

STATE OF NEW YORK

111

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. QUART, DE LA ROSA, SEAWRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to creating the conviction review commission and providing for such commission's powers and duties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 13-B to read as follows:

ARTICLE 13-B

CONVICTION REVIEW COMMISSION

Section 268. Definition.

268-a. Conviction review commission.

268-b. Purpose and conduct of the commission.

268-c. Powers and duties.

268-d. Use of information.

§ 268. Definition. As used in this article, "commission" shall mean the conviction review commission established pursuant to section two hundred sixty-eight-a of this article.

§ 268-a. Conviction review commission. 1. The conviction review commission is hereby established as an independent agency of the state.

a. The commission shall consist of five members as follows:

(i) three members appointed by the governor;

(ii) one member appointed by the temporary president of the senate;

and

(iii) one member appointed by the speaker of the assembly.

b. The five members of the commission shall include community advocates and defense attorneys who are widely known for their professional competence and experience with criminal defense, wrongful convictions, or developments in the field of forensic science, and at least one of

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

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1 whom is a defense attorney in good standing with experience filing
2 motions pursuant to article four hundred forty of the criminal procedure
3 law.

4 2. The term of office of each of the members of the commission shall
5 be five years. Every vacancy occurring prior to the expiration of a
6 member's term shall be filled for the remainder of such term in the
7 manner provided for the original appointment to such term. Upon the
8 expiration of the term of a member of the commission, such member shall
9 continue to serve until his or her successor is appointed.

10 3. The governor shall designate a chairperson from the members of the
11 commission, to serve as such at the pleasure of the governor. The chair-
12 person shall be the chief executive officer of the commission.

13 4. The chairperson shall receive compensation fixed by the governor
14 and shall be reimbursed for all expenses actually and necessarily
15 incurred by him or her in the performance of his or her duties here-
16 under, within the amount made available by appropriation therefor. The
17 other members of the commission shall receive no compensation for their
18 services, but shall be reimbursed for all expenses actually and neces-
19 sarily incurred in the performance of their duties hereunder within the
20 amount made available by appropriation therefor.

21 5. The commission shall meet at least four times each year at prede-
22 termined times and locations announced in advance, and at such other
23 times as the chair of the commission or three or more members shall
24 determine to be necessary.

25 6. For any action authorized by this article, three members of the
26 commission shall constitute a quorum and, except as otherwise provided
27 in subdivision five of this section, the concurrence of at least three
28 members of the commission shall be necessary.

29 7. No member of the commission shall be disqualified from holding any
30 public office or employment, nor shall he or she forfeit any such office
31 or employment, by reason of his or her appointment pursuant to this
32 section, and the members of the commission shall be required to take and
33 file oaths of office before serving on the commission.

34 § 268-b. Purpose and conduct of the commission. 1. The commission
35 shall review cases involving a wrongful conviction and shall be author-
36 ized to reinvestigate such cases, research developments in forensic
37 science, recommend cases and categories of cases for reinvestigation,
38 and recommend reforms to lessen the likelihood of similar wrongful
39 convictions occurring in the future.

40 2. The commission shall establish a conviction review unit which shall
41 consist of the following departments:

42 a. the investigation department, which shall be responsible for inves-
43 tigating all matters brought to the commission's attention by the formal
44 filing or application process set forth by the commission; and

45 b. the research department, which shall be responsible for collecting
46 data pertaining to the work of the conviction review unit, monitoring
47 the most recent research, including forensic research, and recommending
48 cases or categories of cases for reinvestigation based upon the results
49 of such research.

50 § 268-c. Powers and duties. The commission shall have the powers and
51 duties to:

52 1. establish its own reasonable rules and procedures concerning the
53 conduct of its meetings and other affairs related to implementing the
54 provisions of this article;

55 2. employ and remove such officers, investigators and employees as it
56 may deem necessary for the performance of its powers and duties pursuant

1 to this article, and fix their compensation within the amounts made
2 available by appropriation therefor;

3 3. conduct investigations and hearings, administer oaths or affirma-
4 tions, subpoena witnesses, compel their attendance, examine them under
5 oath or affirmation, require production of any books, records, documents
6 or other evidence that it may deem relevant or material to an investi-
7 gation, and may designate any of its members, officers or investigators
8 to exercise any such powers; provided, however, the commission shall not
9 be permitted to compel any trial judge, trial court or any appellate
10 court to provide information or records pertaining to the court's adju-
11 dicative process in rendering its decision in any case;

12 4. request and receive from any court, department, division, board,
13 bureau, commission or other agency of the state or any political subdivi-
14 sion thereof or any public authority such assistance, information,
15 records and data as will enable the commission to properly carry out its
16 powers and duties;

17 5. issue preliminary reports on any investigation conducted pursuant
18 to this article, which preliminary reports shall include findings of
19 fact and recommendations;

20 6. accept requests for proposals from organizations that represent
21 petitioners in proceedings after judgment pursuant to title M of part
22 two of the criminal procedure law and enter into contracts with such
23 organizations authorizing the organizations to represent such petition-
24 ers;

25 7. research and monitor developments in forensic science and other
26 fields which may affect the outcome of criminal cases; and

27 8. perform all activities necessary to carry out the provisions of
28 this article.

29 § 268-d. Use of information. 1. No preliminary report, report or
30 portion thereof issued pursuant to this article shall be admitted into
31 evidence or used in any civil or criminal cause of action relating to a
32 matter which is the subject of such report.

33 2. The commission's election not to reinvestigate a case or initiate
34 an action on behalf of the petitioner shall not be deemed a determi-
35 nation by the commission and shall not be subject to freedom of informa-
36 tion laws pursuant to article six of the public officers law.

37 3. The determination by the commission not to reinvestigate a case or
38 initiate an action on behalf of a petitioner shall not be deemed a
39 determination and shall not be discoverable or admissible in any subse-
40 quent action, administrative hearing or hearing administered by the
41 department of corrections and community supervision.

42 4. Orders and decisions of the commission shall not be appealable.

43 5. The commission shall not be required to disclose to petitioner any
44 records, data, video or audio tape, or any other information received by
45 subpoena or other means from a district attorney's office or from any
46 court, department, division, board, bureau, commission or other agency
47 of the state or any political subdivision thereof or any public authori-
48 ty pursuant to subdivision four of section two hundred sixty-eight-c of
49 this article.

50 § 2. This act shall take effect on the ninetieth day after it shall
51 have become a law, provided that the officials who are empowered by this
52 act to appoint members of the conviction review commission are author-
53 ized and directed to make such appointments on or before such effective
54 date pursuant to section 268-a of the executive law, as added by section
55 one of this act.