

1 Introduced by Committee on Corrections and Institutions

2 Date:

3 Subject: Department of Corrections; corrections employees; human resources;
4 organizational structure

5 Statement of purpose of bill as introduced: This bill proposes to make
6 miscellaneous changes regarding the Department of Corrections, including the
7 organizational structure, practices for hiring, training, certifying, and
8 disciplining employees, and authorizes the use of body cameras for
9 correctional officers.

10 An act relating to miscellaneous Department of Corrections-related
11 amendments

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 * * * Employment * * *

14 Sec. 1. 21 V.S.A. § 494b is amended to read:

15 § 494b. EMPLOYERS PERMITTED TO REQUIRE POLYGRAPH
16 EXAMINATIONS

17 The following employers may require that an applicant for employment
18 take or submit to a polygraph examination, or administer or cause to be
19 administered a polygraph examination to an applicant for employment:

1 (1) the Department of Public Safety; the Department of Motor Vehicles,
2 for applicants for law enforcement positions; the Department of Fish and
3 Wildlife, for applicants for law enforcement positions; the Department of
4 Liquor and Lottery and the Board of Liquor and Lottery, for applicants for
5 investigator positions; the Department of corrections, for applicants for
6 correctional officer positions; municipal police departments and county
7 sheriffs, as to sworn police officers and deputy sheriffs;

8 * * *

9 Sec. 2. 21 V.S.A. § 513 is amended to read:

10 § 513. DRUG TESTING OF EMPLOYEES; PROHIBITIONS;

11 EXCEPTIONS

12 (a) General prohibition. Except as provided in ~~subsection~~ subsections (c)
13 and (d) of this section, an employer shall not, as a condition of employment,
14 promotion, or change of status of employment, or as an expressed or implied
15 condition of a benefit or privilege of employment, do any of the following:

16 * * *

17 (b) Random or company-wide tests. ~~An~~ Except as provided in subsection
18 (d) of this section, an employer shall not request, require, or conduct random or
19 company-wide drug tests except when such testing is required by federal law
20 or regulation.

21 * * *

1 (d) Notwithstanding the prohibitions in subsections (a) and (b) of this
2 section, the Department of Corrections may conduct random or facility-wide
3 drug tests of correctional officers when all of the following conditions are met:

4 (1) Employee assistance program. The Department makes available to
5 each correctional officer tested a bona fide rehabilitation program for alcohol
6 or drug abuse. The rehabilitation program shall be provided by the Department
7 or made available through a health benefit plan offered by a health insurer, as
8 defined in 18 V.S.A. § 9402.

9 (2) Protection against termination.

10 (A) A correctional officer may not be terminated if the test result is
11 positive and the officer agrees to participate in and successfully completes the
12 employee assistance program. However, the correctional officer may be
13 suspended for the period of time necessary to complete the program, but in no
14 event longer than three months.

15 (B) Subject to any rights provided to the correctional officer pursuant
16 to a collective bargaining agreement, the officer may be terminated if, after
17 completion of the employee assistance program, the Department subsequently
18 administers another drug test in compliance with this subsection and the
19 officer's test result is positive.

20 (3) Administration of drug tests. The Department shall administer each
21 drug test in accordance with the requirements of section 514 of this subchapter.

1 Sec. 3. 21 V.S.A. § 511 is amended to read:

2 § 511. DEFINITIONS

3 As used in this subchapter:

4 * * *

5 (9) “Correctional officer” has the same meaning as in 28 V.S.A. § 3.

6 * * * Organization * * *

7 Sec. 4. 28 V.S.A. § 123 is added to read:

8 § 123. CORRECTIONS MISCONDUCT ADVISORY COMMISSION

9 (a) Creation. There is created the Corrections Misconduct Advisory
10 Commission, which shall provide advice and counsel to the Commissioner of
11 Corrections in carrying out his or her responsibilities at the Department of
12 Corrections to monitor reporting of sexual misconduct, implement the
13 Department’s anti-retaliation policy, create transparency and implement
14 policies relating to misconduct, and review disciplinary action.

15 (b) Members. The Commission shall be composed of the following five
16 members:

17 (1) one [member] appointed by [WHO SHOULD BE ON
18 COMMISSION?];

19 (2) one [member] appointed by [WHO SHOULD BE ON
20 COMMISSION?];

Commented [RW1]: The DRM Report recommended 5-6 members. Typically, committees have an odd number of members. Keep at 5?

1 (3) one [member] appointed by [WHO SHOULD BE ON
2 COMMISSION?];

3 (4) one [member] appointed by [WHO SHOULD BE ON
4 COMMISSION?]; and

5 (5) a former judge with knowledge of the criminal justice system,
6 appointed by [WHO SHOULD APPOINT?].

7 (c) Powers and Duties. The Commission shall have the following duties:

8 (1)

9 (2)

10 (3)

11 (d) Member terms. The members of the Commission shall serve staggered
12 four-year terms. A vacancy created before the expiration of a term shall be
13 filled in the same manner as the original appointment for the unexpired portion
14 of the term. A member appointed to fill a vacancy created before the
15 expiration of a term shall not be deemed to have served a term for the purpose
16 of this subsection. Members of the Commission shall be eligible for
17 reappointment. Members of the Commission shall serve no more than two
18 consecutive terms. A member may be removed for cause by the remaining
19 members of the Commission.

20 (e) Meetings.

Commented [RW2]: What are the Commission's responsibilities?

Commented [RW3]: This is a policy choice for Committee

Commented [RW4]: Policy choice for the Committee relating to the independence of the Commission. Members may also serve at the pleasure of the Commissioner of Corrections or be removed for cause by the Commissioner, etc.

1 (1) The Commission shall select a chair from among its members at the
2 first meeting.

3 (2) A majority of the membership shall constitute a quorum.

4 (f) Commissioner’s Duties. The creation and existence of the Commission
5 shall not relieve the Commissioner of his or her duties under the law to
6 manage, supervise, and control the Department of Corrections.

7 (g) Reimbursement. Members of the Commission shall be entitled to
8 receive per diem compensation and reimbursement for expenses in accordance
9 with 32 V.S.A. § 1010.

10 **Sec. 5. IMPLEMENTATION OF THE CORRECTIONS MISCONDUCT**

11 **ADVISORY COMMISSION**

12 (a) The Corrections Misconduct Advisory Commission, created in Sec. 4 of
13 this act, is established on January 1, 2022.

14 (b) Members of the Commission shall be appointed on or before XXX,
15 2021 in order to prepare as they deem necessary for the establishment of the
16 Commission. Terms of members shall officially begin on January 1, 2022.

17 (c)(1) In order to stagger the terms of the members of the Corrections
18 Misconduct Advisory Commission as described in 28 V.S.A. § 123 in Sec. 4 of
19 this act, the initial terms of those members shall be as follows:

20 (A) the [APPOINTER] shall appoint a member for a four-year term;

21 (B) the [APPOINTER] shall appoint a member for a three-year term;

Commented [RW5]: If the nature of the work of the Commission requires that the members have to already be in place as of January 1, you may want to include this language.

1 (C) the [APPOINTER] shall appoint a member for a two-year term;

2 (D) the [APPOINTER] shall appoint a member for a one-year term;

3 and

4 (E) the [APPOINTER] shall appoint a member for a two-year term.

5 (2) After the expiration of the initial terms set forth in subdivision (1) of
6 this subsection, Commission member terms shall be as set forth in 28 V.S.A.
7 § 123 in Sec. 4 of this act.

8 Sec. 6. 28 V.S.A. § 124 is added to read:

9 § 124. DEPARTMENT OF CORRECTIONS; SPECIAL INVESTIGATIONS

10 UNIT

11 (a) Creation. There is created the Special Investigations Unit (SIU) within
12 the Department. The purpose of the SIU shall be to investigate:

13 (1) complaints or allegations of criminal acts by persons under the
14 custody of the Commissioner or employees of the Department of Corrections;

15 and

16 (2) complaints or allegations against employees of the Department for
17 misconduct, including constitutional or policy violations.

18 (b) The Commissioner of Corrections shall:

19 (1) employ the proper staff and adopt the necessary procedures to carry
20 out the duties of the SIU; and

21 (2) appoint a Director who shall administer the activities of the SIU.

1 (c) The SIU shall have the jurisdiction and authority to investigate all
2 complaints and allegations of criminal acts or misconduct at any State-owned
3 correctional facility.

4 (d) The SIU shall coordinate with State law enforcement agencies when
5 violations of federal or State laws apply and the Department of Human
6 Resources on employee misconduct investigations and disciplinary actions.

7 **Sec. 7. CREATION OF STAFF POSITION FOR SPECIAL**

8 **INVESTIGATIONS UNIT**

9 One full-time exempt Director position is created in the Special
10 Investigations Unit set forth in Sec. 6 of this act by using an existing position
11 in the position pool.

12 * * * Crime * * *

13 Sec. 8. 13 V.S.A. § 3257 is amended to read:

14 § 3257. SEXUAL EXPLOITATION OF AN INMATE

15 (a) No correctional employee, contractor, or other person providing
16 services to offenders on behalf of the Department of Corrections or pursuant to
17 a court order or in accordance with a condition of parole, probation, supervised
18 community sentence, or furlough shall engage in a sexual act with a person
19 who the employee, contractor, or other person providing services knows:

20 (1) is confined to a correctional facility; or

Commented [RW6]: The Department indicated there would not be a new position needed for this unit, so this language allows for use of an already existing position in the position pool. If a Director position is required, Committee may also want to consider if this is an exempt position.

1 accommodated within the Department's budget shall be included in the
2 Department's FY22 budget proposal to the General Assembly in August 2021.

3 * * * Correctional Officer Certification and Discipline * * *

4 Sec. 11. CRIMINAL JUSTICE COUNCIL; DEPARTMENT OF
5 CORRECTIONS; CERTIFICATION PROCESS

6 During the 2021 legislative interim, the Criminal Justice Council and the
7 Department of Corrections shall develop a proposal governing minimum
8 training standards, complaint investigations, and a process for certification and
9 decertification of correctional officers as defined in 28 V.S.A. § 3. The
10 proposal shall give the Council the authority to investigate allegations of
11 correctional officer misconduct and to certify and decertify correctional
12 officers. On or before December 1, 2021, the Council and the Department
13 shall report the proposal to the Joint Legislative Justice Oversight Committee.

14 * * * Effective Date * * *

15 Sec. 12. EFFECTIVE DATE

16 This act shall take effect on July 1, 2021.