

H.435

An act relating to miscellaneous Department of Corrections-related amendments

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

\* \* \* Polygraph Examinations; Drug Testing; Report \* \* \*

Sec. 1. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;

CORRECTIONAL EMPLOYEES; POLYGRAPH

EXAMINATIONS; DRUG TESTING; STUDY; REPORT

(a) The Joint Legislative Justice Oversight Committee shall study permitting the Department of Corrections to administer polygraph examinations to certain applicants for employment and to conduct drug testing for certain employees.

(1) In particular, the Committee shall study the following:

(A) With respect to polygraph examinations:

(i) the positions within the Department for which applicants for employment should potentially be subject to polygraph examinations;

(ii) the cost of administering polygraph examinations in relation to the identified positions;

(iii) whether polygraph examinations would be an effective supplement to the Department's existing background investigation procedures

for applicants and whether any potential alternatives to polygraph examinations might be more effective for the Department;

(iv) issues related to the use, retention, storage, and destruction of information obtained through polygraph examinations; and

(v) the potential benefits and drawbacks of the Department using polygraph examinations as a screening tool.

(B) With respect to drug testing:

(i) whether the Department could benefit from the ability to conduct drug testing to a greater extent than is currently permitted under State law;

(ii) categories of employees for whom the Department should potentially be granted additional statutory authority to conduct drug testing;

(iii) circumstances under which the Department should potentially be permitted to require employees within the identified categories to submit to a drug test;

(iv) whether the Department should be permitted to carry out random, scheduled, or facility-wide drug testing for the identified categories of employees;

(v) the potential cost of conducting drug testing in relation to the identified categories of employees;

(vi) whether the existing safeguards and procedural requirements for employee drug testing established in 21 V.S.A. chapter 5, subchapter 11 may require modification if the Department is granted additional authority to conduct employee drug testing; and

(vii) potential privacy, safety, and other concerns that may arise in relation to expanded employee drug testing because of the nature of the work environment in correctional facilities.

(2) If it has sufficient time and resources, the Committee may also study the following issues:

(A) the potential recourse for the Department and employees in relation to a positive drug test; and

(B) the interplay between the collective bargaining agreement for the Corrections Bargaining Unit and any identified potential expansion of the Department's authority to conduct drug testing.

(b) On or before December 15, 2021, the Committee shall submit a report to the House Committee on Corrections and Institutions and the Senate Committee on Judiciary regarding its findings and any recommendations for legislative action.

\* \* \* Organization \* \* \*

Sec. 2. 28 V.S.A. § 123 is added to read:

§ 123. DEPARTMENT OF CORRECTIONS MONITORING COMMISSION

(a) Creation. There is created the Corrections Monitoring Commission to provide advice and counsel to the Commissioner of Corrections with regard to the Commissioner's responsibility to manage the reporting of sexual misconduct; promote adherence to anti-retaliation policies; ensure overall policy implementation and effectiveness; improve the transparency, accountability, and cultural impact of agency decisions; and ensure that the determination of investigatory findings and any resulting disciplinary actions are just and appropriate.

(b) Members.

(1) The Commission shall be composed of the following seven members:

(A) a former judge with knowledge of the criminal justice system, appointed by the Chief Justice of the Vermont Supreme Court;

(B) a retired attorney, appointed by the Department of State's Attorneys and Sheriffs;

(C) a former corrections officer, appointed by the Vermont State Employees' Association;

(D) a formerly incarcerated individual, appointed by the Defender

General;

(E) the Executive Director of the Vermont Network Against

Domestic and Sexual Violence or designee;

(F) a former management-level employee of the Department of

Corrections with experience in corrections management, appointed by the

Governor; and

(G) an individual at large with knowledge of and experience in the

correctional system, crime prevention, human resources, or compliance,

appointed by the Governor.

(2) No member, at the time of appointment or during membership, shall be employed by the Department of Corrections or work in any part of the State correctional system. To the extent feasible, the appointing entities shall appoint members that will create a diverse Commission including gender, racial, and cultural diversity. Commission members shall demonstrate an understanding of and respect for the values, dignity, and diversity of individuals who are in the custody of the Commissioner of Corrections and those working within the State correctional system. If an appointing entity is unable to find a candidate for appointment to the Commission who meets the criteria of subdivision (1) of this subsection, the appointing entity may appoint an individual with relevant lived experience.

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

(1) provide advice and counsel to the Commissioner of Corrections in carrying out the Commissioner's responsibilities at the Department of Corrections to monitor reporting of sexual misconduct, oversee the implementation of the Department's anti-retaliation policy, create transparency and implement policies relating to misconduct, and review disciplinary actions;

(2) monitor the Department in the following areas:

(A) the timely reporting of allegations of sexual misconduct;

(B) compliance with the Prison Rape Elimination Act;

(C) the Department's implementation of and adherence to policies relating to employee misconduct and discipline;

(D) employees' adherence to Department policies, procedures, and directives, particularly to code of ethics and anti-retaliation policies;

(E) maintenance of an independent reporting hotline to the State Police; and

(F) investigations of employee misconduct, the movement of contraband in facilities, threats to personal safety, and the Department's response to major events that occur in the Department of Corrections, including the death of an individual in the custody of the Commissioner of Corrections and the escape of an individual from a Department facility or Department custody; and

(3) beginning on January 1, 2023, submit an annual report to the Commissioner of Corrections, the Secretary of Human Services, the House Committee on Corrections and Institutions, and the Senate Committee on Judiciary reporting on metrics that assess the Department's performance in the areas identified in subdivision (c)(2) of this section, including listing the number of complaints of retaliation and complaints of sexual misconduct and the outcomes of those complaints; identifying areas of repeated noncompliance with policies, procedures, and directives; and providing recommendations for improving compliance and eliminating instances of sexual misconduct in the Department of Corrections.

(d) Member terms. The members of the Commission shall serve staggered three-year terms. A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term. A member appointed to fill a vacancy before the expiration of a term shall not be deemed to have served a term for the purpose of this subsection. Members of the Commission shall be eligible for reappointment. Members of the Commission shall serve not more than two consecutive terms. A member may be removed by a majority vote of the members of the Commission.

(e) Meetings.

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

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

(f) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Department of Corrections.

(g) Commissioner of Correction's duties. The creation and existence of the Commission shall not relieve the Commissioner of his or her duties under the law to manage, supervise, and control the Department of Corrections.

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

### Sec. 3. SUNSET OF CORRECTIONS MONITORING COMMISSION

28 V.S.A. § 123 (Department of Corrections Monitoring Commission) is repealed on July 1, 2025.

### Sec. 4. IMPLEMENTATION OF THE CORRECTIONS MONITORING COMMISSION

(a) The Corrections Monitoring Commission, created in Sec. 2 of this act, is established on January 1, 2022.

(b) Members of the Commission shall be appointed on or before December 1, 2021. Terms of members shall officially begin on January 1, 2022.



(c)(1) In order to stagger the terms of the members of the Corrections Monitoring Commission as described in 28 V.S.A. § 123 in Sec. 2 of this act, the initial terms of those members shall be as follows:

(A) the Chief Justice of the Vermont Supreme Court shall appoint a member for a three-year term;

(B) the Department of State's Attorneys and Sheriffs shall appoint a member for a two-year term;

(C) the Vermont State Employees' Association shall appoint a member for a three-year term;

(D) the Defender General shall appoint a member for a one-year term;

(E) the Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee shall serve a two-year term;

(F) the Governor shall appoint a member to fill the position designated in subdivision (b)(1)(F) of Sec. 2 of this act for a two-year term;

and

(G) the Governor shall appoint a member to fill the position designated in subdivision (b)(1)(G) of Sec. 2 of this act for a one-year term.

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

Sec. 5. 28 V.S.A. § 124 is added to read:

§ 124. DEPARTMENT OF CORRECTIONS; CORRECTIONS

INVESTIGATIVE UNIT

(a) Creation. There is created the Corrections Investigative Unit (CIU) within the Department. The purpose of the CIU shall be to investigate:

- (1) allegations of violations of the Prison Rape Elimination Act;
- (2) major events that occur in the Department, including the death of an individual in the custody of the Department or the escape of an individual from a facility or the custody of Department staff;
- (3) Department compliance with policies, procedures and directives;
- (4) the movement of contraband in facilities; and
- (5) threats against the personal safety of Department employees and individuals in the custody of the Department.

(b) Staff. The Commissioner of Corrections shall appoint and employ sufficient staff and adopt the necessary procedures for the CIU to carry out the duties required under this section.

(c) Coordination. The CIU shall coordinate with outside investigative agencies and law enforcement agencies concerning criminal allegations and shall coordinate with a designated point of contact at the Department of Human Resources on employee misconduct investigations and disciplinary

actions. The CIU shall conduct personal safety planning as necessary for employees who receive threats.

\* \* \* Crime \* \* \*

Sec. 6. 13 V.S.A. § 3257 is amended to read:

§ 3257. SEXUAL EXPLOITATION OF ~~AN INMATE~~ A PERSON UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS

(a) ~~No~~ A correctional employee, contractor, or other person providing services to offenders on behalf of the Department of Corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall not engage in a sexual act with:

(1) a person who the employee, contractor, or other person providing services knows:

(~~4~~) is confined to a correctional facility; or

(2) is any offender being supervised by the Department of Corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider ~~is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person~~ knows or reasonably should have known that the offender is being supervised by the Department, unless the offender and the employee, contractor, or person

providing services were married, parties to a civil union, or engaged in a sexual relationship at the time of sentencing for the offense for which the offender is being supervised by the Department.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Sec. 7. CRIMINAL JUSTICE COUNCIL; DEPARTMENT OF  
CORRECTIONS; CERTIFICATION PROCESS

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

\* \* \* Effective Date \* \* \*

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2021.