

# STATE OF NEW YORK

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3956

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

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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:

1 Section 1. Legislative findings. The legislature hereby acknowledges  
2 that incarcerated individuals and residents are vulnerable to sexual  
3 assault from other incarcerated individuals and employees of state  
4 facilities charged with the duty of care, custody and control of incar-  
5 cerated individuals and residents. In addition to the abusive and coer-  
6 cive nature of sexual misconduct, such behavior may also increase the  
7 incidence of sexually transmitted diseases and unintended 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 § 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 incarcerated individuals in state correctional facilities, or residents  
17 placed in a facility operated by the office of children and family  
18 services, and employees as defined in paragraphs (e) and (g) of subdivi-  
19 sion 3 of section 130.05 of the penal law, and make recommendations  
20 concerning the need, if any, for additional legislation and/or regu-  
21 lations to reduce the incidence of sexual misconduct in such facilities.  
22 The commission shall further study the need, if any, to devise a notifi-  
23 cation system whereby incidences of sexual misconduct are promptly  
24 reported to the appropriate authorities, and recommend safeguards to  
25 prevent such sexual misconduct.

26 § 3. a. The commission shall consist of nine members to be appointed  
27 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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1 include the commissioner of the department of correctional services, the  
2 commissioner of the office of children and family services and the  
3 chairman of the state commission of correction; four members, with two  
4 appointments by the temporary president of the senate and two by the  
5 speaker of the assembly, shall be mental health professionals with expe-  
6 rience in the treatment of persons who suffer sexual abuse, criminal  
7 justice advocates, and academic professionals; one member shall be  
8 appointed by the minority leader of the senate; and one member shall be  
9 appointed by the minority leader of the assembly. No person shall be a  
10 member of such commission while such person is a member of the senate or  
11 assembly. Any vacancy on such commission shall be filled in the same  
12 manner as the original appointment was made. A chairperson and vice-  
13 chairperson of such commission shall be elected by the majority of its  
14 members, all members being present.

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

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

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

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

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

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

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

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