

1394

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

---

Introduced by Sens. MONTGOMERY, DIAZ, HASSELL-THOMPSON, KLEIN, PARKER, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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  
16    inmates in state correctional facilities, or residents placed in a  
17    facility operated by the office of children and family services, and  
18    employees as defined in paragraphs (e) and (g) of subdivision 3 of  
19    section 130.05 of the penal law, and make recommendations concerning the  
20    need, if any, for additional legislation and/or regulations to reduce  
21    the incidence of sexual misconduct in such facilities. The commission  
22    shall further study the need, if any, to devise a notification system  
23    whereby incidences of sexual misconduct are promptly reported to the  
24    appropriate authorities, and recommend safeguards to prevent such sexual  
25    misconduct.

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

LBD00188-01-3

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

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

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

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

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

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

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

46 S 9. The commission shall make a report of its findings and shall  
47 submit the plan developed by it, including any recommendations for  
48 legislative action as it may deem necessary and appropriate, to the  
49 governor, the temporary president of the senate and the speaker of the  
50 assembly no later than the thirty-first of December in the year next  
51 succeeding the year in which this act shall have become a law.

52 S 10. This act shall take effect immediately and shall continue in  
53 full force and effect until the thirty-first of December in the year  
54 next succeeding the year in which it shall have become a law when upon  
55 such date the provisions of this act shall be deemed repealed.