S T A T E O F N E W Y O R K

292

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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 judiciary law, as renumbered by chapter 840 of the laws of 1983, are renumbered article 24 and sections 1000 and 1001 and a new article 23 is added to read as follows:

ARTICLE 23

STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SECTION 900. DEFINITION.

901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM.

902. PURPOSE AND CONDUCT OF THE COMMISSION.

903. POWERS AND DUTIES.

904. USE OF REPORTS.

S 900. DEFINITION. AS USED IN THIS ARTICLE, "COMMISSION" SHALL MEAN THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ESTABLISHED PURSUANT TO SECTION NINE HUNDRED ONE OF THIS ARTICLE.

S 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM. 1. THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM IS HEREBY ESTABLISHED AS AN INDEPENDENT AGENCY OF THE STATE. THE COMMISSION SHALL CONSIST OF TEN MEMBERS AS FOLLOWS:

(A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES;

(B) FOUR MEMBERS APPOINTED BY THE GOVERNOR, OF WHOM:

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

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(I) ONE SHALL BE A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY,
(II) ONE SHALL BE A REPRESENTATIVE OF THE PUBLIC CRIMINAL DEFENSE BAR OR PRIVATE CRIMINAL DEFENSE BAR WHO SHALL BE APPOINTED UPON THE RECOMMENDATION OF AN ORGANIZATION WITH MORE THAN SEVEN HUNDRED FIFTY DUES PAYING MEMBERS REPRESENTING SUCH PUBLIC OR PRIVATE DEFENSE SERVICES,
(III) ONE SHALL BE A REPRESENTATIVE OF VICTIMS RIGHTS ADVOCACY OR SERVICES ORGANIZATIONS, AND
(IV) ONE SHALL BE A REPRESENTATIVE OF THE FORENSIC SCIENCE FIELD;
(C) A MEMBER APPOINTED BY THE ATTORNEY GENERAL WHO SHALL BE A REPRESENTATIVE OF PROSECUTION SERVICES;
(D) TWO MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS, OF WHOM:
(I) ONE SHALL BE A RETIRED JUDGE OR JUSTICE OF A NEW YORK STATE COURT OF RECORD, AND
(II) ONE SHALL BE A PROFESSOR OF LAW OR A RETIRED FULL TIME PROFESSOR OF LAW WHO HAS TAUGHT LAW SCHOOL COURSES IN CRIMINAL LAW, CRIMINAL PROCEDURE, CONSTITUTIONAL LAW, OR EVIDENCE AT AN ACCREDITED POST-GRADUATE COLLEGE IN NEW YORK STATE;
(E) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE; AND
(F) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE.

2. THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL SERVE AN INDEFINITE TERM. THE MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF FOUR YEARS. THE RETIRED JUDGE OR JUSTICE APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF THREE YEARS. THE PROFESSOR OF LAW OR RETIRED PROFESSOR OF LAW APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF TWO YEARS. THE MEMBERS APPOINTED BY THE ATTORNEY GENERAL, THE TEMPORARY 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 THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES, APPOINTED THEREAFTER SHALL SERVE A TERM OF FIVE YEARS. EVERY VACANCY OCCURRING PRIOR TO THE EXPIRATION OF A MEMBER'S TERM SHALL BE FILLED FOR THE REMAINDER OF SUCH TERM IN THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT TO SUCH TERM. UPON THE EXPIRATION OF THE TERM OF A MEMBER OF THE COMMISSION, SUCH MEMBER SHALL CONTINUE TO SERVE UNTIL HIS OR HER SUCCESSOR IS APPOINTED.

3. THE COMMISSION SHALL ELECT A CHAIR FROM AMONGST ITS MEMBERS BY A MAJORITY VOTE OF THE MEMBERS THEREOF.

4. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE 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 FILE OATHS OF OFFICE BEFORE SERVING ON THE COMMISSION.

5. THE COMMISSION SHALL MEET AT LEAST FOUR TIMES EACH YEAR AT PREDETERMINED TIMES AND LOCATIONS ANNOUNCED IN ADVANCE, AND AT SUCH OTHER TIMES AS THE CHAIR OF THE COMMISSION OR FOUR OR MORE MEMBERS SHALL DETERMINE TO BE NECESSARY.

6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX MEMBERS OF THE COMMISSION SHALL BE NECESSARY.

7. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES PURSUANT TO THIS ARTICLE.

S 902. PURPOSE AND CONDUCT OF THE COMMISSION. THE COMMISSION SHALL REVIEW ANY CRIMINAL OR JUVENILE CASE INVOLVING A WRONGFUL CONVICTION AND RECOMMEND REFORMS TO LESSEN THE LIKELIHOOD OF A SIMILAR WRONGFUL CONVICTION OCCURRING IN THE FUTURE.

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

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

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

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

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

3. CONDUCT INVESTIGATIONS AND HEARINGS, ADMINISTER OATHS OR AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR AFFIRMATION, REQUIRE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN INVESTIGATION, AND MAY DESIGNATE ANY OF ITS MEMBERS, OFFICERS OR INVESTIGATORS TO EXERCISE ANY SUCH POWERS; PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE ISSUANCE OF A SUBPOENA OR COMPELLED QUESTIONING OF THE TRIAL COURT JUDGE OR ANY APPELLATE COURT JUDGE CONCERNING THE JUDGE'S MENTAL PROCESSES IN ARRIVING AT ANY DECISION IN A CASE;

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

5. ISSUE PRELIMINARY REPORTS ON ANY INVESTIGATION CONDUCTED PURSUANT TO THIS ARTICLE, WHICH PRELIMINARY REPORTS SHALL INCLUDE FINDINGS OF FACT AND RECOMMENDATIONS, AND INVITE ANY PARTY DIRECTLY INVOLVED IN THE WRONGFUL CONVICTION, WHICH IS THE SUBJECT OF THE REPORT, TO SUBMIT A REPLY WITHIN SIXTY DAYS TO THE COMMISSION CONCERNING THE FINDINGS OF FACT AND RECOMMENDATIONS IN THE REPORT. ANY SUCH REPLY SHALL BE MADE AVAILABLE BY THE COMMISSION, TOGETHER WITH ANY RESPONSE BY THE COMMISSION THERETO, TO THE PARTIES LISTED IN SECTION NINE HUNDRED TWO OF THIS

ARTICLE AS PART OF THE COMMISSION'S REPORT AND RECOMMENDATIONS CONCERNING THE MATTER; AND

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

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

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