

1 SB27
2 114841-1
3 By Senator Sanders
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 10/26/2009

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8 SYNOPSIS: Existing law does not provide for a
9 commission to investigate and determine claims of
10 innocence of a person convicted of a felony.

11 This bill would establish the Alabama
12 Innocence Inquiry Commission to investigate and
13 determine claims of factual innocence of a person
14 convicted of a felony.

15 This bill would provide for commission
16 membership, officers, meetings, terms of office,
17 expenses, and duties.

18 This bill would provide for a director,
19 staff, and duties; claims of innocence; formal
20 inquiry and notification to the victim of the
21 crime; three-judge panel and their duties; and
22 reports.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To establish the Alabama Innocence Inquiry
2 Commission; to provide for membership, officers, meetings,
3 terms of office, expenses, and duties; to provide for a
4 director, staff, and duties; to provide for claims of
5 innocence; to provide for formal inquiry and victim
6 notification; to provide for a three-judge panel and their
7 duties; and to provide for reports.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. There is established the Alabama
10 Innocence Inquiry Commission.

11 Section 2. As used in this act, the following words
12 shall have the following meanings:

13 (1) CLAIM OF FACTUAL INNOCENCE. A claim on behalf of
14 a living person convicted of a felony in any circuit court
15 within the State of Alabama asserting the complete innocence
16 of any criminal responsibility for the felony for which the
17 person was convicted and for any other reduced level of
18 criminal responsibility relating to the crime, and for which
19 there is some credible, verifiable evidence of innocence that
20 has not previously been presented at trial or considered at a
21 hearing granted through post conviction relief.

22 (2) COMMISSION. The Alabama Innocence Inquiry
23 Commission.

24 (3) DIRECTOR. The Director of the Alabama Innocence
25 Inquiry Commission.

1 (4) VICTIM. The victim of the crime, or if the
2 victim of the crime is deceased, the next of kin of the
3 victim.

4 Section 3. (a) The commission shall consist of nine
5 members to be appointed in the following manner:

6 (1) A district attorney currently holding office at
7 the time of his or her appointment appointed by the Governor
8 for a term of three years.

9 (2) A private citizen appointed by the Governor for
10 a term of three years.

11 (3) A victim's advocate appointed by the Lieutenant
12 Governor for a term of three years.

13 (4) A private citizen appointed by the Lieutenant
14 Governor for a term of three years.

15 (5) A criminal defense attorney appointed by the
16 Senate President Pro Tempore for a term of three years.

17 (6) A private citizen who is not an attorney or an
18 officer or employee of the Administrative Office of Courts
19 appointed by the Speaker of the House of Representatives for a
20 term of three years.

21 (7) A sheriff currently holding office at the time
22 of his or her appointment appointed by the Speaker Pro Tempore
23 of the House of Representatives for a term of two years.

24 (8) A private citizen appointed by the Chief Justice
25 of the Alabama Supreme Court for a term of two years.

26 (9) A circuit judge appointed by the Chief Justice
27 of the Alabama Supreme Court for a term of two years.

1 (b) After the initial term of office, each member
2 shall be appointed for a term of four years. A vacancy
3 occurring other than by expiration of term of office shall be
4 filled in the same manner as the original appointment, for the
5 unexpired term.

6 (c) Members of the commission shall have its initial
7 meeting no later than six months after the passage of this act
8 and at least quarterly thereafter or at other times as the
9 chair deems appropriate. A chair of the commission shall be
10 elected by the membership at the first meeting of the
11 commission and every four years thereafter.

12 (d) The commission members shall receive no salary
13 for serving, but shall be entitled to reimbursement for all
14 necessary expenses incurred in the performance of their
15 official duties in accordance with state travel laws.

16 Section 4. The commission shall have the following
17 duties and powers:

18 (1) Establish the criteria and screening process to
19 be used to determine which cases shall be accepted for review.

20 (2) Conduct inquiries into claims of factual
21 innocence, with priority to be given to those cases in which
22 the convicted person is currently incarcerated solely for the
23 crime for which he or she claims factual innocence.

24 (3) Coordinate the investigation of cases accepted
25 for review.

26 (4) Maintain records for all case investigations.

1 (5) Prepare written reports outlining commission
2 investigations and recommendations to the trial court at the
3 completion of each inquiry.

4 (6) Apply for and accept any funds that may become
5 available for the work of the commission from government
6 grants, private gifts, donations, or bequests from any source.

7 Section 5. (a) The commission shall employ a
8 director. The director shall be an attorney licensed to
9 practice in Alabama at the time of appointment and at all
10 times during service as director. The director shall assist
11 the commission in developing rules and standards for cases
12 accepted for review, coordinate investigation of cases
13 accepted for review, maintain records for all case
14 investigations, prepare reports outlining commission
15 investigations and recommendations to the trial court, and
16 apply for and accept on behalf of the commission any funds
17 that may become available from government grants, private
18 gifts, donations, or bequests from any source. The director
19 shall provide clerical and administrative assistance to the
20 commission.

21 (b) Subject to the approval of the chair and as
22 funds permit, the director shall employ such other staff and
23 shall contract for services as is necessary to assist the
24 commission in the performance of its duties. The director and
25 his or her staff shall not be subject to the state Merit
26 System.

1 Section 6. (a) A claim of factual innocence may be
2 referred to the commission by any court, person, or agency.
3 The commission may not consider a claim of factual innocence
4 if the convicted person is deceased. The determination of
5 whether to grant a formal inquiry regarding any claim of
6 factual innocence shall be at the discretion of the
7 commission. The commission may informally screen and dismiss a
8 case summarily.

9 (b) No formal inquiry into a claim of innocence may
10 be made by the commission unless the director or his or her
11 designee first obtains a signed agreement from the convicted
12 person in which the convicted person waves his or her
13 procedural safeguards and privileges, agrees to cooperate with
14 the commission, and agrees to provide full disclosure
15 regarding all inquiry requirements of the commission. The
16 waiver under this subsection shall not apply to matters
17 unrelated to a convicted person's claim of innocence. The
18 convicted person shall have the right to advice of counsel
19 prior to the execution of the agreement and, if a formal
20 inquiry is granted, throughout the formal inquiry. If counsel
21 represents the convicted person, then the convicted person's
22 counsel shall be present at the signing of the agreement. If
23 counsel does not represent the convicted person, the
24 commission chair shall determine the indigency status of the
25 convicted person and, if appropriate, enter an order for the
26 appointment of counsel for the purpose of advising on the
27 agreement.

1 (c) If a formal inquiry regarding a claim of factual
2 innocence is granted, the director shall use all due diligence
3 to notify the victim in the case and explain the inquiry
4 process. The commission shall give the victim notice that the
5 victim has the right to present his or her views and concerns
6 throughout the investigation by the commission.

7 (d) The commission may use any measure to obtain
8 information necessary to its inquiry. The commission may also
9 do any of the following: Issue process to compel the
10 attendance of witnesses and the production of evidence;
11 administer oaths; petition the Circuit Court of Montgomery
12 County or the circuit court of conviction for enforcement of
13 process or for other relief; and prescribe its own rules of
14 procedure. All challenges with regard to the authority of the
15 commission or access of the commission to evidence shall be
16 heard by the commission chair in his or her judicial capacity,
17 including any in camera review.

18 (e) While performing duties for the commission, the
19 director may serve or have served subpoenas or other process
20 issued by the commission throughout the state.

21 (f) All state discovery and disclosure statutes in
22 effect at the time of formal inquiry shall be enforceable as
23 if the convicted person were currently being tried for the
24 charge for which the convicted person is claiming innocence.

25 (g) If, at any point during an inquiry, the
26 convicted person refuses to comply with the requests of the

1 commission or is otherwise deemed to be uncooperative by the
2 commission, the commission shall discontinue the inquiry.

3 Section 7. (a) At the completion of a formal
4 inquiry, all relevant evidence shall be presented to the full
5 commission. As part of its proceedings, the commission may
6 conduct public hearings. The determination as to whether to
7 conduct public hearings shall be solely at the discretion of
8 the commission. Any public hearing held in accordance with
9 this section shall be subject to the rules of operation of the
10 commission promulgated pursuant to the Administrative
11 Procedure Act.

12 (b) The director shall use all due diligence to
13 notify the victim at least 30 days prior to any proceedings of
14 the full commission held in regard to the victim's case. The
15 commission shall notify the victim that the victim is
16 permitted to attend proceedings otherwise closed to the
17 public, subject to any limitations imposed by this act. If the
18 victim plans to attend proceedings otherwise closed to the
19 public, the victim shall notify the commission at least 10
20 days in advance of the proceedings of his or her intent to
21 attend. If the commission determines that the presence of the
22 victim may interfere with the investigation, the commission
23 may close any portion of the proceedings to the victim.

24 (c) (1) After hearing the evidence, the full
25 commission shall vote to establish further case disposition as
26 provided by this subsection. All members of the commission
27 shall participate in that vote.

1 (2) Except in cases where the convicted person
2 entered and was convicted on a plea of guilty, if five or more
3 of the members of the commission conclude there is sufficient
4 evidence of factual innocence to merit judicial review, the
5 case shall be referred to the presiding circuit court judge in
6 the circuit where the trial was held by filing with the clerk
7 of court the opinion of the commission with supporting
8 findings of fact, as well as the record in support of the
9 opinion, with service on the district attorney in noncapital
10 cases and service on both the district attorney and Attorney
11 General in capital cases. In cases where the convicted person
12 entered and was convicted on a plea of guilty, if all of the
13 members of the commission conclude there is sufficient
14 evidence of factual innocence to merit judicial review, the
15 case shall be referred to the presiding circuit court judge in
16 the circuit court of conviction and request the Chief Justice
17 to appoint a three-judge panel pursuant to Section 8.

18 (3) If less than five members of the commission, or
19 in cases where the convicted person entered and was convicted
20 on a guilty plea and less than all members of the commission,
21 conclude there is sufficient evidence of factual innocence to
22 merit judicial review, the commission shall conclude there is
23 insufficient evidence of factual innocence to merit judicial
24 review. The commission shall document that opinion, along with
25 supporting findings of fact and file those documents and
26 supporting materials with the clerk of the circuit court in

1 the circuit where the trial was held, with a copy to the
2 district attorney and the presiding circuit court judge.

3 (4) The director of the commission shall use all due
4 diligence to notify immediately the victim of the conclusion
5 in the case by the commission.

6 (d) Evidence of criminal acts, professional
7 misconduct, or other wrongdoing disclosed through formal
8 inquiry or commission proceedings shall be referred to the
9 appropriate authority. Evidence favorable to the convicted
10 person disclosed through formal inquiry or commission
11 proceedings shall be disclosed to the convicted person and his
12 or her counsel, if the convicted person has counsel.

13 (e) All proceedings of the commission shall be
14 recorded and transcribed as part of the record. All commission
15 member votes shall be recorded in the record. All records and
16 proceedings of the commission shall be confidential and shall
17 be exempt from public record and public meeting laws except
18 that the supporting records for the conclusion of the
19 commission that there is sufficient evidence of factual
20 innocence to merit judicial review, including all files and
21 materials considered by the commission and a full transcript
22 of the hearing before the commission, shall become public at
23 the time of referral to the circuit court. Commission records
24 for conclusions of insufficient evidence of factual innocence
25 to merit judicial review shall remain confidential, except as
26 provided in subsection (d).

1 Section 8. (a) If the commission concludes there is
2 sufficient evidence of factual innocence to the commission
3 shall request the Chief Justice of the Alabama Supreme Court
4 to appoint a three-judge panel, not to include any trial judge
5 that has had substantial previous involvement in the case, and
6 issue commissions to the members of the three-judge panel to
7 convene a special session of the circuit court where the trial
8 was held to hear evidence relevant to the recommendation of
9 the commission. The senior judge of the panel shall preside.

10 (b) The presiding circuit court judge shall enter an
11 order setting the case for hearing at the special session of
12 the circuit court for which the three-judge panel is
13 commissioned and shall require the state to file a response to
14 the opinion of the commission within 60 days of the date of
15 the order.

16 (c) The district attorney in the circuit of
17 conviction, or his or her designee, shall represent the state
18 at the hearing before the three-judge panel.

19 (d) The three-judge panel shall conduct an
20 evidentiary hearing. At the hearing, the court may compel the
21 testimony of any witness, including the convicted person. The
22 convicted person may not assert any privilege or prevent a
23 witness from testifying. The convicted person has a right to
24 be present at the evidentiary hearing and to be represented by
25 counsel. A waiver of the right to be present shall be in
26 writing.

1 (e) The presiding circuit court judge shall
2 determine the indigency status of the convicted person and, if
3 appropriate, enter an order for the appointment of counsel.
4 The court may also enter an order relieving an indigent
5 convicted person of all or a portion of the costs of the
6 proceedings.

7 (f) The clerk of court shall provide written
8 notification to the victim 30 days prior to any case-related
9 hearings.

10 (g) Upon the motion of either party, the presiding
11 judge of the panel may direct the attorneys for the parties to
12 appear before him or her for a conference on any matter in the
13 case.

14 (h) The three-judge panel shall rule as to whether
15 the convicted person has proved by clear and convincing
16 evidence that the convicted person is innocent of the charges.
17 The determination shall require a unanimous vote. If the vote
18 is unanimous, the panel shall enter dismissal of all or any of
19 the charges. If the vote is not unanimous, the panel shall
20 deny relief.

21 Section 9. (a) Unless otherwise authorized by this
22 act, the decisions of the commission and of the three-judge
23 panel are final and shall not be subject to further review by
24 appeal, certification, writ, motion, or otherwise.

25 (b) A claim of factual innocence asserted through
26 the Alabama Innocence Inquiry Commission shall not adversely

1 affect the rights of the convicted person to other
2 post-conviction relief.

3 Section 10. Beginning January 1, 2012, and annually
4 thereafter, the Alabama Innocence Inquiry Commission shall
5 give an annual report to the Legislature of Alabama on the
6 fifth legislative day of each regular session. The report may
7 contain recommendations of any needed legislative changes
8 related to the activities of the commission. The report shall
9 recommend the funding needed by the commission.

10 Section 11. This act shall become effective on
11 October 1, 2010, following its passage and approval by the
12 Governor, or its otherwise becoming law.