

CHAPTER 305  
FORMERLY  
SENATE BILL NO. 245

AN ACT TO AMEND TITLES 11 AND 29 OF THE DELAWARE CODE RELATING TO THE DEPARTMENT OF CORRECTION.

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

Section 1. Amend Chapter 43 of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows and renumbering subsections accordingly:

§4301. Purposes and construction.

~~(1) "Board" or "Board of the Department of Correction" means the Department of Correction.~~

§4343(B). Duties

(8) The Board shall: Act as advisory board to the Board of Pardons. When a person in legal custody of the ~~Bureau of Adult Correction~~ Department of Correction applies to the Board of Pardons for recommendation for a pardon or commutation of sentence, the Parole Board, upon request, shall furnish to each member of the Board of Pardons and to the Governor a report of the record of such person, which shall include its opinion as to the state of rehabilitation of such person.

§4347. Parole authority and procedure.

(a) A person committed to the custody of the Department who will be eligible for parole within 180 days may apply for a parole hearing on forms promulgated by the Board. Upon receipt of such application, the Board shall notify the Bureau Chief of ~~Adult Correction~~ Prisons of said application and request verification of parole eligibility and the information required in subsection (d) of this section which shall be provided the Board within 30 days. Upon receipt of the foregoing information, the Board shall determine within 30 days if a parole hearing will be scheduled. If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Board of the earliest date, not sooner than 6 months for an applicant with a good-time release date of 3 years or less and not sooner than 1 year for an applicant with a good-time release date of more than 3 years, upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section.

Section 2. Amend Chapter 65 of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows, by and renumbering the following sections accordingly

§6505. Definition.

~~(1) "Board" or "Board of Correction" means the Department of Correction.~~

§6509. General powers and duties of the Department.

(6) Furnishing the Board of Parole adequate office facilities and supplies to properly perform its duties; ~~to transmit the Board of Parole's budget with its own;~~

(14) Collecting a fee as a condition of probation supervision. An offender sentenced to probation shall be charged a fixed fee of \$200 for each period of probation. If an offender is serving multiple sentences of probation simultaneously, the sentences shall be treated as 1 period of probation for the purposes of assessing and collecting the supervision fee. The ~~Director~~ Bureau Chief of Community Corrections Services shall develop policies and procedures with regard to determining an offender's ability to pay the fee. Such policies and procedures shall be applied on a consistent basis to all offenders, and shall be subject to approval by the Commissioner of Correction. In the event the Department determines an offender is unable to pay the fee due to lack of employment or other significant extenuating circumstances, such as an offender's responsibility to remit payment for victim compensation, restitution or child support, said inability shall not constitute a violation of supervision. The offender shall remain liable to pay the fee at such time as the Department determines offender is able to do so.

Section 7. Amend Section 6505 of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows:

~~§ 6505. Powers of the Board.~~

~~The Board shall be the general policymaking authority for the Department, not its administrative or executive head, but the administrative or executive head shall be responsible directly to the Board which shall have such other duties as are granted in this chapter. The Board shall:~~

~~(1) Establish criteria for the employment of, and screening applications for, the office of Commissioner;~~

~~(2) Assist in developing modern personnel policies for the Department, including written job descriptions and qualifications and criteria for the employment of personnel for each position in the Department;~~

~~(3) Make regular visits in and observations of all Department operated facilities and services;~~

~~(4) Continually review Department policy and operation;~~

~~(5) Study procedures in and the development and progress of the correctional system, including probation and parole, of this State; study and consult with officers and other personnel concerning correctional institutions and probation and parole systems elsewhere; but, primarily, interpret the Department's responsibilities, problems, functions and needs;~~

~~(6) Review and frame proposals concerning legislation important to the Department.~~

§65065. Employment of personnel.

(a) The Department shall be the hiring agency for all correctional ~~guards or~~ officers employed by the Department. Any applicant for employment by the Department shall take such physical, mental and intelligence tests as the Department shall prescribe, and shall provide the Department with such information as it may need for its employment decisions.

(b) Prior to making an employment decision on an applicant for employment by the Department, the Department shall ~~fingerprint the applicant and provide the fingerprints to the State Bureau of Identification for the purpose of obtaining~~ obtain the applicant's entire criminal history record from both the State and the Federal Bureau of Investigation. Prior to employing the applicant, the Department shall complete a computerized name search of the National Crime Information Center (NCIC) and the Criminal Justice Information System (CJIS) maintained by the Delaware Criminal Justice Information System (DELJIS) to determine if the applicant has any criminal history record information. Based on the results of the computerized name searches for criminal history records, the Department may not employ any individual who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware. Upon receiving the results of the fingerprint bases searches for criminal history record information, the Department shall immediately terminate the employment of any individual employed by the Department who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware.

§6517. Duties and responsibilities of the Commissioner.

(1) Promulgating rules and regulations to carry out the Commissioner's duties and operate the Department ~~which shall not be inconsistent with the general policies of the Board;~~

~~(12) Periodic reports to the Board of an analysis of the institutions and services within the Department, and analysis and evaluation of the adequacy and effectiveness of personnel and buildings.~~

§ 6520. Establishment of ~~divisions~~ Bureaus.

There shall be within the Department a ~~Division of Field Services for probation and parole services, a Division of Statistics, Research and Planning~~ Bureau of Management Services, Bureau of Correctional Healthcare Services, Bureau of Prisons and Bureau of Community Corrections, and such other bureaus, divisions and subdivisions, ~~including a Division of Institutions,~~ with such personnel as the Commissioner shall deem desirable.

~~§ 6521. Division of Field Services. The employees of the Division of Field Services, Department of Correction, shall have their job qualifications and pay scales approved by the Director of the Office of Management and Budget and the Commissioner of the Department of Correction.~~

§ 6523. ~~Diagnostic~~ Rehabilitation services.

(a) ~~There shall be within the Department a diagnostic service, consisting of 1 or more branches, to~~ The Department shall make social, medical, psychological and other appropriate studies and investigations of persons committed to its care for the purpose of rehabilitation of said persons. At the request of any sentencing court, the ~~diagnostic service~~ Department shall, to the extent possible, receive for study and report to the court concerning any person who has been convicted, is before the court for sentencing and is subject to commitment to the Department.

(b) The ~~diagnostic service~~ Department shall take steps to ensure that infectious diseases are not disseminated among the persons committed to the Department's care and staff. In performing the function, the ~~diagnostic service~~ Department is empowered to review medical histories, to complete medical histories, to complete appropriate medical examinations, to perform laboratory tests as are deemed appropriate, and to begin a course of treatment on persons committed to its care.

§6529A. Institutional Release Classification Board.

(b) The Institutional Release Classification Board shall consist of 7 members: Two members each from the custodial staff and treatment staff as well as 3 individuals to be appointed by the ~~Council on Administration of Justice~~ Criminal Justice Council and whose terms shall run ~~concurrently with that of the membership of said Council~~ for a period of 4 years from the date of appointment.

(c) The 3 individuals to be appointed by the ~~Council on Administration of Justice~~ Criminal Justice Council shall receive compensation in the amount of \$90 per meeting. However, no member so appointed shall receive compensation in excess of \$4,000 per annum.

§ 6534B. ~~Prison Industries and Services~~ Delaware Correctional Industries Special Fund.

(a) There is hereby established a ~~Prison Industries and Services~~ Delaware Correctional Industries Special Fund which shall consist of:

- (1) Moneys received from the sale of products as described in § 6532 of this title;
- (2) Moneys received through the contract of service or labor as described in § 6532 of this title;
- (3) Moneys received per § 6532(f)(3) of this title;
- (4) Moneys received per § 6531A(c) of this title; and
- (5) Moneys received per § 6531(d) of this title.

(b) Funds from the ~~Industries and Services~~ Delaware Correctional Industries Special Fund shall be expended only for the following purposes:

- (1) Financing the ~~prison industries~~ Delaware Correctional Industries programs, including, but not limited to, all prison manufacturing, construction, contractual services and labor provided;
- (2) Financing the educational programs required by § 6531A of this title;
- (3) Financing the treatment and rehabilitation programs required by § 6531 of this title; and
- (4) Financing any and all programs as itemized in § 6532(f)(3) of this title.

(c) The ~~Prison Industries and Services~~ Delaware Correctional Industries Special Fund shall be appropriated and expended in conformity with the annual Appropriations Act of the State.

(d) Nothing in this subchapter shall preclude the appropriation of general funds to support the programs itemized in subsection (b) of this section.

§6536. Medical care.

(a) The Department shall promulgate reasonable standards, and shall establish reasonable health, medical and dental services, for each institution, including preventive, diagnostic and therapeutic measures on both an out-patient and hospital basis for all types of patients. The nature and extent of such medical and dental services shall be determined by the Commissioner of Correction in consultation with the ~~chief medical officer of the Department~~ Bureau Chief of Correctional Healthcare Services. The Department may authorize, under regulations, inmates to be taken, with or without guard, to a medical institution or facility outside the institution.

~~§ 6553. Compensation of employees.~~

~~Compensation of employees shall be as fixed by the Commissioner.~~

~~§ 6554 Bond of officers and employees. The Board Department may require the Commissioner, and any officer or employee of the Department, to execute a surety bond with corporate surety, to be approved, and in such amount as required, by the Board, with the condition that the Commissioner, officer or employer shall faithfully perform the duties of the office and account for all funds received as Commissioner. The premium for such bond shall be paid from funds of the Department.~~

§6555. Contracts; limitations for interest.

No officer or employee of the Department may be directly or indirectly concerned or interested in any contract, purchase or sale made by the Department or by its authority, or may accept any reward or gift, or any

promise of any reward or gift, directly or indirectly from any person interested in any contract, purchase or sale made by the Department or its authority, and every officer and employee shall report to the Department all offenses coming to the officer's or employee's knowledge; ~~nor shall any member of the Board, or anyone in the family of a member hold any other office or position in the Department.~~

§6560. Annual reports.

The Commissioner ~~and Board~~ shall make a report every year on or before November 15 to the Governor, showing the financial operation of the Department for the preceding year, together with adequate statistical information concerning the persons committed to the Department, or under the supervision of the Department, ~~or under the supervision of the Department's field service~~, with such research reports, analysis, planning, evaluation and recommendations as may appear necessary to the advancement of the interest of the Department and its objectives. A copy of said report shall be sent to each member of the General Assembly and shall be made available to other agencies and citizens, as desired.

§6561. Police powers of corrections officers, employees and internal affairs investigators.

(b) Only those correctional officers and employees who have been sworn in by the Commissioner shall have the power of a police officer under this section. The ~~Board~~ Department shall provide appropriate identification for all such correctional officers and employees.

Section 3. Amend Section 8701(b) (8) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows:

(8) The Chief of the Bureau of Prisons ~~Adult Correction~~ of the Department of Correction, or the Bureau Chief's designee;

Section 4. Amend Chapter 89 of Title 29 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows:

§8902. Appointments, qualifications, etc., of Commissioner, bureau chiefs, Acting Commissioner.

(a) The administrator and head of the Department shall be the Commissioner of the Department of Correction, who shall be a person qualified by training and experience to perform the duties of the office. The Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor. The Commissioner shall be paid an annual salary as approved by the General Assembly, ~~not in excess of \$30,000~~. The Commissioner of the Department of Correction shall become a bona fide resident of the State within 6 months after his or her appointment; provided, however, that upon good cause shown, the Governor may grant an additional extension of 6 months. After becoming a resident of the State, the ~~Secretary~~ Commissioner of the Department of Correction shall continuously be a resident of the State as long as he or she retains the office. Failure to obtain or retain such residency shall serve to terminate said office.

§8903. Powers, duties and funding -- Commissioner.

(2) Appoint and fix the salary, with the written approval of the Governor, of the ~~following~~ chiefs of the Department's Bureaus and other office heads, who may be removed from office by the Commissioner with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Commissioner;

~~a. A Chief of the Bureau of Adult Correction who shall be known as the Chief of Adult Correction. The Chief shall have a minimum of an earned graduate degree above that of bachelor from an accredited college or university, in 1 of the behavioral sciences, such as corrections, sociology, psychology or social work, with 5 years of experience in the corrections field, including a responsible administrative position, or an equivalent combination of education and experience which provides the necessary knowledge and abilities.~~

~~b. [Repealed.]~~

(10) Adopt a plan for use of personnel within the correctional system; ~~which plan will prohibit the placement or assignment of guards of 1 sex within housing units for inmates of the opposite sex unless the Commissioner shall determine that emergency conditions require such placement;~~

Approved July 05, 2012