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:

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

NEW YORK STATE INNOCENCE INQUIRY COMMISSION

Section 900. Definitions.

901. New York state innocence inquiry commission.

902. Purpose of the commission.

903. Powers and duties.

904. Procedure.

905. Commission staff.

906. Reports.

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

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

2. "Exoneree" shall mean any individual who has been granted a judgment in a claim for unjust conviction and imprisonment.

3. "Claimant" shall mean an individual convicted or who has pled guilty to a crime for which he or she believes themselves to be factually innocent.

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

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§ 901. New York state innocence inquiry commission. 1. The New York state innocence inquiry commission is hereby established as an independent agency of the state. The commission shall consist of nine members as follows:

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

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

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

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

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

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

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

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

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

(f) one member appointed by the minority leader of the senate, who shall be a professor of law or a professor of a field related to wrongful convictions including, but not limited to criminal justice, psychology, and sociology, or a retired full-time professor of law or a professor of a field related to wrongful convictions including, but not limited to criminal justice, psychology, and sociology, who has taught law school or graduate level courses at an accredited post-graduate college in New York state; and

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

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

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

(c) The members appointed by the governor and speaker of the assembly shall serve an initial term of four years. The member appointed by the minority leader of the assembly shall serve an initial term of three years. The member appointed by the minority leader of the senate shall serve an initial term of two years. The member appointed by the temporary president of the senate shall serve an initial term of one year.

(d) Each of the members of the commission 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.

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

(f) Each member 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 his or her duties.

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

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

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

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

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

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

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

1. establish the criteria and screening process to be used when determining which cases the commission shall hear;

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

3. maintain records for all case investigations;

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

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

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

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

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

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

(i) a claimant;

(ii) a claimant's attorney;

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

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

(v) any state or local agency.

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

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

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

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

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

(b)(i) All proceedings of the commission shall be recorded and transcribed as part of the official record of the proceedings and all commission member votes shall be included in such record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The decisions of the commission and the judicial panel shall be final and shall not be subject to further review by appeal, certification, writ, motion or otherwise.

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

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

2. The director shall employ individuals and volunteers as he or she deems necessary to create a staff to assist with the functions and operations of the commission.

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

§ 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 New York state innocence inquiry commission 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.