

# STATE OF NEW YORK

2102

2019-2020 Regular Sessions

## IN SENATE

January 22, 2019

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Article 23 and sections 860 and 861 of the judiciary law,  
2 as renumbered by chapter 840 of the laws of 1983, are renumbered article  
3 24 and sections 1000 and 1001 and a new article 23 is added to read as  
4 follows:

### ARTICLE 23

#### STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

##### Section 900. Definition.

9 901. State commission for the integrity of the criminal justice  
10 system.

11 902. Purpose and conduct of the commission.

12 903. Powers and duties.

13 904. Use of reports.

14 § 900. Definition. As used in this article, "commission" shall mean  
15 the state commission for the integrity of the criminal justice system  
16 established pursuant to section nine hundred one of this article.

17 § 901. State commission for the integrity of the criminal justice  
18 system. 1. The state commission for the integrity of the criminal  
19 justice system is hereby established as an independent agency of the  
20 state. The commission shall consist of ten members as follows:

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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1 (ii) one shall be a representative of the public criminal defense bar  
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-  
23 inite term. The members appointed by the governor shall serve a term of  
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  
27 years. The members appointed by the attorney general, the temporary  
28 president of the senate and the speaker of the assembly shall each serve  
29 a term of two years. Each of the members of the commission, except the  
30 commissioner of criminal justice services, appointed thereafter shall  
31 serve a term of five years. Every vacancy occurring prior to the expi-  
32 ration of a member's term shall be filled for the remainder of such term  
33 in the manner provided for the original appointment to such term. Upon  
34 the expiration of the term of a member of the commission, such member  
35 shall continue to serve until his or her successor is appointed.

36 3. The commission shall elect a chair from amongst its members by a  
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  
41 section, and the members of the commission shall be required to take and  
42 file oaths of office before serving on the commission.

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  
53 expenses incurred in the discharge of their duties pursuant to this  
54 article.

55 § 902. Purpose and conduct of the commission. The commission shall  
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 days, shall issue a preliminary written report of its findings of fact  
11 and conclusions, and any recommendations to prevent wrongful convictions  
12 from occurring under similar circumstances in the future. Within one  
13 hundred twenty days after issuing such preliminary report, the commis-  
14 sion shall issue its report and recommendations concerning the matter.  
15 Such report and recommendations shall be made available to the public,  
16 and shall be delivered to the governor, attorney general, chief judge of  
17 the court of appeals, temporary president of the senate, speaker of the  
18 assembly, and to any governmental unit or agency that the commission  
19 finds may have been involved in the investigation or adjudication of the  
20 wrongful conviction. The commission shall also make available an annual  
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 § 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  
35 oath or affirmation, require production of any books, records, documents  
36 or other evidence that it may deem relevant or material to an 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  
41 judge's mental processes in arriving at any decision in a case;

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 5. issue preliminary reports on any investigation conducted pursuant  
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  
52 fact and recommendations in the report. Any such reply shall be made  
53 available by the commission, together with any response by the commis-  
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     § 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     § 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.