

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.