STATE OF NEW YORK

9861

IN ASSEMBLY

February 20, 2020

Introduced by M. of A. QUART -- 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 whom is a defense attorney in good standing with experience filing motions pursuant to article four hundred forty of the criminal procedure law.

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

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2. The term of office of each of the members of the commission shall be 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 governor shall designate a chairperson from the members of the commission, to serve as such at the pleasure of the governor. The chairperson shall be the chief executive officer of the commission.

4. The chairperson shall receive compensation fixed by the governor and shall be reimbursed for all expenses actually and necessarily incurred by him or her in the performance of his or her duties hereunder, within the amount made available by appropriation therefor. The other members of the commission shall receive no compensation for their services, but shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder within the amount made available by appropriation therefor.

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 three or more members shall determine to be necessary.

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

7. 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.

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

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

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

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

§ 268-c. 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 by appropriation 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, the commission shall not be permitted to compel any trial judge, trial court or any appellate court to provide information or records pertaining to the court's adjudicative process in rendering its decision in any case;

4. request and receive from any court, department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information, records and data as will enable the commission 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;

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

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

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

§ 268-d. Use of information. 1. 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.

2. The commission's election not to reinvestigate a case or initiate an action on behalf of the petitioner shall not be deemed a determination by the commission and shall not be subject to freedom of information laws pursuant to article six of the public officers law.

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

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

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

§ 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 conviction review commission are authorized and directed to make such appointments on or before such effective date pursuant to section 268-a of the executive law, as added by section one of this act.