

By Senator Hill

1-175-07

1 A bill to be entitled
2 An act relating to the investigation of the
3 innocence of convicted felons; creating ss.
4 940.201-940.212, F.S.; creating the Florida
5 Innocence Inquiry Commission; providing
6 definitions; providing legislative intent;
7 establishing the commission as an independent
8 commission located within the Executive Office
9 of the Governor for administrative purposes
10 only; providing for membership, meetings, terms
11 of office, and reimbursement of expenses;
12 requiring the commission to employ a director;
13 establishing qualifications of the director;
14 creating duties and responsibilities for the
15 commission; providing for the filing of claims
16 of innocence; requiring a claimant to waive
17 certain procedural rights; requiring the
18 claimant to sign an agreement with the
19 commission; providing for the claimant to be
20 represented by legal counsel; authorizing the
21 commission to use certain procedures to obtain
22 information relating to the claim of innocence;
23 providing procedures for the commission
24 proceedings; providing for judicial review of
25 claims found to demonstrate sufficient evidence
26 of factual innocence; providing procedures for
27 a court to review the claim of innocence;
28 prohibiting further review of a claim of
29 innocence; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Sections 940.201, 940.202, 940.203,
2 940.204, 940.205, 940.206, 940.207, 940.208, 940.209, 940.210,
3 940.211, and 940.212, Florida Statutes, are created to read:

4 940.201 Short title.--Sections 940.201-940.212 may be
5 cited as the "Florida Innocence Inquiry Commission Act."

6 940.202 Definitions.--As used in ss. 940.201-940.212,
7 the term:

8 (1) "Claim of factual innocence" means a claim on
9 behalf of a living person convicted of a felony in the circuit
10 court which asserts the complete innocence of any criminal
11 responsibility for the felony for which the person was
12 convicted and for any other reduced level of criminal
13 responsibility relating to the crime, and for which there is
14 some credible, verifiable evidence of innocence which has not
15 been presented at trial or considered at a hearing granted
16 through postconviction relief.

17 (2) "Claimant" means a person who files a claim with
18 the Florida Innocence Inquiry Commission alleging that he or
19 she is factually innocent of the felony for which he or she
20 was convicted.

21 (3) "Commission" means the Florida Innocence Inquiry
22 Commission.

23 (4) "Director" means the director of the Florida
24 Innocence Inquiry Commission.

25 (5) "Victim" means the victim of the crime or, if the
26 victim of the crime is deceased, the next of kin of the
27 victim.

28 940.203 Legislative intent.--The Legislature intends
29 to establish an extraordinary procedure by which to
30 investigate and determine credible claims of factual
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1 innocence. The procedure requires an individual to voluntarily
2 waive rights and privileges as described in this act.

3 940.204 Florida Innocence Inquiry Commission
4 established.--

5 (1) There is established the Florida Innocence Inquiry
6 Commission. The commission shall be an independent commission
7 and shall be located within the Executive Office of the
8 Governor for administrative purposes only.

9 (2) The Executive Office of the Governor shall provide
10 administrative support to the commission as needed. The
11 Executive Office of the Governor may not reduce or modify the
12 budget of the commission or use funds appropriated to the
13 commission without the approval of the commission.

14 940.205 Membership; chair; meetings; quorum.--

15 (1)(a) The commission shall consist of nine members.
16 The Governor shall appoint all members of the commission. In
17 making each appointment, the Governor shall make a good faith
18 effort to appoint members who reflect the racial, ethnic, and
19 cultural diversity of the state's population.

20 (b) The Governor shall also appoint an alternate
21 commissioner for each commission member appointed. The
22 alternate commissioner shall serve in the event of a
23 scheduling conflict, a conflict of interest, the disability of
24 the appointed commissioner, or a disqualification arising in a
25 particular case.

26 (2) The commissioners shall select one of its members
27 as chair of the commission.

28 (3)(a) The commission shall hold its initial meeting
29 no later than January 31, 2008. The commission shall meet a
30 minimum of once every 6 months and may meet more often at the
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1 call of the chair. The commission shall meet at a time and
2 place designated by the chair.

3 (b) Meetings of the commission shall be open to the
4 public and the commission must provide reasonable notice of
5 the meetings. A majority of the members constitute a quorum.
6 Except as provided in s. 940.210, all actions of the
7 commission shall be by majority vote.

8 940.206 Terms of members; compensation; expenses.--

9 (1) The Governor shall appoint each member of the
10 commission for a 3-year term. A commissioner may not serve for
11 more than two consecutive 3-year terms.

12 (2) For the initial appointments, three of the members
13 shall be appointed to 1-year terms; three of the members shall
14 be appointed to 2-year terms; and three of the members shall
15 be appointed to 3-year terms. Thereafter, all terms shall be
16 for 3 years.

17 (3) All terms of members shall begin on January 1 and
18 end on December 31. The Governor may remove a member for
19 cause. Vacancies shall be filled by the Governor.

20 (4) The members of the commission shall serve without
21 compensation, but are entitled to reimbursement for per diem
22 and travel expenses pursuant to s. 112.061 while performing
23 their duties.

24 940.207 Director and other staff.--The commission
25 shall employ a director. The director must be an attorney who
26 is licensed to practice in this state at the time of
27 appointment and at all times during his or her service as the
28 director. The director shall assist the commission in drafting
29 rules for processing cases accepted for review, coordinate the
30 investigation of cases accepted for review, maintain records
31 of all case investigations, prepare reports describing

1 commission investigations and recommendations to a circuit
2 court, and apply for and accept on behalf of the commission
3 any funds that are available from government grants, private
4 gifts, donations, or bequests from any source. Subject to the
5 approval of the chair and as funds permit, the director shall
6 employ other staff and contract for services as necessary to
7 assist the commission in performing its duties.

8 940.208 Duties of the commission.--The commission
9 shall:

10 (1) Establish the criteria and screening process to be
11 used to determine which cases will be accepted for review.

12 (2) Conduct inquiries into claims of factual
13 innocence, with priority for investigation given to those
14 cases in which the convicted person is incarcerated solely for
15 the crime for which he or she claims factual innocence.

16 (3) Coordinate the investigation of cases accepted for
17 review.

18 (4) Maintain records of all case investigations.

19 (5) Prepare written reports detailing the
20 investigations and the recommendations to the circuit court at
21 the completion of each inquiry.

22 (6) Apply for and accept any funds that are available
23 for the commission's work from government grants, private
24 gifts, donations, or bequests from any source.

25 940.209 Claims of innocence; waiver of convicted
26 person's procedural safeguards and privileges; formal inquiry;
27 notification of the crime victim.--

28 (1) A claim of factual innocence may be filed with the
29 commission by a court, an individual, or a governmental
30 entity. The decision to commence or refuse to commence a
31 formal inquiry regarding the claim of factual innocence shall

1 be made at the sole discretion of the commission. The
2 commission may informally screen and dismiss a case summarily
3 at its discretion.

4 (2)(a) A formal inquiry into a claim of innocence may
5 not begin unless the director or the director's designee
6 obtains a signed agreement from the claimant. The agreement
7 must acknowledge that the claimant waives his or her
8 procedural rights and privileges, agrees to cooperate with the
9 commission, and agrees to provide full disclosure to the
10 commission for all inquiries relating to the claim of
11 innocence. The waiver does not apply to any legal matter
12 unrelated to a claimant's claim of innocence.

13 (b) A claimant has the right to be represented by
14 counsel before executing the commission's agreement and, if a
15 formal inquiry is commenced, to be represented by counsel
16 throughout the formal inquiry. If the convicted person is
17 represented by private counsel, the claimant's counsel must be
18 present at the signing of the agreement. If the claimant is
19 not represented by counsel, the chair shall determine if the
20 claimant is indigent and, if so, enter an order for the
21 appointment of counsel for the purpose of advising the
22 claimant concerning the commission's agreement.

23 (3) If a formal inquiry is commenced into the
24 claimant's claim of factual innocence, the director must use
25 all due diligence to notify the victim in order to explain the
26 inquiry process. The director must advise the victim that he
27 or she has the right to be present at any hearing and to offer
28 his or her views throughout the commission's investigation.

29 (4) The commission may use any measure otherwise
30 provided to counsel in law or court rule to obtain the
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1 information necessary to complete its inquiry. The commission
2 may:

3 (a) Issue process to compel the attendance of
4 witnesses and the production of documents or other evidence;
5 and

6 (b) Petition the Circuit Court of Leon County or the
7 circuit court in the county in which the claimant was
8 convicted to enforce the process to acquire the information or
9 for other relief.

10 (5) Any challenge with regard to the authority of the
11 commission to proceed or to the commission's claim for access
12 to information or evidence shall be heard by the chair,
13 including any in camera review required by law.

14 (6) When performing his or her duties for the
15 commission, the director or the director's designee may serve
16 subpoenas or other process issued by the commission throughout
17 the state in the same manner and with the same effect as an
18 officer authorized to serve process under law.

19 (7) All laws governing discovery and disclosure which
20 are in effect at the time of the formal inquiry shall be
21 enforceable as if the claimant were currently being tried for
22 the charge for which the claimant is claiming innocence.

23 (8) If at any point during an inquiry the claimant
24 refuses to comply with requests of the commission or is
25 otherwise deemed to be uncooperative by the commission, the
26 commission shall discontinue the inquiry.

27 940.210 Commission proceedings.--

28 (1) At the completion of a formal inquiry, all
29 relevant evidence must be presented to the full commission at
30 a hearing.

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1 (2) The director shall use all due diligence to notify
2 the victim at least 30 days before the hearing held by the
3 full commission in regard to the victim's case. The director
4 must notify the victim that he or she may attend the hearing.
5 If the victim plans to attend the hearing, the victim must
6 notify the commission at least 10 days before the hearing of
7 his or her intent to attend.

8 (3) After hearing the evidence on the claim of factual
9 innocence, the full commission shall vote to dispose of the
10 case as provided by this subsection. All members of the
11 commission must vote.

12 (a) If a majority of the commission decides that there
13 is reasonable cause to believe that the claimant is factually
14 innocent of the crime for which the claimant was convicted,
15 the claimant may bring an action in the circuit court in the
16 circuit in which the claimant was convicted. The election by
17 the claimant to file the action is the exclusive procedure
18 available to the claimant pursuant to this act.

19 (b) If the commission unanimously decides that there
20 is reasonable cause to believe that the claimant is factually
21 innocent of the crime for which the claimant was convicted
22 following a plea of guilty, the claimant may bring an action
23 in the circuit court in the circuit in which the claimant was
24 convicted. The election by the claimant to file the action is
25 the exclusive procedure available to the claimant pursuant to
26 this act.

27 (c) If the commission believes that there is
28 reasonable cause to believe that the claimant is factually
29 innocent, the director shall prepare a report of the hearing,
30 including the findings of fact and conclusions of law, and
31 present the report and recommendation of reasonable cause to

1 the chief judge of the circuit in which the claimant was
2 convicted by filing the report and recommendation with the
3 clerk of court. The report and recommendation shall be sent to
4 the state attorney in noncapital cases and to the state
5 attorney and Attorney General in capital cases.

6 (d) If the commission believes that the claimant is
7 factually innocent, the claimant must bring the action in
8 circuit court within 1 year after the date of the report and
9 recommendation is received by the circuit court.

10 (4) If the commission determines that there is not
11 reasonable cause to believe that the claimant is factually
12 innocent of the crime for which the claimant was convicted or
13 to which the claimant entered a plea of guilty, the commission
14 shall dismiss the claim of factual innocence.

15 (5) Evidence of criminal acts, professional
16 misconduct, or other wrongdoing that is disclosed through
17 formal inquiry or commission proceedings shall be referred to
18 the appropriate authority. Evidence favorable to the claimant
19 which is disclosed through formal inquiry or commission
20 proceedings shall be disclosed to the claimant and to the
21 counsel of the claimant, if the claimant has counsel.

22 (6) All proceedings of the commission shall be
23 recorded and transcribed as part of the record. All votes of
24 the commission members shall be recorded in the record.

25 940.211 Civil action.--

26 (1) In any civil action filed under s. 940.210, the
27 court shall determine if the claimant is factually innocent of
28 the crime for which the claimant was convicted or for which
29 the claimant filed a plea of guilty. The civil action must be
30 filed in the circuit court in the judicial circuit in which
31 the claimant was convicted.

1 (2) The judge shall enter an order setting the case
2 for hearing and shall require the state to file a response to
3 the report and recommendation of the commission within 60 days
4 after the date of the order.

5 (3) The state attorney or the state attorney's
6 designee shall represent the state in the civil action before
7 the court.

8 (4) The court shall conduct an evidentiary hearing. At
9 the hearing, the court may compel the testimony of any
10 witness, including the claimant. The claimant may not assert
11 any privilege or prevent a witness from testifying. The
12 claimant has a right to be present at the evidentiary hearing
13 and to be represented by counsel. A waiver of the right to be
14 present must be in writing.

15 (5) The court shall determine if the claimant is
16 indigent and, if so, enter an order appointing counsel for the
17 claimant. The court may also enter an order relieving an
18 indigent claimant of all or a portion of the costs of the
19 proceedings.

20 (6) The clerk of court shall provide written
21 notification to the victim at least 30 days before any
22 case-related hearings.

23 (7) Upon the motion of either party, the court may
24 direct the attorneys for the parties to appear for a
25 conference on any matter in the case.

26 (8) The court shall issue an order determining if the
27 claimant has proven by clear and convincing evidence that the
28 claimant is innocent of the charges.

29 940.212 No right to further review of decision;
30 convicted person retains right to other postconviction
31 relief.--

