

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

14 Sec. 1. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;

15 CORRECTIONAL EMPLOYEES; POLYGRAPH

16 EXAMINATIONS; DRUG TESTING; STUDY; REPORT

17 (a) The Joint Legislative Justice Oversight Committee shall study  
18 permitting the Department of Corrections to administer polygraph  
19 examinations to certain applicants for employment and to conduct drug testing  
20 for certain employees. In particular, the Committee shall study the following:

1           (1) With respect to polygraph examinations:

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

4                   (B) the cost of administering polygraph examinations in relation to  
5 the identified positions;

6                   (C) how the Department would use the information obtained through  
7 polygraph examinations;

8                   (D) issues related to the retention, storage, and destruction of  
9 information obtained through polygraph examinations;

10                  (E) whether polygraph examinations would provide the Department  
11 with an effective screening tool to supplement its existing background  
12 investigation procedures for applicants for employment;

13                  (F) the benefits and drawbacks of the Department using polygraph  
14 examinations as a screening tool; and

15                  (G) potential alternatives to polygraph examinations, including  
16 enhanced background investigation procedures, and whether they would be a  
17 more effective screening tool for the Department.

18           (2) With respect to drug testing:

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

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

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

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

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

11          (F) the recourse for both the Department and employees in relation to  
12          a positive drug test;

13          (G) the interplay between the collective bargaining agreement for the  
14          Corrections Bargaining Unit and any identified potential expansion of the  
15          Department's authority to conduct drug testing;

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



1           (3) a retired corrections officer, appointed by the Vermont State

2           Employees' Association;

3           (4) a formerly incarcerated individual, appointed by -----;

4           (5) the Executive Director of the Vermont Network Against Domestic  
5           and Sexual Violence or designee;

6           (6) an individual with experience in the administration of correctional  
7           facilities appointed by -----; and

8           (7) an individual with experience in human resources or compliance,  
9           appointed by the State Auditor of Accounts.

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

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

16           (2) monitor the Department in the following areas:

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

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

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

1           (D) compliance with the Prison Rape Elimination Act;

2           (E) maintenance of an independent reporting hotline to the State

3 Police; and

4           (F) investigations of employee misconduct, the movement of

5 contraband in facilities, threats to personal safety and the Department’s

6 response to major events that occur in the Department of Corrections,

7 including the death of an individual in the custody of the Commissioner of

8 Corrections and the escape of an individual from a Department facility or

9 Department custody; and

10           (3) submit an annual report on or before January 1 to the Commissioner

11 of Corrections, the Secretary of Human Services, the House Committee on

12 Corrections and Institutions, and the Senate Committee on the Judiciary

13 identifying areas of repeated noncompliance with policies, procedures, and

14 directives, listing the number of complaints of retaliation and complaints of

15 sexual misconduct and the outcomes of those complaints and recommendations

16 for improving compliance and decreasing instances of sexual misconduct in

17 Department facilities.

18           (d) Member terms. The members of the Commission shall serve staggered

19 five-year terms. A vacancy created before the expiration of a term shall be

20 filled in the same manner as the original appointment for the unexpired portion

21 of the term. A member appointed to fill a vacancy created less than two years

1 before the expiration of a term shall not be deemed to have served a term for  
2 the purpose of this subsection. Members of the Commission shall be eligible  
3 for reappointment. Members of the Commission shall serve no more than two  
4 consecutive terms. A member may only be removed for cause by the  
5 remaining members of the Commission.

6 (e) Meetings.

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

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

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

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

16 Sec. 3. SUNSET OF CORRECTIONS MONITORING COMMISSION

17 28 V.S.A. § 123 (Department of Corrections Monitoring Commission) is  
18 repealed on July 1, 2025.

19 Sec. 4. IMPLEMENTATION OF THE CORRECTIONS MONITORING

20 COMMISSION

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

3        (b) Members of the Commission shall be appointed on or before  
4        December 1, 2021. Terms of members shall officially begin on January 1,  
5        2022.

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

9                (A) the Chief Justice shall appoint a member for a five-year term;

10               (B) the Vermont State Employees' Association shall appoint a  
11        member for a five-year term;

12               (C) the State's Attorney shall appoint a member for a four-year term;

13               (D) the State Auditor of Accounts shall appoint a member for a four-  
14        year term;

15               (E) the Executive Director of the Vermont Network Against  
16        Domestic and Sexual Violence or designee shall serve an initial three-year  
17        term;

18               (F) the [APPOINTER- incarceration experience] shall appoint a  
19        member for a two-year term; and

20               (G) the [APPOINTER- corrections administration experience] shall  
21        appoint a member for a two-year term.

1           (2) After the expiration of the initial terms set forth in subdivision (1) of  
2           this subsection, Commission member terms shall be as set forth in 28 V.S.A.  
3           § 123 in Sec. 2 of this act.

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

5           § 124. DEPARTMENT OF CORRECTIONS; SPECIAL INVESTIGATIONS  
6           UNIT

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

9                   (1) allegations of violations of the Prison Rape Elimination Act;

10                   (2) major events that occur in the Department, including the death of an  
11                   individual in the custody of the Department or the escape of an individual from  
12                   a facility or the custody of Department staff;

13                   (3) Department compliance with policies, procedures and directives;

14                   (4) the movement of contraband in facilities;

15                   (5) threats against the personal safety of Department employees and  
16                   individuals in the custody of the Department;

17                   (6) the background of applicants for positions involving the supervision  
18                   of individuals in the custody of the Department;

19                   (7) complaints or allegations of criminal acts by individuals under the  
20                   custody of the Commissioner or employees of the Department of Corrections;

21           and

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

3           (b) The Commissioner of Corrections shall:

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

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

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

10          (d) The SIU shall coordinate with outside investigative agencies and law  
11          enforcement agencies concerning criminal allegations and the Department of  
12          Human Resources on employee misconduct investigations and disciplinary  
13          actions.

14          Sec. 6. CREATION OF STAFF POSITION FOR SPECIAL  
15                          INVESTIGATIONS UNIT

16          One full-time exempt Director position is created in the Special  
17          Investigations Unit set forth in Sec. 5 of this act by using an existing position  
18          in the position pool.

19                                  \* \* \* Crime \* \* \*

20          Sec. 7. 13 V.S.A. § 3257 is amended to read:

21          § 3257. SEXUAL EXPLOITATION OF AN INMATE

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

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

7 (2) is being supervised by the Department of Corrections while on  
8 parole, probation, supervised community sentence, or furlough, ~~where the~~  
9 ~~employee, contractor, or other service provider is currently engaged in a direct~~  
10 ~~supervisory relationship with the person being supervised. For purposes of this~~  
11 ~~subdivision, a person is engaged in a direct supervisory relationship with a~~  
12 ~~supervisee if the supervisee is assigned to the caseload of that person.~~

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

15 \* \* \* Body Cameras \* \* \*

16 Sec. 8. 28 V.S.A. § 602 is added to read:

17 § 602. EQUIPMENT OF OFFICERS WITH VIDEO RECORDING

18 DEVICES

19 The Department shall ensure that every Department correctional officer as  
20 defined by 28 V.S.A. § 3 is equipped with a body camera or other video  
21 recording device on his or her person.

1       Sec. 9. DEPARTMENT OF CORRECTIONS; VIDEO RECORDING  
2                   DEVICES; ONGOING COSTS

3               The Department of Corrections shall immediately initiate the acquisition  
4               and deployment of video recording devices to comply with the requirements of  
5               28 V.S.A. § 602. The ongoing costs of the devices that cannot be  
6               accommodated within the Department’s budget shall be included in the  
7               Department’s FY22 budget proposal to the General Assembly in August 2021.

8                   \* \* \* Correctional Officer Certification and Discipline \* \* \*

9       Sec. 10. CRIMINAL JUSTICE COUNCIL; DEPARTMENT OF  
10                   CORRECTIONS; CERTIFICATION PROCESS

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

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

20       Sec. 11. EFFECTIVE DATE

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