than one year after the organizational meeting.
33 The commission shall expire upon submission of the final report,
34 unless it deems further deliberations are necessary, in which case it
35 may be extended for two subsequent periods of six months.
- 36
- 37 5. This joint resolution shall take effect immediately.