



Benjamin N. Cardozo School of Law, Yeshiva University

MODEL LEGISLATION, 2011 STATE LEGISLATIVE SESSIONS

**AN ACT CREATING A (STATE) CRIMINAL JUSTICE REFORM COMMISSION**

SECTION 1. LEGISLATIVE INTENT

The legislature finds that:

- A. Whenever a person convicted of a crime is found, through post-conviction DNA testing or the discovery of other new evidence, to have been innocent of that crime, a failure has occurred in the criminal justice system which wrongly convicted an innocent person and allowed the real perpetrator to remain undetected;
- B. Review of the causes of wrongful convictions enables [State] to identify potential weaknesses in the [State] criminal justice system, and the remedies that can strengthen the quality of criminal justice in [State];
- C. There is not presently any government entity in [State] charged with conducting the independent, expert reviews of wrongful convictions necessary to identify the primary and potential causes of wrongful convictions in [State];
- D. Several states, including California, North Carolina, and Wisconsin, have convened commissions to understand the causes of wrongful convictions, which have resulted in the adoption of positive reforms to enhance the accuracy of criminal investigations, strengthen criminal prosecutions, and protect the innocent; and
- E. [State] would benefit from the creation of a [State] Criminal Justice Reform Commission, charged with:
  - 1. Identifying the systemic causes of wrongful convictions;



2. Identifying policies and procedures demonstrated to minimize the likelihood of wrongful convictions;
3. Proposing reforms to minimize the likelihood of wrongful convictions in [State], bolster public confidence in [State's] criminal justice system, and ensure that the administration of criminal justice in [State] is fair, accurate and reliable; and
4. Conducting its work in a manner that is transparent, with the goal of keeping the public informed.

## SECTION 2. CREATION AND COMPOSITION

(The appropriate section of the state criminal code) is amended by adding (chapter/article/section ##) to read as follows:

Chapter/article/section ## [State] Criminal Justice Reform Commission.

- A. The [State] Criminal Justice Reform Commission is created.
- B. The Commission is composed of fifteen members:
  1. The Governor shall appoint two members:
    - a. One of whom must be a dean of a law school or his designee, who must be a law professor; and
    - b. One of whom must be a law enforcement officer;
  2. The Attorney General shall appoint two members:
    - a. One of whom must be an attorney who represents the state in the prosecution of felonies; and
    - b. One of whom must be a scientist in the field of forensics;



3. The Chair of the criminal justice committee of the Senate shall appoint one member who may be a member of the legislature;
  4. The Chair of the criminal justice committee of the House of Representatives shall appoint one member who may be a member of the legislature;
  5. The Chief Justice of the Supreme Court shall appoint one member who must be a member of the judiciary;
  6. The chancellor of The University of [State] System shall appoint three members:
    - a. One of whom must be a law professor;
    - b. One of whom must have a background in laboratory science; and
    - c. One of whom must be a scientist in the field of forensics;
  7. The [State] Public Defender (or Criminal Defense Lawyers Association) shall appoint one member who must be a criminal defense lawyer;
  8. A representative from a [State] organization that is a member of the national Innocence Network;
  9. The President of the State Bar Association shall appoint two members:
    - a. One of whom must be a member of the State Bar; and
    - b. One of whom must be a victim advocate or a victim of a serious felony; and
  10. An individual who was wrongfully convicted and incarcerated for a serious felony.
- C. Each member shall serve a two-year term.
- D. The presiding officer shall be elected on an annual basis by the members.



SECTION 3. DUTIES

- A. The Commission shall review all [State] cases in which an innocent person was convicted and exonerated.
- B. The Commission shall identify the causes of wrongful convictions.
- C. The Commission shall identify current [State] laws, rules and procedures implicated by each identified cause of wrongful convictions.
- D. The Commission shall identify through peer-reviewed research, experts, and discussion potential solutions in the form of legislation, rule, regulation or procedural changes; and educational or training opportunities demonstrated to eliminate or minimize the occurrence of each cause of wrongful convictions.
- E. The Commission shall consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution.
- F. The Commission shall issue interim reports and/or a detailed annual report recommending solutions for each cause identified, and any recommended proposed legislation and/or other rule or policy changes necessary to implement procedures and programs to prevent future wrongful convictions.
  - 1. The report shall be made available to the public on request.
  - 2. The findings and recommendations contained in the report may not be used as binding evidence in any subsequent civil or criminal proceeding.



SECTION 4. SUBMISSION OF REPORT

The Commission shall submit the report(s) described by Section 3 (F) to the Governor, the Lieutenant Governor, the Senate President and the Speaker of the House of Representatives and post on [state website] not later than [date].

SECTION 5. RESPONSE TO REPORT

Not later than the 60<sup>th</sup> day after the date of receipt of each report issued under this Act, the Governor, Lieutenant Governor, the Senate President and the Speaker of the House of Representatives shall, singly or jointly, issue a formal written response to the findings and recommendations of the Commission.

SECTION 6. REIMBURSEMENT.

A member of the Commission is not entitled to compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter [XXX] of the [State] Code, and the General Appropriations Act.

SECTION 7. ASSISTANCE.

The [State] Office of Legislative Research, Department of Administrative Services, and the University of [State], shall assist the Commission in performing the Commission's duties. Other government and private entities in [State] may also provide such assistance, with the consent of a majority of the commission and consistent with [State] law.



SECTION 8. EFFECTIVE DATE.

The appointments to the [State] Criminal Justice Reform Commission as required by (chapter/article/section ##, above), Code of Criminal Procedure, as added by this Act, shall be made not later than the 60<sup>th</sup> day after the effective day of this Act. This Act takes effect [date].