STATE OF NEW YORK

3956

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 2023

Introduced by M. of A. BICHOTTE HERMELYN, SIMON -- read once and referred to the Committee on Correction

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:

Section 1. Legislative findings. The legislature hereby acknowledges that incarcerated individuals and residents are vulnerable to sexual assault from other incarcerated individuals and employees of state facilities charged with the duty of care, custody and control of incarcerated individuals and residents. In addition to the abusive and coercive nature of sexual misconduct, such behavior may also increase the incidence of sexually transmitted diseases and unintended pregnancies.

Furthermore, the legislature finds that additional rules and regulations may be necessary to reduce the risk of sexual misconduct by employees of such facilities. Therefore, the legislature hereby finds and declares that a temporary commission is necessary to study the problem and recommend measures to rectify such circumstances.

§ 2. A temporary state commission, to be known as the temporary state commission on custodial sexual misconduct (hereinafter "commission"), is hereby created to study the prevalence of sexual misconduct between incarcerated individuals in state correctional facilities, or residents placed in a facility operated by the office of children and family services, and employees as defined in paragraphs (e) and (g) of subdivision 3 of section 130.05 of the penal law, and make recommendations concerning the need, if any, for additional legislation and/or regulations to reduce the incidence of sexual misconduct in such facilities. The commission shall further study the need, if any, to devise a notification system whereby incidences of sexual misconduct are promptly reported to the appropriate authorities, and recommend safeguards to prevent such sexual misconduct.

§ 3. a. The commission shall consist of nine members to be appointed as follows: three members shall be appointed by the governor and shall

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

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include the commissioner of the department of correctional services, the commissioner of the office of children and family services and the chairman of the state commission of correction; four members, with two appointments by the temporary president of the senate and two by the speaker of the assembly, shall be mental health professionals with experience in the treatment of persons who suffer sexual abuse, criminal justice advocates, and academic professionals; one member shall be appointed by the minority leader of the senate; and one member shall be appointed by the minority leader of the assembly. No person shall be a member of such commission while such person is a member of the senate or assembly. Any vacancy on such commission shall be filled in the same manner as the original appointment was made. A chairperson and vice-chairperson of such commission shall be elected by the majority of its members, all members being present.

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

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

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

§ 6. For the accomplishment of its purposes, the commission shall be authorized and empowered to undertake any studies, inquiries, surveys or analyses it may deem relevant through its own personnel or in cooperation with or by agreement with any other public or private agency.

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

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

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

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