

# STATE OF NEW YORK

4600

2021-2022 Regular Sessions

## IN SENATE

February 5, 2021

Introduced by Sens. GIANARIS, BENJAMIN, FELDER, GOUNARDES, HOYLMAN, JACKSON, SALAZAR -- 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 New York state innocence inquiry commission

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

#### NEW YORK STATE INNOCENCE INQUIRY COMMISSION

##### Section 900. Definitions.

8 901. New York state innocence inquiry commission.

9 902. Purpose of the commission.

10 903. Powers and duties.

11 904. Procedure.

12 905. Commission staff.

13 906. Reports.

14 § 900. Definitions. As used in this article, the following terms shall  
15 have the following meanings:

16 1. "Commission" shall mean the New York state innocence inquiry  
17 commission established pursuant to section nine hundred one of this  
18 article.

19 2. "Exoneree" shall mean any individual who has been granted a judg-  
20 ment in a claim for unjust conviction and imprisonment.

21 3. "Claimant" shall mean an individual convicted or who has pled guil-  
22 ty to a crime for which he or she believes themselves to be factually  
23 innocent.

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

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1     § 901. New York state innocence inquiry commission. 1. The New York  
2 state innocence inquiry commission is hereby established as an independ-  
3 ent agency of the state. The commission shall consist of nine members as  
4 follows:

5     (a) two members appointed by the chief judge of the court of appeals,  
6 of whom:

7       (i) one shall be a current supreme court justice from the first or  
8 second judicial department;

9       (ii) one shall be a current supreme court justice from the third or  
10 fourth judicial department;

11     (b) two members appointed by the attorney general, of whom:

12       (i) one shall be an attorney with at least five years of prosecutorial  
13 experience, regardless of whether they are currently practicing;

14       (ii) one shall be an attorney with at least five years of criminal  
15 defense experience, regardless of whether they are currently practicing;

16     (c) one member appointed by the governor, in consultation with the  
17 community of wrongful conviction practitioners in the state, who shall  
18 be an exoneree;

19     (d) one member appointed by the speaker of the assembly who shall be a  
20 member of the public-at-large;

21     (e) one member appointed by the minority leader of the assembly who  
22 shall be a member of the public-at-large;

23     (f) one member appointed by the minority leader of the senate, who  
24 shall be a professor of law or a professor of a field related to wrong-  
25 ful convictions including, but not limited to criminal justice, psychol-  
26 ogy, and sociology, or a retired full-time professor of law or a profes-  
27 sor of a field related to wrongful convictions including, but not  
28 limited to criminal justice, psychology, and sociology, who has taught  
29 law school or graduate level courses at an accredited post-graduate  
30 college in New York state; and

31     (g) one member appointed by the temporary president of the senate who  
32 shall be an expert in the field of forensic science.

33     2. (a) The member appointed by the chief judge of the court of appeals  
34 from the first or second judicial department shall serve an initial term  
35 of one year and the member appointed by the chief judge of the court of  
36 appeals from the third or fourth judicial department shall serve an  
37 initial term of two years. Each member appointed by the chief judge of  
38 the court of appeals shall only serve so long as they hold office in  
39 their respective judicial departments.

40     (b) The member appointed by the attorney general with prosecutorial  
41 experience shall serve an initial term of three years and the member  
42 appointed by the attorney general with defense experience shall serve an  
43 initial term of four years.

44     (c) The members appointed by the governor and speaker of the assembly  
45 shall serve an initial term of four years. The member appointed by the  
46 minority leader of the assembly shall serve an initial term of three  
47 years. The member appointed by the minority leader of the senate shall  
48 serve an initial term of two years. The member appointed by the tempo-  
49 rary president of the senate shall serve an initial term of one year.

50     (d) Each of the members of the commission appointed thereafter shall  
51 serve a term of five years. Every vacancy occurring prior to the expira-  
52 tion of a member's term shall be filled for the remainder of such term  
53 in the manner provided for the original appointment to such term. Upon  
54 the expiration of the term of a member of the commission, such member  
55 shall continue to serve until his or her successor is appointed.

1 (e) Any member of the commission who has any connection to a case  
2 brought in front of the commission shall recuse themselves, and it will  
3 be the responsibility of the commission director to select an alternate  
4 who shall service in their place for the duration of such case.

5 (f) Each member of the commission shall serve without salary or other  
6 compensation, but shall be entitled to receive actual and necessary  
7 expenses incurred in the discharge of his or her duties.

8 (g) Appointing authorities shall consider geographical location,  
9 gender and racial diversity when making appointments to the commission.

10 (h) Appointing authorities shall, before making appointments of judi-  
11 cial or prosecutorial members to the commission, evaluate and conduct  
12 all necessary inquiries to determine that an individual being considered  
13 for the commission is qualified to participate, and shall evaluate  
14 factors which shall include, but not be limited to, character, training,  
15 experience, temperament, reputation, and commitment to equal justice  
16 under the law.

17 (i) The commission shall elect a chair from amongst its members by a  
18 majority vote of the members thereof, and such chair shall be replaced  
19 when their term expires. The chair of the commission shall have the  
20 authority to remove members from the commission, with cause and a major-  
21 ity vote of the members.

22 (j) The commission shall meet at least once every quarter, and at such  
23 other times as the chair of the commission shall determine to be neces-  
24 sary. All commission meetings shall be public unless otherwise noted.

25 3. There shall be a judicial panel established and made up of three  
26 supreme court justices. The chief judge of the court of appeals shall  
27 have the power and duty to establish a list of persons who shall be  
28 eligible to be appointed as members of the judicial panel. Such list  
29 shall hereinafter be referred to in this article as the "judicial nomi-  
30 nations pool." Before admission to the judicial nominations pool, the  
31 chief judge of the court of appeals shall evaluate and conduct all  
32 necessary inquiries to determine that an individual who has been nomi-  
33 nated for the judicial panel is qualified to participate, and shall  
34 evaluate factors which shall include, but not be limited to, character,  
35 training, experience, temperament and commitment to equal justice under  
36 the law. The chief judge of the court of appeals shall also consider  
37 geographical location, gender, and racial diversity when assembling the  
38 judicial nominations pool.

39 § 902. Purpose of the commission. The commission shall review and  
40 investigate any criminal or juvenile case involving a potential wrongful  
41 conviction and render judgment in each case that comes before the  
42 commission as to whether sufficient evidence of innocence exists which  
43 would merit judicial review.

44 § 903. Powers and duties. The commission shall have the powers and  
45 duties to:

46 1. establish the criteria and screening process to be used when deter-  
47 mining which cases the commission shall hear;

48 2. coordinate the investigation of cases the commission accepts for  
49 review;

50 3. maintain records for all case investigations;

51 4. prepare written reports outlining commission investigations and  
52 recommendations to the trial court which heard the case originally at  
53 the completion of each investigation;

54 5. apply for and accept funds that may become available for the  
55 commission's work from government grants, private gifts, donations or  
56 any other source;

1 6. conduct hearings to determine potential innocence;  
2 7. administer oaths and affirmations;  
3 8. gather evidence in each investigation as necessary;  
4 9. compel witness testimony, which includes examination under oath and  
5 the power to subpoena witnesses;  
6 10. grant immunity as the commission sees necessary;  
7 11. request discovery related to a particular case, which includes the  
8 production of any books, records, documents or other evidence it may  
9 deem relevant or material to a particular investigation; and  
10 12. subject physical evidence to forensic and DNA testing.

11 § 904. Procedure. 1. The commission's director shall select which  
12 cases the commission will undertake for review. The commission director  
13 may delegate this task.

14 (a) The commission shall only consider cases for review in which the  
15 claimants claim factual innocence in that they were not involved in the  
16 crime or crimes for which they were convicted for or pled guilty to.  
17 Cases including, but not limited to, false confessions, admissions, or  
18 guilty pleas shall be eligible for review.

19 (b) Claims of innocence may be submitted to the commission by:

20 (i) a claimant;

21 (ii) a claimant's attorney;

22 (iii) an innocence organization, if a claimant is being represented by  
23 one;

24 (iv) any court of competent jurisdiction in the state of New York; or

25 (v) any state or local agency.

26 2. (a) Once a case is chosen for review by the commission, the commis-  
27 sion shall then begin a formal inquiry.

28 (b) If a co-defendant shall have also been convicted as part of a case  
29 being reviewed, notification to such co-defendant that the commission  
30 has taken such case under review shall be made within thirty days from  
31 the time that the commission agrees to review such case.

32 (c) The commission shall provide a confidential case update to the  
33 prosecuting attorney and the claimant and his or her attorney no less  
34 than once every six months throughout the review process. Such case  
35 update shall include, but not be limited to, a summary of action and any  
36 forensic testing performed.

37 (d) All challenges with regard to the commission's authority or the  
38 commission's access to evidence shall be heard by one of the current  
39 supreme court justices serving on the commission in their judicial  
40 capacities. Such justices shall alternate in hearing such challenges.

41 3. (a) The commission shall then conduct an evidentiary hearing to  
42 determine if there is sufficient evidence of factual innocence to merit  
43 judicial review in front of the judicial panel established under this  
44 section. Every member of the commission shall participate in a vote to  
45 decide whether such factual innocence to merit judicial review exists.  
46 This vote shall occur immediately upon conclusion of the commission's  
47 evidentiary hearing.

48 (b)(i) All proceedings of the commission shall be recorded and tran-  
49 scribed as part of the official record of the proceedings and all  
50 commission member votes shall be included in such record.

51 (ii) The supporting records for the commission's conclusions, includ-  
52 ing, but not limited to, all files and materials considered by the  
53 commission in making a decision and a full transcript of the hearing  
54 before the commission, shall become public when filed with the supreme  
55 court in the jurisdiction where the crime in question occurred, regard-

1 less of a finding of sufficient or insufficient evidence of factual  
2 innocence to warrant a hearing by the judicial panel.

3 (c) (i) Upon the finding of sufficient evidence by the commission of  
4 misconduct committed by police, prosecutors or other government offi-  
5 cial that were involved in the guilty conviction of an individual, the  
6 chair of the commission shall request the attorney general to appoint a  
7 special prosecutor to represent the state in lieu of the district attor-  
8 ney appointed in the district where the conviction occurred or such  
9 district attorney's designee. Such request shall be made within seven  
10 days of the determination by the commission that misconduct has occurred  
11 in a particular case.

12 (ii) The attorney general shall not appoint as a special prosecutor  
13 any attorney who has prosecuted or assisted with the prosecution in the  
14 trial of a claimant whose case is before the commission for review, or  
15 is a prosecuting attorney in the district where the claimant's case was  
16 tried.

17 (iii) Notice of a determination that misconduct has occurred in a  
18 particular case shall be provided to any other defendant or co-defendant  
19 when the official found to have committed such misconduct was involved  
20 in such other defendant or co-defendant's case within thirty days of the  
21 determination.

22 (d) Evidence of criminal acts, misconduct or other wrongdoing  
23 disclosed through formal inquiry or commission proceedings shall be  
24 referred to the appropriate authority including, in cases of prosecuto-  
25 rial misconduct, referrals to the commission on prosecutorial conduct.  
26 Evidence favorable to a claimant disclosed through formal inquiry of  
27 commission proceedings shall be disclosed to such claimant and such  
28 claimant's counsel, where applicable.

29 (e) The commission's vote to determine if sufficient evidence of  
30 factual innocence to merit judicial review exists may be bypassed if the  
31 acting prosecutor and claimant or their counsel agree that enough  
32 evidence exists to go directly in front of the judicial panel.

33 4. (a) If the commission determines by a majority vote that a case  
34 merits review, it shall be sent before the judicial panel established  
35 pursuant to subdivision three of section nine hundred one of this arti-  
36 cle for further consideration.

37 (b) (i) The chair of the commission shall immediately request that the  
38 chief judge of the court of appeals commission members of the judicial  
39 panel to convene a special session of the court of original jurisdiction  
40 in the case involved, to hear evidence relevant to the commission's  
41 recommendation that such case merits review.

42 (ii) The chief judge of the court of appeals shall appoint three  
43 supreme court justices who shall comprise such judicial panel within ten  
44 days after an opinion is rendered by the commission that sufficient  
45 evidence of factual innocence to merit judicial review exists.

46 (iii) The justice that has served the longest in the capacity as a  
47 supreme court justice shall preside over such special session.

48 (iv) Once the judicial panel has been established, the presiding  
49 justice shall enter an order setting the case for hearing at a special  
50 session of the supreme court for which the judicial panel is commis-  
51 sioned and shall require the prosecuting attorney to file a response to  
52 the commission's opinion within thirty days of the date of such order.  
53 Such response by the prosecutor, at the time of the original filing or  
54 through amendment at any time before or during proceedings, may include  
55 joining the defense in a motion to dismiss the charges with prejudice on



1 the basis of innocence. The special session hearing shall commence no  
2 later than forty-five days from the order for such hearing.

3 5. (a) The judicial panel shall rule as to whether a claimant whose  
4 case is being reviewed has proved by a preponderance of the evidence  
5 that such claimant is innocent of the charges brought against them. If  
6 there is a majority vote by the judicial panel that the standard of a  
7 preponderance of the evidence has been met, the panel shall enter a  
8 ruling that any or all of the charges shall be dismissed. If a majority  
9 vote has not been met, the panel shall deny relief and any dissenting  
10 opinions shall be published. Any ruling by the panel shall be published  
11 within seven days of the hearing's conclusion.

12 (b) (i) The judicial panel shall conduct an evidentiary hearing, at  
13 which time the court, prosecution and defense may compel the testimony  
14 of witnesses, including the claimant. All evidence relevant to the case,  
15 even if previously considered by a jury or judge in a prior proceeding  
16 may be presented during such hearing, including, but not limited to,  
17 prior incidents of misconduct by an official who was or is involved in  
18 such case. A claimant whose case is being reviewed shall have the right  
19 to be present at the evidentiary hearing and to be represented by coun-  
20 sel at such hearing. If a claimant chooses to waive their right to be  
21 present at such hearing, such waiver shall be made in writing to the  
22 judicial panel.

23 (ii) Legal representation and services shall be provided to indigent  
24 individuals if applicable, and the request for such shall be entered by  
25 the presiding justice.

26 (c) If a claimant has been determined to be innocent and an order to  
27 dismiss all or any charges against them has been ordered, such claimant  
28 shall be eligible for compensation pursuant to section eight-b of the  
29 court of claims act.

30 (d) The decisions of the commission and the judicial panel shall be  
31 final and shall not be subject to further review by appeal, certif-  
32 ication, writ, motion or otherwise.

33 (e) A claim of factual innocence presented to the commission shall not  
34 adversely affect a claimant's rights to other post-conviction relief.

35 § 905. Commission staff. 1. The commission shall employ a director who  
36 shall be a licensed attorney with courtroom experience, specifically  
37 criminal experience, in the state of New York.

38 2. The director shall employ individuals and volunteers as he or she  
39 deems necessary to create a staff to assist with the functions and oper-  
40 ations of the commission.

41 § 906. Reports. The commission shall report annually by February first  
42 of each year on the cases it has heard and any rulings it has made in  
43 relation to such cases to the appointing authorities described in  
44 section nine hundred one of this article. The report may include, but  
45 not be limited to, recommendations of any needed legislative changes  
46 related to the duties or procedures of the commission and recommenda-  
47 tions of funding needed by the commission in order to meet their duties.

48 § 2. This act shall take effect on the ninetieth day after it shall  
49 have become a law, provided that the officials who are empowered by this  
50 act to appoint members of the New York state innocence inquiry commis-  
51 sion are authorized and directed to make such appointments on or before  
52 such effective date pursuant to section 901 of the judiciary law, as  
53 added by section one of this act.