

S T A T E O F N E W Y O R K

S. 1340--A

A. 3755--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 28, 2009

IN SENATE -- Introduced by Sens. MONTGOMERY, DIAZ, DUANE, HASSELL-THOMPSON, KLEIN, ONORATO, PARKER, SAMPSON, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ROBINSON, TITUS, O'DONNELL -- Multi-Sponsored by -- M. of A. COOK, GLICK, McENENY, PEOPLES, TOWNS -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to create a temporary state commission to study and investigate sexual misconduct in state correctional facilities; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby acknowledges
2 that inmates and residents are vulnerable to sexual assault from other
3 inmates and employees of state facilities charged with the duty of care,
4 custody and control of inmates and residents. In addition to the
5 abusive and coercive nature of sexual misconduct, such behavior may also
6 increase the incidence of sexually transmitted diseases and unintended
7 pregnancies.
8 Furthermore, the legislature finds that additional rules and regu-
9 lations may be necessary to reduce the risk of sexual misconduct by
10 employees of such facilities. Therefore, the legislature hereby finds
11 and declares that a temporary commission is necessary to study the prob-
12 lem and recommend measures to rectify such circumstances.
13 S 2. A temporary state commission, to be known as the temporary state
14 commission on custodial sexual misconduct (hereinafter "commission"), is
15 hereby created to study the prevalence of sexual misconduct between

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 inmates in state correctional facilities, or residents placed in a
2 facility operated by the office of children and family services, and
3 employees as defined in paragraphs (e) and (g) of subdivision 3 of
4 section 130.05 of the penal law, and make recommendations concerning the
5 need, if any, for additional legislation and/or regulations to reduce
6 the incidence of sexual misconduct in such facilities. The commission
7 shall further study the need, if any, to devise a notification system
8 whereby incidences of sexual misconduct are promptly reported to the
9 appropriate authorities, and recommend safeguards to prevent such sexual
10 misconduct.

11 S 3. a. The commission shall consist of nine members to be appointed
12 as follows: three members shall be appointed by the governor and shall
13 include the commissioner of the department of correctional services, the
14 commissioner of the office of children and family services and the
15 chairman of the state commission of correction; four members, with two
16 appointments by the temporary president of the senate and two by the
17 speaker of the assembly, shall be mental health professionals with expe-
18 rience in the treatment of persons who suffer sexual abuse, criminal
19 justice advocates, and academic professionals; one member shall be
20 appointed by the minority leader of the senate; and one member shall be
21 appointed by the minority leader of the assembly. No person shall be a
22 member of such commission while such person is a member of the senate or
23 assembly. Any vacancy on such commission shall be filled in the same
24 manner as the original appointment was made. A chairperson and vice-
25 chairperson of such commission shall be elected by the majority of its
26 members, all members being present.

27 b. Except as provided in subdivision a of this section, no member,
28 officer or employee of the commission shall be disqualified from holding
29 any other public office or employment, nor shall he or she forfeit any
30 such office or employment by reason of his or her appointment hereunder,
31 notwithstanding the provisions of any general, special or local law,
32 ordinance or city charter.

33 S 4. The members of the commission shall receive no compensation for
34 their services, but shall be allowed their actual and necessary expenses
35 incurred in the performance of their duties hereunder.

36 S 5. The commission may employ and at pleasure remove such personnel
37 as it may deem necessary for the performance of its functions and fix
38 their compensation within the amounts made available by appropriation
39 therefor. Such commission may meet and hold public and/or private hear-
40 ings within or without the state, and shall have all the powers of a
41 legislative committee pursuant to the legislative law.

42 S 6. For the accomplishment of its purposes, the commission shall be
43 authorized and empowered to undertake any studies, inquiries, surveys or
44 analyses it may deem relevant through its own personnel or in cooper-
45 ation with or by agreement with any other public or private agency.

46 S 7. The commission may request and shall receive from any court in
47 the state and from any subdivision, department, board, bureau, commis-
48 sion, office, agency or other instrumentality of the state or of any
49 political subdivision thereof such facilities, assistance and data as it
50 deems necessary or desirable for the proper execution of its powers and
51 duties and to effectuate the purposes set forth in this act.

52 S 8. The commission is hereby authorized and empowered to enter into
53 any agreements and to do and perform any acts that may be necessary,
54 desirable or proper to carry out the purposes and objectives of this
55 act.

1 S 9. The commission shall make a report of its findings and shall
2 submit the plan developed by it, including any recommendations for
3 legislative action as it may deem necessary and appropriate, to the
4 governor, the temporary president of the senate and the speaker of the
5 assembly no later than the thirty-first of December in the year next
6 succeeding the year in which this act shall have become a law.
7 S 10. This act shall take effect immediately and shall continue in
8 full force and effect until the thirty-first of December in the year
9 next succeeding the year in which it shall have become a law when upon
10 such date the provisions of this act shall be deemed repealed.