

**COLIN R. M. J. BONINI**  
STATE SENATOR  
Sixteenth District



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DOVER, DELAWARE 19901

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**FOR IMMEDIATE RELEASE**  
**September 29, 2009**

**Contact:**  
**Senator Colin Bonini**  
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**Response to the Special Report  
of the  
Caesar Rodney Institute  
Concerning the Death of Inmate Daniel Kern**

On or about September 15, 2009, the Delaware Department of Correction (DOC), announced the death of inmate Daniel Kern in a tersely worded statement, indicating that no foul play was suspected.

Earlier today, Investigative Reporter Lee Williams of the Caesar Rodney Institute published his second investigative report concerning inmate treatment while in the custody of the Delaware Department of Correction. In that report Mr. Lee outlined a compelling case for concluding that Delaware's Department of Correction "killed Daniel Kern" by withholding even the most basic and rudimentary health care, laying responsibility for Mr. Kern's death squarely at the feet of the contractor hired to provide that care, Correctional Medical Services (CMS), the Delaware Department of Correction, and by extension, the people of the State of Delaware.

Just 10 days after announcing Mr. Kern's death, DOC issued a press release on September 25<sup>th</sup> announcing the death of inmate David H. Daudt, late of Bridgeville, DE, in the prison infirmary in Smyrna, again announcing "no foul play is suspected".

While it is much too early for us to know the facts and circumstances of Mr. Daudt's death, it is clear from Mr. Kern's death and the incidents brought to the public's attention by the Caesar Rodney Institute in August of this year, that swift and decisive action must be taken to address the issue of inadequate medical care within our prison system. We simply cannot afford to wait any longer to address these issues.

When a society assumes responsibility for the rehabilitation and/or incarceration of an individual, it also assumes responsibility for that person's safety and humane treatment while in state custody. We do not have to like these folks, and we certainly do not condone the crimes they have committed that placed them within the custody of the state. We are, nevertheless, morally and legally obligated to ensure that these inmates are treated humanely, that they receive the care the law requires, and that the people and organizations responsible for their care are held accountable, at all levels, for their failure and/or refusal to live up to their duties and responsibilities in that regard.

Upon reading the Special Report filed by Mr. Williams and the Caesar Rodney Institute back in late August, I requested that the Attorney General appoint a Special Prosecutor pursuant to the authority granted to him by Section 2505(i) of Title 29 of the Delaware Code and that the Special Prosecutor empanel an investigative grand jury to, among other things, investigate the allegations of abuse and neglect at SCI and throughout the Delaware Department of Corrections that were raised in CRI's initial Special Report. That request to the Attorney General included a request for a grand jury investigation into Corrections Medical Services (CMS). He declined to do so. \*

Today I am renewing that request and asking that said investigation include a full and complete examination of the facts to determine whether Mr. Kern's death was, in fact, the result of criminal negligence; and if so, whether criminal prosecution of the person(s) and/or organization(s) responsible for Mr. Kern's death is appropriate. For the record, Section 231(a) of Delaware's Criminal Code defines "criminal negligence" as follows:

***"A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation".***

I am also renewing my request to my colleagues in both the House and Senate to conduct hearings at the earliest possible time into the issues raised in both of these CRI Special Reports; to determine how the monies allocated by the General Assembly to the Department of Correction for training and medical care are being spent; and to determine the annual costs to the State of Delaware to defend against and/or settle abuse and/or neglect cases arising from conduct within Delaware's Department of Correction.

I am renewing my request that the Controller General investigate the expenditures of funds for the Prison Monitor to determine whether the State of Delaware has received full value for those funds.

And I am renewing my request to the State Auditor for a full and complete audit of DOC to ensure that the funds allocated by the General Assembly are being spent wisely and in the manner directed and expected by the General Assembly. As a part of that audit, I am again asking the State Auditor to conduct a forensic audit of the contract with and billing by Correctional Medical Services with regard to its contract for medical services with the Department of Correction.

Once again, I call upon Commissioner Danberg to provide the people of the State of Delaware with the answers to each and every question posed to him in the Open Letter to Commissioner Danberg which was a part of the first Special Report of the Caesar Rodney Institute, and to address the issues raised by this latest report from CRI concerning the death of Inmate Daniel Kern.

Finally, in addition to renewing and expanding all of my prior requests, I am adding a new request to my list, this one directed to Governor Markell. I hereby respectfully request that Governor Markell direct the Secretary of Health and Social Services to immediately form and deploy a team of medical experts from the Division of Public Health, or elsewhere within the Department, to the various facilities operated by the Department of Correction to review the medical records and current medical conditions of those inmates receiving and/or requesting medical attention and care, with special and immediate emphasis on those inmates currently residing in the infirmaries, to ensure that they are receiving adequate care at this time; and that a full and complete report of this team's findings be given to the General Assembly.

It is time to identify and solve the problems that plague our system of Adult Corrections. It is time for every branch of our state government, from the General Assembly to the Governor, from the Attorney General to the State Auditor, and everyone in between – especially Commissioner Danberg - to take these matters seriously and to correct these problems before more unfortunate folks like Daniel Kern become victims of "the system".

I believe that it is the job of the Delaware General Assembly to determine the facts and to fix that which is broken, and to do so as quickly as possible. We must, and we will, be a part of the solution. Delaware spends a tremendous amount of money for adult corrections and receives far too little return on that investment. We can do better, and we must do better. The people of this State demand better, and I am dedicated to making sure that their demands are met.

\*A copy of Senator Bonini's August 25<sup>th</sup> Press Release is attached hereto for your reference.