



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: March 10, 2021

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Terri Hancharick – Chairperson TH
State Council for Persons with Disabilities

RE: HCR 3 (Creation of Delaware Corrections Investigation Task Force)

The State Council for Persons with Disabilities (SCPD) has reviewed House Concurrent Resolution 3, which seeks to create a task force to “investigate and make findings and recommendations regarding the treatment of inmates and the quality of healthcare provided to inmates in this State’s correctional institutions.” According to the introductory text of the resolution, the task force is being formed in light of the Covid-19 pandemic and particular risks that the pandemic poses to incarcerated individuals; however, the duties of the task force as described in the resolution are broader and do not specifically relate to Covid-19.

SCPD endorses the proposed legislation and has the following observations and recommendations.

In addition to various legislators, the resolution proposes appointing one member of the judiciary, one Delaware attorney with experience representing criminal defendants or handling prisoners’ rights matters, one member of the public who has expertise in correctional healthcare, and one member of the public who is a licensed physician. The task force would be required to produce a report

summarizing its findings and recommendations no later than July 30, 2021. The concurrent resolution would cease to be effective 90 days after the Task Force's first meeting (the synopsis of the bill states the report must be submitted within 90 days of the Task Force's first meeting, but that is not actually what the resolution says).

It is also not clear whether this task force would also address the numerous allegations of neglect and malpractice that were made against the Department's previous medical and behavioral health contractor, Connections CSP. Medical and behavioral health services in state correctional facilities were taken over by a new contractor, Centurion, on April 1, 2020, shortly after the onset of the Covid-19 pandemic.

A critique that opponents of the bill have presented is the overlap between the subject matter of this Task Force and the existing Adult Correction Health Care Review Committee, which is created by statute (see 11 Del. C. § 6518) and serves in an advisory capacity to the Commissioner of the Department of Corrections as well as the Governor and the General Assembly. Per the enabling statute the Committee is required to issue an annual report each year by December 31; the Committee's annual report for 2020 does not appear on its website (see <https://cjc.delaware.gov/achrc/>) as of February 10, 2021, so it is difficult to assess what issues that body had reviewed during the 2020 calendar year and to what extent it had separately investigated any concerns related to Covid-19 in correctional settings.

It has been well established that congregate environments such as correctional facilities present increased risk for Covid-19. While duplicating the work of an existing committee may not be the most effective way to improve conditions for this vulnerable population, it could be beneficial for the legislature to direct a more focused review on issues related to Covid-19 and the ongoing precautions and available resources for medical care that may be needed. SCPD recommends that, should the Task Force go forward, its focus should be further narrowed to investigate questions related to medical care for Covid-19 that may need more urgent action than could be addressed by the Adult Correction Health Care Review Committee.

One specific issue that may merit further consideration by such a group is the issue of "compassionate release" for individuals who are at particular risk for serious complications or death due to Covid-19. Under current Delaware law, there is not

a process for individuals to initiate a request for “compassionate release” or “medical parole” of their own volition; the process needs to be initiated by the Department of Corrections and referred to the Board of Parole. Otherwise, some individuals potentially have the option to go through the lengthy process of requesting a commutation of sentence, but that decision is generally not primarily based on medical concerns. The Department of Corrections has been resistant to previous calls from advocacy groups to consider any sort of broader effort to release individuals who are particularly vulnerable to Covid-19 due to age, disability or other underlying health condition.

SCPD endorses the proposed legislation, but requests clarification about whether this task force would also address the numerous allegations of neglect and malpractice that were made against the Department’s previous medical and behavioral health contractor, Connections CSP. SCPD also recommends that the Task Force add that they consider evaluating the process for getting compassionate release for medical release for those who are at heightened risk during the pandemic for those that are low security risk during the pandemic

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position and observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HCR 3 creation of DE corrections investigation task force 3-10-21