
MEMORANDUM

TO: Senator S. Elizabeth Lockman, Chair
Representative David Bentz, Vice Chair
Members of the Joint Legislative Oversight and Sunset Committee

FROM: Mark Brainard Jr., JLOSC Analyst

SUBJECT: Council on Correction Holdover Status Update

DATE: April 9, 2019

Background

In 1975, an 11 member advisory Council on Corrections (“Council”) was created in conjunction with the establishment of the Department of Correction (“Department”). The Council was charged with serving in an advisory capacity to the Commissioner of the Department of Correction and to consider matters relating to the development and progress of the correctional system of Delaware.

In 2014, the Council was re-established with Senate Bill 256, reducing the size from 11 to 7 members with the requirement to meet no less than 6 times per year. The Council may study, research, plan, and advise on matters it deems appropriate.¹

The 7 members of the Council are appointed by the Governor for terms up to 3 years to allow that no more than 3 members’ terms expire in any year. The Council members elect a Chair and Vice Chair of the Council on an annual basis. Three new members were appointed in October 2017, and 4 members are serving on expired terms.² Delaware Code does not require the Department to provide staff. In practice, the Department provides the Council with 1 merit employee, who assists in scheduling meetings, taking minutes, and contacting Council members when needed. The Deputy Commissioner of Corrections represents the Department at Council meetings, and responds on the Department’s behalf.³

The Council receives complaints from members of the public regarding inmate medical issues, inmate treatment, delay of inmate release, and the inmate grievance process. No specific data, such as a number of complaints reviewed, investigated, or forwarded to the Department’s Deputy Attorney General are available.

The Council has had problems achieving quorum. Recent changes to membership have addressed this issue, and the Council has made quorum at most meetings held since June 2018. The Council is not assigned a Deputy Attorney General.

¹ See 29 Del. C. §8905 attached.

² See the Council’s updated member roster attached.

³ Analyst’s Note: As outlined in the 2018 Final Report, each Department of Corrections staff member devotes less than 5% of their time to the Council.

During the 2018 JLOSC review process, the Committee explored a number of issues and opportunities for improvement including the clarification of the Department of Correction's role with the Council, additional documentation of Council activity through meeting minutes, and the role the Council has with the general public.

Reason for the Hold Over

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

Recommendation: The Council shall draft and submit to the Committee amendments to Title 29, §8905 – to remove a Council member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

Update: No language to update the statute has been submitted. However, the Council adopted the language in its by-laws to address removal of a member.⁴

Recommendation: The Council will provide an annual report to the Commissioner and Deputy Commissioners of the Department of Correction, as well as the Governor, and General Assembly

Update: No annual report has been submitted as of April 26, 2019.

Recommendation: To allow members of the public opportunities to attend Council meetings, the Council shall rotate meeting locations in all three counties.

Update: According to the state public meeting calendar, 3 of the 5 scheduled Council meetings since June 2018 were held in Kent County with 1 being held in New Castle County. The scheduled meeting in Sussex County did not have a quorum.

- July 11, 2018: First State Action Agency: Georgetown, DE
 - Note: On the state's public meeting calendar, this meeting's location is listed as the Correction Central Administration Building in 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

Recommendation: The Council shall undergo training to support development and leadership as a unit.

Update: Since June of 2018, the Council has completed 4 tours of Department facilities: James T. Vaughn Correctional Center (2), Baylor Women's Correctional Institution, and Sussex Correctional Institution. At the Council's April 24, 2019 meeting, the Council

⁴ See letter D of Section 3.2 of the Council's by-laws attached.

discussed advocating for funding of further development and leadership training opportunities.

Recommendation: Finalize Council by-laws.

Update: The Council has created and adopted by-laws included in the 2018 JLOSC Final Report.⁵

Other Recommendations Proposed by the JLOSC in 2018

By way of further background information, JLOSC tabled the following recommendations:

Recommendation: The Council shall be terminated and applicable sections of the Code shall be amended to remove the Council.

Recommendation: To avoid lack of clarity, and mission vagueness, the Department of Correction should provide guidance to the Council to craft a clearly defined mission and goals. The mission and goals may include how the Council, as a citizen advisory council can contribute to the achievement of common goals.

Update: The by-laws, adopted by the Council, did create a mission.

Recommendation: Remove the Council on Correction from Title 29, Chapter 89. Duties of the Council will be assumed by the Criminal Justice Council, who will add a sub-committee to advise the Department of Correction. Legislation will be drafted by the Criminal Justice Council to include these duties under Title 11, Chapter 87

Update: The Criminal Justice Council remains receptive of the idea to assume the duties of the Council on Correction as a sub-committee to advise the Department of Corrections. This is contingent on the FY 20 state budget process in which the Criminal Justice Council is hoping to attain a state-supported staff position. Currently, much of their staff is paid through federal dollars tied to specific policy initiatives. With a state-supported staff position, the Criminal Justice Council would be able to assume the duties of the Council on Correction and offer training and development opportunities to its members.

Additional Comment from the Committee Analyst

The Council's website can be found at <http://www.doc.delaware.gov/views/coc.blade.shtml>. The single webpage contains the governing statute and a list of members that does not reflect the current makeup.

⁵ See the complete by-laws attached

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TITLE 29
STATE GOVERNMENT
Departments of Government
CHAPTER 89. DEPARTMENT OF CORRECTION
Subchapter I. General Provisions

§ 8905 Council on Correction.

- (a) The Council on Correction (COC) is reestablished.
- (b) The COC shall serve in an advisory capacity to the Commissioner of Correction and shall consider matters relating to the development and progress of the correctional system of this State. The Council shall consider such other matters as may be referred to it by the Governor, the Commissioner and the Chief of the Bureau of Adult Correction. The Council may study, research, plan and advise the several chiefs, the Commissioner and the Governor on matters it deems appropriate to enable the Department to function in the best manner. The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including correctional facilities and services provided to adult offenders.
- (c) The COC shall be composed of 7 members appointed by the Governor for terms up to 3 years to allow that no more than 3 members' terms expire in any year. The COC members shall annually elect a Chair and Vice Chair of the Council.
- (d) The COC shall meet no less than 6 times a year. The failure by a member to attend 2 consecutive or 3 regular meetings of the Council per year without cause shall be construed as a request by that member to resign from the Council. The Governor may accept the resignation and appoint a replacement member. A quorum shall consist of a majority of current members.
- (e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

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**Operating By-laws
Delaware Council on Corrections**

ARTICLE I MISSION

Section 1.1 Mission:

The Delaware Council on Corrections (hereinafter “Council”) is dedicated to furthering the goal of the Delaware Department of Correction: to protect the public in its supervision of adult offenders through the provision of safe, humane services, programs, and facilities.

More specifically and in furtherance of that mission, the Council shall collect and evaluate the best available data and rely upon that when making its recommendations to the Department of Correction. At the forefront of the Council’s goals are: (1) enhancing the safe and orderly operation of the Department of Correction’s facilities to include both offender and employee alike, (2) enhancing the effectiveness of corrections policies, (3) ensuring system and offender accountability and (4) fostering a constructive and respectful relationship between the Department of Correction and the public it serves.

ARTICLE II DUTIES

Section 2.1 Duties of the Council: The Duties of the Council are prescribed in Title 29, DE Code, §8905:

- A. The Council shall serve in an advisory capacity to the Commissioner of Correction and shall consider matters relating to the development and progress of the correctional system of this State.
- B. The Council shall consider such other matters as may be referred to it by the Governor, the Commissioner and the Chief of the Bureau of Adult Correction.
- C. The Council may study, research, plan and advise the several chiefs, the Commissioner and the Governor on matters it deems appropriate to enable the Department to function in the best manner.
- D. The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including correctional facilities and services provided to adult offenders.

ARTICLE III MEMBERSHIP

Section 3.1 Council Voting Members:

- A. The Council shall be composed of 7 members.
- B. There shall be a Chair and a Vice Chair.
- C. Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

Section 3.2 Appointments, Term, Vacancy, Removal:

- A. Appointments and Term:

- a. Members shall be appointed by the Governor for terms up to three years to allow that no more than three members' terms expire in any year.
 - b. The Council members shall elect a Chair and Vice Chair of the Council annually.
- B. Vacancies:
- a. Vacancies shall be filled by appointment and at the pleasure of the Governor
 - b. As vacancies occur for any reason, the Council Chair shall inform the Office of the Governor
 - c. As vacancies occur:
 - i. the Council may recruit qualified candidates for the Governor's consideration and;
 - ii. the Council may vote to recommend qualified applicants to the Governor for his/her consideration of appointment, and;
 - iii. the Council Chair shall submit the recommendation, application, and explanation as to why this applicant is a qualified candidate for the vacancy and;
 - iv. the Governor will review the recommendation along with all other applicants
- C. All applicants must submit a State of Delaware Governor's application form to the Office of the Governor prior to any Governor appointment
- D. Removal:
- a. The failure by a member to attend 2 consecutive or 3 regular meetings of the Council per year without cause shall be construed as a request by that member to resign from the Council. In order to have just cause considered, the member:
 - i. must contact the Chair or Vice-Chair prior to the day of the second scheduled meeting to be missed and;
 - ii. must inform the Chair or Vice-Chair that they are unable to attend the second scheduled meeting and;
 - iii. ask for consideration to be excused
 - b. The Chair or Vice-Chair shall inform the Governor when a member has resigned for lack of attendance. They may also request that the Governor accept the resignation, and appoint a new member.
 - c. Active participation in Council meetings, sub-committees and Commission activities is a requirement for continued membership and, in implementation of this standard, each member must serve on at least one sub-committee with full participation
 - d. All Governor appointments are at the pleasure of the Governor and at any time can be removed or replaced.

ARTICLE IV OFFICERS

Section 4.1 Council Officers, Powers and Duties:

- A. Council officers shall consist of the following:
 - a. Council Chair
 - b. Council Vice-Chair
 - c. Secretary

B. The Council Chair:

- a. shall have general charge of the business of the Council;
- b. may delegate any of his/ her powers to the Vice-Chair or, in their absence, a Council member;
- c. shall designate the Vice-Chair to preside over a meeting in the event of his/ her absence;
- d. shall be an ex-officio member of all other assigned sub-committees
- e. shall designate a Council member to Chair each active sub-committee

C. In the event of a vacancy in the Chair position, the Governor shall designate the Vice-Chair to become Acting Chair. The Acting Chair shall have all of the powers of and be subject to all of the restrictions upon the Chairperson until the Council elects a replacement Chair.

D. The Council Vice-Chair:

- a. shall be a member of the Executive Committee
- b. shall, upon designation by the Chair, perform the duties of the Chair and when so acting, he/ she shall have all of the powers of and be subject to all the restrictions of the Chairperson;
- c. shall upon designation by the Governor, become the Acting Chair and when so acting, shall have all of the powers of and be subject to all the restrictions upon the chairperson;
- d. when a Vice-Chair vacancy occurs, the Council shall elect a replacement;

E. The Secretary:

- a. shall ensure that all scheduled Council or sub-committee meetings are posted in advance and approved minutes are recorded and posted in accordance with legal requirements as described in 20 Del. C. §10001-10006;
- b. shall ensure that all Council meetings have documentation for minutes;
- c. shall perform such other duties as the Council may from time to time prescribe

Section 4.2 Officer Terms:

- A. The Chair and Vice-Chair shall be elected annually by the Council members and shall serve at the pleasure of the Governor
- B. The Secretary shall be elected annually by the Council. If a vacancy occurs in the position of Secretary prior to the election, the Council shall elect a new Secretary at the next scheduled full Council meeting

ARTICLE V COUNCIL BUSINESS

Section 5.1 Meetings:

- A. The business of the Council shall be conducted by Council members at regularly scheduled meetings.
- B. The Council shall meet a minimum of six times per year.
- C. Sub-Committee meetings shall be scheduled by the designated Chair of each sub-committee, as often as needed in order to accomplish deadlines for completion of assigned projects or to continue all work in progress.

Section 5.2 Quorum:

- A. A quorum shall consist of a majority of current members.
- B. A video conference appearance is acceptable for a quorum, when there is a meeting place posted and available for the public.
- C. A member may participate in a meeting by phone, but may not vote via phone nor be counted as a quorum member.
- D. For quorum purposes all public meeting will be noticed and conducted in accordance with 29 Del. C. §10001-10006, except that the subcommittees may conduct interim telephonic meetings to determine agendas, strategies, or conduct other business in preparation for a public meeting.

ARTICLE VI COMMITTEES

Section 5.1 Executive Committee:

- A. The Executive Committee shall be a continuing Committee and:
 - a. shall consist of all Council officers;
 - b. shall have general supervision of the affairs of the Council between meetings;
 - c. may as emergencies arise and immediate action is required, act on behalf of the Council, and shall report any such interim actions at the next scheduled Council meeting, such action may be ratified by the full Council;
 - d. shall be subject to the orders of the Council and none of its acts shall conflict with action taken by the Council;
 - e. may recommend to the Council additions and deletions to the Council roster, and monitor Council members' performance and attendance at meetings;
 - f. may recommend to the Council changes for policies and procedures;
- B. The Council Chair shall preside over the Executive Committee

Section 5.2 Sub-Committees:

- A. The Council &/or the Executive Committee may establish sub-committees as necessary to carry out business, responsibilities or assigned projects.
- B. The Council &/or Executive Committee shall review and decide when a sub-committee is essential and vote to establish such sub-committee.
- C. The Council Chair shall designate a Council member to Chair the assigned sub-committee.
- D. The sub-committee Chair shall:
 - a. assign all sub-committee meeting dates;
 - b. ensure the meetings are posted, followed by posted minutes, according to statutory requirements;
 - c. ensure that the progress of all sub-committee is presented to the Council members, at each scheduled Council meeting through the duration of a project
- E. Non-Council members may participate in sub-committee meetings and work. The sub-committee members may reach out for assistance as needed to accomplish the assigned project.
- F. All established sub-committee members shall be responsible for accomplishing assigned projects in a timely manner.
- G. Sub-committee critical decisions should be addressed at scheduled Council meetings for a vote, prior to the sub-committee taking action. If the sub-committee is working

with a deadline and needs sudden action and there is not a scheduled Council meeting to address the need in a timely manner, the Chair of the sub-committee shall address the Executive Committee for a decision.

ARTICLE VI AMENDMENTS

Section 6.1 By-Law Amendments:

These by-laws may be amended at any public meeting that has been posted 14 days in advance with the agenda and has 2/3 of all active members as described in Section 5.2A.

ARTICLE VII CONFLICT OF INTEREST

Section 7.1 Conflict of Interest

No member of the Council may cast a vote on any matter that is likely to provide a direct benefit to that member, or to an organization or business in which that member has an interest, or with which that member has a relationship. No member shall otherwise give the appearance of a conflict of interest as defined more specifically under 29 Delaware Code Chapter 58, the "State Employees', Officers' and Officials' Code of Conduct," which is incorporated herein by reference thereto.