

MEMORANDUM

February 6, 2020 Council on Correction Holdover



Joint Legislative Oversight
& Sunset Committee

Update

In August of 2019, a progress reporting worksheet was sent via email to all entities held over by the Committee in 2019.¹ The worksheet provided a list of the recommendations approved by the Committee and a text box to provide an update regarding implementation of those recommendations. One update was due at the end of October while the second was due at the end of December. As of January 31, 2020, no progress report has been received by the Council on Correction.

The Council on Correction was held over following the adoption of several recommendations requiring further action from the Council:

Recommendation: Submit an annual report, no later than December 1 of each calendar year, to the Commissioner and Deputy Commissioners of the Department of Correction, Governor, and General Assembly. The report shall include:

- Meeting agendas and minutes
- Training and development completed
- All legislative priorities and activities
- All correspondence with the Department of Correction
- Goals and priorities for the coming year

Update: In 2018 and 2019, the Committee adopted a recommendation for the submission of an annual report. As of January 31, 2020, no annual report for 2018 or 2019 has been submitted.

Recommendation: In 2018 and 2019, the Committee adopted a recommendation for the Council to rotate meeting locations in all three counties.

Update: According to the state public meeting calendar, 7 of the 9 scheduled Council meetings since June 2018 were held in Kent County with 1 being held in New Castle and Sussex counties. All 2019 Council meetings were held in Dover.

- July 11, 2018: First State Action Agency: Georgetown, DE
 - Note: On the state's public meeting calendar, this meeting's location is listed as Dover. However, the agenda posted reflects the Georgetown location. Additionally, this meeting did not have a quorum.
- September 25, 2018: Hilltop Lutheran Neighborhood Center: Wilmington, DE
- November 27, 2018: Correction Central Administration Building: Dover, DE
- February 26, 2019: Correction Central Administration Building: Dover, DE
- April 24, 2019: Correction Central Administration Building: Dover, DE
- September 5, 2019: Correction Central Administration Building: Dover, DE
- December 10, 2019: Correction Central Administration Building: Dover, DE
- January 30, 2020: Correction Central Administration Building: Dover, DE

¹ See "COC Progress Report" tab for a copy of the progress reporting document.

Recommendation: The Commissioner of the Department of Correction shall provide the Council with 3 direct updates per year, at a scheduled Council meeting, of the Department's current priorities.

Update: October and December 2019 progress reports were not received, no update to report.

Recommendation: In 2018 and 2019, the Committee adopted a recommendation for the Council to seek and attend training to support cohesion and leadership as a unit as well as maintaining FOIA compliance.

Update: Beginning in June of 2018, the Council has completed tours of Department facilities: James T. Vaughn Correctional Center, Baylor Women's Correctional Institution, and Sussex Correctional Institution. At the Council's April 24, 2019 meeting, the Council discussed advocating for funding of further development and leadership training opportunities. However, October and December 2019 progress reports were not received, so additional details are unavailable.

Recommendation: The Council on Correction shall meet with willing families of the Delaware inmates who were moved to Pennsylvania and provide a written report to the Commissioner of the Department of Correction, the Governor, and the General Assembly. The report shall not contain personal and identifying information of the inmates.

Update: October and December 2019 progress reports were not received, no update to report.

Other Recommendations Approved by the JLOSC in 2019

In 2019 the Committee approved the following recommendations that require statutory changes²:

Recommendation: JLOSC will sponsor a bill drafted by the Committee's Legislative Attorney to make technical corrections to the Council's governing statute, § 8905, Title 29, including the following:

- a. Adding standard removal and quorum provisions.
- b. Codifying the Council's updated by-laws.
- c. Adding language requiring the Council to hold at least 1 meeting per year in each county and any other meeting called at the discretion of the Chair.

Recommendation: Add to the Council's governing statute in Chapter 89, Title 29:

- a. The Council will update its website and keep it updated to include current information on each of the following:
 - (1) Council members, statute, and by-laws.
 - (2) Meeting agendas and minutes, both past and future.
 - (3) Contact information for the public.
- b. The Council will post its meeting agendas, locations, minutes on the Public Meeting Calendar.

² Given the holdover status of the Council and the possibility of additional statutory changes, staff is waiting to draft one complete bill comprised of 2018, 2019, and 2020 recommendations.

Recommendation Options from the Committee Analyst

An email was received in November 2019 from the Commissioner for the Department of Correction expressing concern regarding the lack of adequate notice for Council meetings as well as confusion surrounding the timeframe in which public meeting notices must be posted. This has been an ongoing concern since the Council has been under review.

Currently, the Department of Correction is responsible for posting all meeting notices, agendas, and minutes on behalf of the Council. Since only 5% of the Department's time is spent on Council issues, it is recommended that the responsibility for the administrative tasks of posting meeting notices, agendas, and minutes be moved elsewhere. In an attempt to rectify this issue, the Committee Analyst suggests consideration of the following:

OPTION 1: The Council shall designate one member to contact the public meeting calendar staff for log in access and approval to begin posting all meeting notices, agendas, and minutes, eliminating the Department's responsibility.

OPTION 2: The Criminal Justice Council will provide limited administrative support as it relates only to the posting of meeting notices, agendas, and minutes to the public meeting calendar.

However, Options 1 and 2 do not address the crux of the organizational issues currently facing the Council. Given the lack of staff and budgetary support provided, the volunteer Council will continue to struggle meeting its directives. In addition to the meeting notice issues, two annual reports and two progress reports have not been submitted while all 2019 meetings were held in one county. The Criminal Justice Council continues to be willing to provide the necessary administrative support required so members of the Council can remain focused on meeting the goals established in their bylaws.

The previous recommendations outlining the Council's reestablishment as a Criminal Justice Council subcommittee were met with resistance from the Council on Correction membership, expressing concern that this will compromise the organization's autonomy. In 2019, the General Assembly passed HB 173³, amending the statute of the Adult Correction Healthcare Review Committee to allow the Criminal Justice Council to provide administrative and budgetary support (§ 6518 b). Applied to the Council on Correction, this path forward would assist with administrative support while retaining the Council's autonomy within its governing statute in Chapter 89, Title 29. Therefore, it is recommended that the Committee consider adopting the following recommendation:

RECOMMENDATION: The JLOSC will sponsor legislation to amend the Council's governing statute in Chapter 89, Title 29 to add language enabling the Criminal Justice Council to provide administrative assistance. The legislation will establish this partnership as a PILOT Partnership Program and include a 5-year sunset provision.

³ See "HB 173" tab for engrossed copy of legislation.

Council on Correction: Recommendations

| <u>Recommendation</u> | <u>Status</u> |
|---|---|
| <p style="text-align: center;">Recommendation 1: Continue or Terminate</p> <p>Under DEL. CODE ANN. tit. 29, §10213(a), the Committee must determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select one of the following options.</p> <p><u>Option 1:</u> Council on Correction shall continue, subject to any further recommendations that JLOSC adopts.</p> <p style="text-align: center;">- OR -</p> <p><u>Option 2:</u> Council on Correction is terminated. The Committee’s legislative attorney shall draft legislation, which the Committee will sponsor, to implement the termination.</p> <p>Status: 5/6: First consideration of this recommendation. 5/6: JLOSC adopted recommendation 1 with option 1.</p> | <p>Progress Reporting not needed for this recommendation</p> |

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Recommendation 2: Terminate and Reestablish Under CJC

Contingent on the FY 21 budget process and the addition of a state-supported staff person, do the following:

- a. Terminate the Council as it exists under the Department of Correction ("DOC") in Chapter 89, Title 29, and re-assign its duties to the Criminal Justice Council ("CJC") in Chapter 87, Title 11 through a new CJC subcommittee to advise the Department of Correction.
- b. Through legislation drafted by JLOSC's legislative attorney and in consultation with the Council and the CJC, add to CJC's governing statute language establishing the new subcommittee to take over the Council's mission and duties.*

OPTION 1: The legislation drafted under subsection b. should mirror, in large part, the Council's current mission, by-laws, and statute, and any other legislative recommendations listed here that JLOSC approves.

OPTION 2: This recommendation is limited for a 1-year trial period beginning July 1, 2019. A sunset provision will be included in the legislation under this recommendation.

OPTION 3: The Council is held over and its successor under this recommendation must report back to JLOSC in January 2020 to update JLOSC on the status of the change from the DOC to the CJC.

Status:

5/6: First consideration of this recommendation

5/6: JLOSC tabled recommendation 2

Progress Reporting not needed for this recommendation

Council on Correction: Recommendations

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| <p>Recommendation 5: Communication with the Public Add to the Council’s governing statute in Chapter 89, Title 29:</p> <p>a. The Council will update its website and keep it updated to include current information on each of the following:</p> <ul style="list-style-type: none">(1) Council members, statute, and by-laws.(2) Meeting agendas and minutes, both past and future.(3) Contact information for the public. <p>b. The Council will post its meeting agendas, locations, and minutes on the State’s Public Meeting Calendar.</p> <p style="text-align: center;">Status: 5/6: First consideration of this recommendation 5/6: JLOSC adopted recommendation 5</p> | <p>October Update:</p> <p>December Update:</p> |
| <p>Recommendation 6: Updates from the Commissioner</p> <p>The Commissioner of the Department of Correction shall provide the Council with 3 direct updates per year, at a scheduled Council meeting, of the Department’s current priorities.</p> <p style="text-align: center;">Status: 5/6: First consideration of this recommendation 5/6: JLOSC adopted recommendation 6</p> | <p>October Update:</p> <p>December Update:</p> |

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SPONSOR: Rep. Schwartzkopf & Sen. McBride & Sen. Ennis &
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HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 173
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PRISONS AND PRISONERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6518, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6518 Adult Correction Healthcare Review Committee.

(a) The Adult Correction Healthcare Review Committee (Committee) is hereby established.

(b) For administrative and budgetary purposes, the Committee shall be placed within the Criminal Justice Council.

The Criminal Justice Council shall provide fiscal oversight as determined by the Executive Director of the Criminal Justice Council. Staff of the Committee are under the authority of and subject to the oversight and supervision of the Executive Director of the Criminal Justice Council.

(c) The Committee shall consist of 6 voting members, appointed by the Governor and confirmed by the Delaware State Senate which shall include the following;

- (1) A Delaware licensed physician;
- (2) A Delaware licensed psychiatrist;
- (3) A Delaware licensed psychologist;
- (4) A Delaware licensed registered nurse;
- (5) A member of the Delaware Bar;
- (6) An expert in the field of substance abuse treatment.

(d) The Committee shall also consist of the following 3 non-voting ex-officio members:

- (1) The Chief of the Bureau of Correctional Healthcare Services.
- (2) Chairperson of the House Corrections Committee.
- (3) Chairperson of the Senate Corrections and Public Safety Committee.

(e) Voting members shall be appointed for a term of 3 years.

(f) No member of the committee other than those designated in subsection (d) may be an employee of the Department of Correction or a contractor providing medical services under the direction of the Department of Correction.

(g) Non-voting ex-officio members may designate another individual to attend Committee meetings. The non-voting ex-officio members identified in subsection (d)(2) and (d)(3) may only designate a member of their respective corrections committees.

(h) Members shall receive no salary for their service, but may be reimbursed for reasonable expenses incurred in their work for the commission.

(i) Four voting members of the Committee must be present to constitute a quorum.

~~(b) The Chief of Correctional Healthcare Services shall serve as an ex-officio nonvoting member. All other members shall be appointed for a term of 3 years.~~

(ej) The Medical Society of Delaware, the Delaware Psychiatric Society, the Delaware Psychological Association, the Delaware Nurses Association, and the Delaware State Bar Association may submit recommendations to the Governor for consideration of appointment.

~~(dk)~~ The chair of the Committee shall be elected annually by majority vote of the ~~current~~ voting Committee members.

(el) The Committee serves in an advisory capacity to the Governor, the General Assembly, and the Commissioner of the Department of Correction on all matters in Delaware's adult correction system relating to the provision of inmate health-care services, the review of all inmate deaths and autopsies relating to those deaths, the construction of health-care contracts that provide inmate health-care services, and the review of all statistics relating to inmate health care.

(m) The Committee shall not be considered a public body as defined at § 10002 of Title 29.

(fn) The Committee shall do all of the following:

- (1) Perform advisory reviews of medical records and autopsies of inmates who have died while incarcerated;₂
- (2) Review and monitor the quality and appropriateness of health-care services rendered in Delaware's adult correctional facilities;₂
- (3) Review critical incident and mortality and morbidity review reports;₂
- (4) Receive and review monthly summaries of inmate, staff, public, and other health-care related grievances and the resolutions of these grievances in order to be fully apprised of the state of health-care services in Delaware's adult correction facilities;₂

(5) Receive and review monthly reports of inmate hospital admissions and infectious disease diagnoses, such as hepatitis C, tuberculosis, human immunodeficiency virus (HIV), methicillin resistant staphylococcus aureus (MRSA), and meningitis, from all adult correction facilities;

(6) Have access to any and all otherwise protected health-care information relating to current and former inmates supervised by the Department of Correction notwithstanding any other statute to the contrary;

(7) ~~Review and advise~~ Advise the Governor, the General Assembly, and the Commissioner of the Department of Correction on any other matters relating to adult inmate health care that the Committee considers reasonable and worthwhile including, ~~but not limited to,~~ all of the following:

- a. Assurance that all inmates receive appropriate and timely services in a safe environment;
- b. Systematic monitoring of the treatment environment;
- c. Assisting in the reduction of professional and general liability risks;
- d. Enhancing efficient utilization of resources;
- e. Assisting in credential review;
- f. Enhancing the identification of continuing educational needs;
- g. Facilitating the identification of strengths, weaknesses, and opportunities for improvement;
- h. Facilitating the coordination and integration of information systems; ~~and~~
- i. Assuring the resolution of identified problems.
- j. Changes considered necessary by the Committee.

(o) The Committee may request the appearance of any contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction at a Committee meeting in order to provide information to the Committee.

~~(gp)~~ The Committee shall refer to the appropriate licensing board grievance cases in which there is a serious deviation from the community standard of care by a health-care worker or other employee of a prison health-care contractor, if the health-care worker or other employee's profession or occupation is governed under Title 24.

~~(hq)~~ The Department of Correction shall forward copies of National Commission of Correctional Health Care (NCCHC) and American Correctional Association (ACA) surveys, reports, and evaluations to the Committee upon their request. Whenever a survey, evaluation, or similar act is conducted by or on behalf of NCCHC or ACA, the Committee may be contacted and be allowed to contribute to the survey, evaluation, or other activity. The transmission of documents in the possession of the Department of Correction to the Committee shall not be considered a waiver of any statutory or common law privilege.

(r) All of the following shall be provided to the Committee at the Committee's request:

(1) Autopsy reports of inmates who have died while incarcerated within the control of the Department of Safety and Homeland Security.

(2) Evaluations performed by the Delaware Psychiatric Center of an inmate within the control of the Department of Health and Social Services except those records protected by 42 C.F.R. Part 2.

(3) Inmate medical and behavioral health services records in the custody of the Department of Correction.

(4) Records of a contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction.

(Is) Any document received or generated by the Committee is hereby specifically excluded from the definition of public record as set forth at § 10002 of Title 29.

(t) All Committee members must abide by federal and state laws regarding privacy of protected health information. In addition any other remedies available under federal and state law, any person aggrieved by a violation of this paragraph shall have a right of action in the Superior Court and may recover for each violation all of the following:

(1) Against any person who intentionally or recklessly violates a provision of this paragraph, damages of \$5,000 or actual damages, whichever is greater.

(2) Reasonable attorneys' fees.

(3) Such other relief, including an injunction, as a court may deem appropriate.

(ju) This section is intended only to provide ongoing independent review, monitoring, advice, and critique of the provision of health care services to inmates within the custody of the Department of Correction. Accordingly, nothing in this chapter shall give rise to any right, entitlement or a private cause of action for civil damages or injunctive relief for any public or private party.

(ky) The Committee shall submit a report by December 31 of each year to the Governor, ~~and~~ the General Assembly and the Commissioner of the Department of Correction on the state of inmate health care services in Delaware's adult correction system by delivering a copy to the Governor, and the Clerks of the House of Representatives and the Senate, and the Commissioner of the Department of Correction.