5344

2011-2012 Regular Sessions

IN ASSEMBLY

February 16, 2011

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to creating the state commission for the integrity of the criminal justice system, as an independent agency, 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. Article 23 and sections 860 and 861 of the 1 judiciary law, 2 as renumbered by chapter 840 of the laws of 1983, are renumbered article 3 and sections 1000 and 1001 and a new article 23 is added to read as 24 4 follows: 5 ARTICLE 23 б STATE COMMISSION FOR THE INTEGRITY 7 OF THE CRIMINAL JUSTICE SYSTEM 8 SECTION 900. DEFINITION. 9 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE 10 SYSTEM. 902. PURPOSE AND CONDUCT OF THE COMMISSION. 11 12 903. POWERS AND DUTIES. 904. USE OF REPORTS. 13 14 DEFINITION. AS USED IN THIS ARTICLE, "COMMISSION" SHALL MEAN 900. S 15 THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ESTABLISHED PURSUANT TO SECTION NINE HUNDRED ONE OF THIS ARTICLE. 16 17 S 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM. 1. THE STATE COMMISSION FOR 18 THE INTEGRITY OF THE CRIMINAL ESTABLISHED AS AN INDEPENDENT AGENCY OF THE 19 JUSTICE SYSTEM IS HEREBY STATE. THE COMMISSION SHALL CONSIST OF TEN MEMBERS AS FOLLOWS: 20 21 (A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES; 22 (B) FOUR MEMBERS APPOINTED BY THE GOVERNOR, OF WHOM: 23 (I) ONE SHALL BE A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY, EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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(II) ONE SHALL BE A REPRESENTATIVE OF THE PUBLIC CRIMINAL DEFENSE BAR 1 2 OR PRIVATE CRIMINAL DEFENSE BAR WHO SHALL BE APPOINTED UPON THE RECOM-3 MENDATION OF AN ORGANIZATION WITH MORE THAN SEVEN HUNDRED FIFTY DUES 4 PAYING MEMBERS REPRESENTING SUCH PUBLIC OR PRIVATE DEFENSE SERVICES, 5 (III) ONE SHALL BE A REPRESENTATIVE OF VICTIMS RIGHTS ADVOCACY OR 6 SERVICES ORGANIZATIONS, AND 7 (IV) ONE SHALL BE A REPRESENTATIVE OF THE FORENSIC SCIENCE FIELD; 8 (C) A MEMBER APPOINTED BY THE ATTORNEY GENERAL WHO SHALL BE A REPRE-9 SENTATIVE OF PROSECUTION SERVICES; 10 (D) TWO MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS, 11 OF WHOM: 12 (I) ONE SHALL BE A RETIRED JUDGE OR JUSTICE OF A NEW YORK STATE COURT 13 OF RECORD, AND 14 (II) ONE SHALL BE A PROFESSOR OF LAW OR A RETIRED FULL TIME PROFESSOR 15 OF LAW WHO HAS TAUGHT LAW SCHOOL COURSES IN CRIMINAL LAW, CRIMINAL 16 PROCEDURE, CONSTITUTIONAL LAW, OR EVIDENCE AT AN ACCREDITED POST-GRADU-17 ATE COLLEGE IN NEW YORK STATE; 18 (E) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO 19 SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE; AND 20 (F) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL BE 21 A MEMBER OF THE PUBLIC-AT-LARGE. 22 2. THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL SERVE AN INDEF-INITE TERM. THE MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF 23 24 FOUR YEARS. THE RETIRED JUDGE OR JUSTICE APPOINTED BY THE CHIEF JUDGE 25 SHALL SERVE A TERM OF THREE YEARS. THE PROFESSOR OF LAW OR RETIRED 26 PROFESSOR OF LAW APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF TWO YEARS. THE MEMBERS APPOINTED BY THE ATTORNEY GENERAL, THE TEMPORARY 27 28 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH SERVE A TERM OF TWO YEARS. EACH OF THE MEMBERS OF THE COMMISSION, EXCEPT 29 THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES, APPOINTED THEREAFTER SHALL 30 SERVE A TERM OF FIVE YEARS. EVERY VACANCY OCCURRING PRIOR TO THE EXPI-31 32 RATION OF A MEMBER'S TERM SHALL BE FILLED FOR THE REMAINDER OF SUCH TERM THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT TO SUCH TERM. UPON 33 IN THE EXPIRATION OF THE TERM OF A MEMBER OF THE COMMISSION, SUCH MEMBER 34 35 SHALL CONTINUE TO SERVE UNTIL HIS OR HER SUCCESSOR IS APPOINTED. THE COMMISSION SHALL ELECT A CHAIR FROM AMONGST ITS MEMBERS BY A 36 3. 37 MAJORITY VOTE OF THE MEMBERS THEREOF. 38 4. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY 39 PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE 40 OR EMPLOYMENT, BY REASON OF HIS OR HER APPOINTMENT PURSUANT TO THIS SECTION, AND THE MEMBERS OF THE COMMISSION SHALL BE REQUIRED TO TAKE AND 41 FILE OATHS OF OFFICE BEFORE SERVING ON THE COMMISSION. 42 43 5. THE COMMISSION SHALL MEET AT LEAST FOUR TIMES EACH YEAR AT PREDE-44 TERMINED TIMES AND LOCATIONS ANNOUNCED IN ADVANCE, AND AT SUCH OTHER 45 TIMES AS THE CHAIR OF THE COMMISSION OR FOUR OR MORE MEMBERS SHALL 46 DETERMINE TO BE NECESSARY. 47 6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE 48 COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED 49 IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX 50 MEMBERS OF THE COMMISSION SHALL BE NECESSARY. 51 7. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER 52 COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES PURSUANT TO THIS 53 54 ARTICLE. 55 902. PURPOSE AND CONDUCT OF THE COMMISSION. THE COMMISSION SHALL S 56 REVIEW ANY CRIMINAL OR JUVENILE CASE INVOLVING A WRONGFUL CONVICTION AND 1 RECOMMEND REFORMS TO LESSEN THE LIKELIHOOD OF A SIMILAR WRONGFUL 2 CONVICTION OCCURRING IN THE FUTURE.

3 WHENEVER A PERSON WHO HAS BEEN CONVICTED OF A CRIME OR ADJUDICATED A 4 YOUTHFUL OFFENDER IS SUBSEQUENTLY DETERMINED TO BE INNOCENT OF SUCH 5 CRIME OR OFFENSE AND EXONERATED, THE COMMISSION SHALL CONDUCT AN INVES-6 TIGATION, HOLD HEARINGS ON AND MAKE FINDINGS OF FACT REGARDING THE 7 WRONGFUL CONVICTION IN ORDER TO DETERMINE THE CAUSE OR CAUSES OF THE 8 WRONGFUL CONVICTION.

9 UPON THE COMPLETION OF SUCH PROCESS, THE COMMISSION, WITHIN SIXTY 10 ISSUE A PRELIMINARY WRITTEN REPORT OF ITS FINDINGS OF FACT DAYS, SHALL AND CONCLUSIONS, AND ANY RECOMMENDATIONS TO PREVENT WRONGFUL CONVICTIONS 11 12 FROM OCCURRING UNDER SIMILAR CIRCUMSTANCES IN THE FUTURE. WITHIN ONE HUNDRED TWENTY DAYS AFTER ISSUING SUCH PRELIMINARY REPORT, THE COMMIS-13 14 SION SHALL ISSUE ITS REPORT AND RECOMMENDATIONS CONCERNING THE MATTER. 15 SUCH REPORT AND RECOMMENDATIONS SHALL BE MADE AVAILABLE TO THE PUBLIC, AND SHALL BE DELIVERED TO THE GOVERNOR, ATTORNEY GENERAL, CHIEF JUDGE OF 16 THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE 17 ASSEMBLY, AND TO ANY GOVERNMENTAL UNIT OR AGENCY THAT THE COMMISSION 18 19 FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDICATION OF THE WRONGFUL CONVICTION. THE COMMISSION SHALL ALSO MAKE AVAILABLE AN ANNUAL 20 21 REPORT DETAILING, AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR FORMAL 22 AND INFORMAL INVESTIGATION, THE NUMBER OF COMPLETED INVESTIGATIONS AND 23 THE STATUS OF ON-GOING OR PENDING INVESTIGATIONS.

24 S 903. POWERS AND DUTIES. THE COMMISSION SHALL HAVE THE POWERS AND 25 DUTIES TO:

26 1. ESTABLISH ITS OWN REASONABLE RULES AND PROCEDURES CONCERNING THE 27 CONDUCT OF ITS MEETINGS AND OTHER AFFAIRS RELATED TO IMPLEMENTING THE 28 PROVISIONS OF THIS ARTICLE;

29 2. EMPLOY AND REMOVE SUCH OFFICERS, INVESTIGATORS AND EMPLOYEES AS IT 30 MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS POWERS AND DUTIES PURSUANT 31 TO THIS ARTICLE, AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE 32 AVAILABLE THEREFOR;

33 3. CONDUCT INVESTIGATIONS AND HEARINGS, ADMINISTER OATHS OR AFFIRMA-34 TIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR AFFIRMATION, REQUIRE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS 35 OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN 36 INVESTI-37 GATION, AND MAY DESIGNATE ANY OF ITS MEMBERS, OFFICERS OR INVESTIGATORS 38 TO EXERCISE ANY SUCH POWERS; PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVI-39 SION SHALL AUTHORIZE THE ISSUANCE OF A SUBPOENA OR COMPELLED QUESTIONING 40 OF THE TRIAL COURT JUDGE OR ANY APPELLATE COURT JUDGE CONCERNING THE JUDGE'S MENTAL PROCESSES IN ARRIVING AT ANY DECISION IN A CASE; 41

42 4. REQUEST AND RECEIVE FROM ANY COURT, DEPARTMENT, DIVISION, BOARD, 43 BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE OR A POLITICAL SUBDIVI-44 SION THEREOF OR ANY PUBLIC AUTHORITY SUCH ASSISTANCE, INFORMATION, 45 RECORDS AND DATA AS WILL ENABLE IT TO PROPERLY CARRY OUT ITS POWERS AND 46 DUTIES;

47 PRELIMINARY REPORTS ON ANY INVESTIGATION CONDUCTED PURSUANT 5. ISSUE 48 TO THIS ARTICLE, WHICH PRELIMINARY REPORTS SHALL INCLUDE FINDINGS OF 49 FACT AND RECOMMENDATIONS, AND INVITE ANY PARTY DIRECTLY INVOLVED IN THE 50 WRONGFUL CONVICTION, WHICH IS THE SUBJECT OF THE REPORT, TO SUBMIT A 51 REPLY WITHIN SIXTY DAYS TO THE COMMISSION CONCERNING THE FINDINGS OF FACT AND RECOMMENDATIONS IN THE REPORT. ANY SUCH REPLY SHALL BE MADE 52 AVAILABLE BY THE COMMISSION, TOGETHER WITH ANY RESPONSE BY THE COMMIS-53 54 SION THERETO, TO THE PARTIES LISTED IN SECTION NINE HUNDRED TWO OF THIS 55 ARTICLE AS PART OF THE COMMISSION'S REPORT AND RECOMMENDATIONS CONCERN-56 ING THE MATTER; AND

1 6. DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT THE 2 PROVISIONS OF THIS ARTICLE.

3 S 904. USE OF REPORTS. NO PRELIMINARY REPORT, REPORT OR PORTION THERE-4 OF ISSUED PURSUANT TO THIS ARTICLE SHALL BE ADMITTED INTO EVIDENCE OR 5 USED IN ANY CIVIL OR CRIMINAL CAUSE OF ACTION RELATING TO A MATTER WHICH 6 IS THE SUBJECT OF SUCH REPORT.

7 S 2. This act shall take effect on the ninetieth day after it shall 8 have become a law, provided that the officials who are empowered by this 9 act to appoint members of the state commission for the integrity of the 10 criminal justice system are authorized and directed to make such 11 appointments on or before such effective date pursuant to section 901 of 12 the judiciary law, as added by section one of this act.