

1 SB241  
2 114841-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 22-MAR-11

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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.