
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1283 Session of
2014

INTRODUCED BY STACK, FERLO, FONTANA, GREENLEAF, WILLIAMS,
FARNESE AND HUGHES, MARCH 28, 2014

REFERRED TO JUDICIARY, MARCH 28, 2014

AN ACT

1 Establishing the Pennsylvania Innocence Inquiry Commission
2 within the Administrative Office of Pennsylvania Courts; and
3 providing for its powers and duties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Pennsylvania
8 Innocence Inquiry Commission Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Chief Justice." The Chief Justice of the Pennsylvania
14 Supreme Court.

15 "Claim of factual innocence." A claim filed by or on behalf
16 of a living person who has been convicted of a felony in a court
17 of common pleas of this Commonwealth asserting the complete
18 innocence of any criminal responsibility for the felony for

1 which the person was convicted and for any other reduced level
2 of criminal responsibility relating to the crime, and for which
3 there is some credible, verifiable evidence of innocence that
4 has not previously been presented at trial or considered at a
5 hearing granted through postconviction relief.

6 "Commission." The Pennsylvania Innocence Inquiry Commission
7 established pursuant to this act.

8 "Director." The Director of the Pennsylvania Innocence
9 Inquiry Commission.

10 "President Judge." The President Judge of the Superior
11 Court.

12 "Victim." The victim of the crime for which a claim of
13 factual innocence has been filed or, if the victim of the crime
14 is deceased, the next of kin of the victim.

15 Section 3. Pennsylvania Innocence Inquiry Commission.

16 (a) Establishment.--The Pennsylvania Innocence Inquiry
17 Commission is established and shall be an independent commission
18 under the jurisdiction of the Administrative Office of
19 Pennsylvania Courts for administrative purposes.

20 (b) Administrative support.--

21 (1) The Administrative Office of Pennsylvania Courts
22 shall provide administrative support to the commission as
23 needed.

24 (2) The Director of the Administrative Office of
25 Pennsylvania Courts shall not reduce or modify the budget of
26 the commission or use funds appropriated to the commission
27 without the approval of the commission.

28 Section 4. Membership and organization.

29 (a) Members.--The commission shall consist of voting members
30 as follows:

1 (1) A judge of a court of common pleas.
2 (2) A district attorney.
3 (3) A crime victim advocate.
4 (4) A licensed attorney engaged in the practice of
5 criminal defense law in this Commonwealth.

6 (5) A member of the public who is not an attorney or an
7 officer or employee of the judicial branch.

8 (6) A law enforcement officer.

9 (7) Two at-large members.

10 (b) Initial appointments.--

11 (1) The Chief Justice shall make the initial appointment
12 of members identified in subsection (a)(4), (5), (6) and (7).

13 (2) The president judge shall make the initial
14 appointment of members identified in subsection (a)(1), (2)
15 and (3).

16 (3) Members initially appointed under subsection (a)(1),
17 (2), (3), (4), (5) and (6) shall serve an initial term of
18 one, two and three years, respectively, as designated by the
19 chief justice or president judge at the time of appointment.

20 (4) Members initially appointed under subsection (a)(7)
21 shall serve an initial term of three years.

22 (5) An appointment to fill a vacancy created by a member
23 appointed in accordance with this subsection shall be for the
24 remainder of the unexpired term.

25 (6) Initial appointments shall be made within 60 days of
26 the effective date of this section.

27 (7) The appointing authority shall also consider
28 geographic location, gender and racial diversity in making
29 the appointments and shall make a good faith effort to
30 appoint members with different perspectives of the justice

1 system.

2 (c) Subsequent appointments.--Upon the expiration of an
3 initial term of a member appointed under subsection (b), the
4 appointment power shall rotate and each subsequent appointment,
5 except for appointments under subsection (a)(7), shall be by the
6 chief justice or president judge who did not make the previous
7 appointment. The following shall apply to appointments made
8 under this subsection:

9 (1) The term of office shall be three years.

10 (2) A member may be reappointed by the appointing
11 authority for one additional three-year term.

12 (3) An appointment to fill a vacancy shall be for the
13 remainder of the unexpired term. Appointments to fill a
14 vacancy shall be made within 60 days of the creation of the
15 vacancy.

16 (4) A member appointed to fill a vacancy, including a
17 vacancy under subsection (b), may serve two full terms
18 following the expiration of the term related to the vacancy.

19 (5) All terms of members shall begin on January 1 and
20 end on December 31.

21 (6) Members serving by virtue of elective or appointive
22 office may serve only so long as the officeholders hold those
23 respective offices.

24 (7) The chief justice may remove any member for cause.

25 (d) Alternate members.--

26 (1) Appointing authorities shall appoint alternate
27 members for the members they have appointed to serve in the
28 event of scheduling conflicts, conflicts of interest,
29 disability or other disqualification arising in a particular
30 case. The alternate members shall have the same

1 qualifications for appointment as the original member.

2 (2) In making appointments under this subsection, the
3 appointing authorities shall make a good faith effort to
4 appoint members with different perspectives of the justice
5 system. The appointing authorities shall also consider
6 geographic location, gender and racial diversity in making
7 the appointments.

8 (e) Chairman.--The court of common pleas judge appointed
9 under subsection (a) shall serve as chair of the commission.

10 (f) Organization and meetings.--The commission shall have an
11 organization meeting at the call of the chair but no later than
12 January 31, 2015. The commission shall meet a minimum of once
13 every six months and may also meet more often at the call of the
14 chair. The commission shall meet at such time and place as
15 designated by the chair. Notice of the meetings shall be given
16 at such time and manner as provided by the rules of the
17 commission. A majority of the members shall constitute a quorum.
18 All commission votes shall be by majority vote.

19 (g) Salaries prohibited and reimbursement of expenses.--
20 Members shall receive no salary for serving but shall be
21 reimbursed for all necessary and actual expenses incurred in the
22 performance of their official duties as members.

23 Section 5. Executive director and other staff.

24 (a) General rule.--The commission shall employ an executive
25 director who shall be an attorney licensed to practice in this
26 Commonwealth at the time of appointment and at all times during
27 service as executive director. The executive director shall have
28 the following powers and duties:

29 (1) Assist the commission in developing rules and
30 standards for cases accepted for review.

1 (2) Coordinate investigation of cases accepted for
2 review.

3 (3) Maintain records for all case investigations.

4 (4) Prepare reports outlining commission investigations
5 and recommendations to the trial court.

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

9 (6) Any other duties assigned by the commission.

10 (b) Staff and service contracts.--The commission shall
11 employ such other staff and shall contract for services as is
12 necessary to assist the commission in the performance of its
13 duties and as funds permit.

14 (c) Place of meetings and office space.--The commission may
15 meet in the State Capitol Complex or may meet in an area
16 provided by the Director of the Administrative Office of
17 Pennsylvania Courts. The Director of the Administrative Office
18 of Pennsylvania Courts shall provide office space for the
19 commission and the commission staff.

20 Section 6. Duties of commission.

21 The commission shall have the following powers and duties:

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

24 (2) Conduct inquiries into claims of factual innocence,
25 with priority to be given to those cases in which the
26 convicted person is currently incarcerated solely for the
27 crime for which the convicted person claims factual
28 innocence.

29 (3) Coordinate the investigation of cases accepted for
30 review.

1 (4) Maintain records for all case investigations.

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

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

8 Section 7. Claims of innocence.

9 (a) General rule.--

10 (1) A claim of factual innocence may be referred to the
11 commission by any court, person or agency. The commission
12 shall not consider a claim of factual innocence if the
13 convicted person is deceased.

14 (2) The determination of whether to grant a formal
15 inquiry regarding any other claim of factual innocence is in
16 the discretion of the commission.

17 (3) The commission may informally screen and dismiss a
18 case summarily at its discretion.

19 (b) Waiver of procedural safeguards and privileges.--

20 (1) No formal inquiry into a claim of factual innocence
21 shall be made by the commission unless the director or the
22 director's designee first obtains a signed agreement from the
23 convicted person in which the convicted person waives the
24 convicted person's procedural safeguards and privileges,
25 agrees to cooperate with the commission and agrees to provide
26 full disclosure regarding all inquiry requirements of the
27 commission.

28 (2) The waiver under this subsection does not apply to
29 matters unrelated to a convicted person's claim of innocence.

30 (3) (i) The convicted person shall have the right

1 to advice of counsel prior to the execution of the
2 agreement and, if a formal inquiry is granted, throughout
3 the formal inquiry.

4 (ii) If counsel represents the convicted person,
5 then the convicted person's counsel must be present at
6 the signing of the agreement.

7 (iii) If counsel does not represent the convicted
8 person, the chairman shall determine the convicted
9 person's indigency status and, if appropriate, enter an
10 order for the appointment of counsel for the purpose of
11 advising on the agreement.

12 (c) Formal inquiry.--

13 (1) If a formal inquiry regarding a claim of factual
14 innocence is granted, the director shall use all due
15 diligence to notify the victim in the case and explain the
16 inquiry process.

17 (2) The commission shall give the victim notice that the
18 victim has the right to present the victim's views and
19 concerns throughout the commission's investigation.

20 (d) Powers of commission.--In conducting an inquiry, the
21 commission may do any of the following:

22 (1) Issue process to compel the attendance of witnesses
23 and the production of evidence.

24 (2) Administer oaths, petition the courts for
25 enforcement of process or for other relief and prescribe its
26 own rules of procedure. All challenges with regard to the
27 commission's authority or the commission's access to evidence
28 shall be heard by the chair of the commission in the chair's
29 judicial capacity, including any in camera review.

30 (e) Subpoenas.--While performing duties for the commission,

1 the executive director or his designee may serve subpoenas.

2 (f) Discovery and disclosure statutes.--All discovery and
3 disclosure statutes in effect at the time of formal inquiry
4 shall be enforceable as if the convicted person were currently
5 being tried for the charge for which the convicted person is
6 claiming innocence.

7 (g) Discontinuance.--If, at any point during an inquiry, the
8 convicted person refuses to comply with requests of the
9 commission or is otherwise deemed to be uncooperative by the
10 commission, the commission shall discontinue the inquiry.

11 Section 8. Commission proceedings.

12 (a) Public hearings.--At the completion of a formal inquiry,
13 all relevant evidence shall be presented to the full commission.
14 As part of its proceedings, the commission may conduct public
15 hearings. The determination as to whether to conduct public
16 hearings is solely in the discretion of the commission. Any
17 public hearing held in accordance with this section shall be
18 subject to the commission's rules of operation.

19 (b) Witnesses and immunity.--

20 (1) The commission may compel the testimony of any
21 witness.

22 (2) If a witness asserts the privilege against self-
23 incrimination in a proceeding under this act, the chair of
24 the commission, in the chair's judicial capacity, may order
25 the witness to testify or produce other information if the
26 chair first determines that the witness's testimony will
27 likely be material to reach a correct factual determination
28 in the case at hand.

29 (3) The chair shall not order the witness to testify or
30 produce other information that would incriminate the witness

1 in the prosecution of any offense other than an offense for
2 which the witness is granted immunity under this subsection.

3 (4) The order shall prevent a prosecutor from using the
4 compelled testimony, or evidence derived therefrom, to
5 prosecute the witness for previous false statements made
6 under oath by the witness in prior proceedings.

7 (5) The prosecutor has a right to be heard by the chair
8 prior to the chair issuing the order.

9 (6) Once granted, the immunity shall apply throughout
10 all proceedings conducted pursuant to this act. The limited
11 immunity granted under this section shall not prohibit
12 prosecution of statements made under oath that are unrelated
13 to the commission's formal inquiry, false statements made
14 under oath during proceedings under this act or prosecution
15 for any other crimes.

16 (c) Notification to victim of proceedings.--

17 (1) The executive director shall use all due diligence
18 to notify the victim at least 30 days prior to any
19 proceedings of the full commission that are held in regard to
20 the victim's case.

21 (2) The commission shall notify the victim that the
22 victim is permitted to attend proceedings otherwise closed to
23 the public, subject to any limitations imposed by this act.

24 (3) If the victim plans to attend proceedings otherwise
25 closed to the public, the victim must notify the commission
26 at least ten days in advance of the proceedings of the
27 victim's intent to attend.

28 (4) If the commission determines that the victim's
29 presence may interfere with the investigation, the commission
30 may close any portion of the proceedings to the victim.

1 (d) Voting.--After hearing the evidence, the full commission
2 shall vote to establish further case disposition as provided by
3 this section. All eight voting members of the commission shall
4 participate in that vote. The following shall apply:

5 (1) (i) Except in cases where the convicted person
6 entered and was convicted on a plea of guilty, if five or
7 more of the eight voting members of the commission vote
8 that there is sufficient evidence of factual innocence to
9 merit judicial review, the case shall be referred to the
10 president judge of the court of common pleas where the
11 case was prosecuted by filing with the clerk of courts
12 the opinion of the commission with supporting findings of
13 fact, as well as the record in support of such opinion,
14 with service on the district attorney in noncapital cases
15 and service on both the district attorney and Attorney
16 General in capital cases.

17 (ii) In a case where the convicted person entered
18 and was convicted on a plea of guilty, if all of the
19 eight voting members of the commission vote that there is
20 sufficient evidence of factual innocence to merit
21 judicial review, the case shall be referred to the senior
22 resident superior court judge in the district of original
23 jurisdiction.

24 (2) (i) If fewer than five of the eight voting
25 members of the commission vote that there is sufficient
26 evidence of factual innocence to merit judicial review,
27 the commission shall conclude there is insufficient
28 evidence of factual innocence to merit judicial review.

29 (ii) In a case where the convicted person entered
30 and was convicted on a plea of guilty, if fewer than all

1 of the eight voting members of the commission vote that
2 there is sufficient evidence of factual innocence to
3 merit judicial review, the commission shall conclude
4 there is insufficient evidence of factual innocence to
5 merit judicial review.

6 (iii) The commission shall document the vote, along
7 with supporting findings of fact, and file those
8 documents and supporting materials with the clerk of
9 courts in the county where the case was prosecuted, with
10 a copy to the district attorney and the president judge
11 of the court of common pleas.

12 (3) The executive director of the commission shall use
13 all due diligence to notify immediately the victim of the
14 commission's vote in a case.

15 (e) Referral of wrongdoing.--

16 (1) Evidence of criminal acts, professional misconduct
17 or other wrongdoing disclosed through formal inquiry or
18 commission proceedings shall be referred to the appropriate
19 authority.

20 (2) Evidence favorable to the convicted person disclosed
21 through formal inquiry or commission proceedings shall be
22 disclosed to the convicted person and the convicted person's
23 counsel, if the convicted person has counsel.

24 (f) Proceedings to be recorded and transcribed.--

25 (1) All proceedings of the commission shall be recorded
26 and transcribed as part of the record. All commission member
27 votes shall be recorded in the record.

28 (2) All records and proceedings of the commission are
29 confidential and are exempt from public record and public
30 meeting laws, except that the supporting records for the

1 commission's conclusion that there is sufficient evidence of
2 factual innocence to merit judicial review, including all
3 files and materials considered by the commission and a full
4 transcript of the hearing before the commission, shall become
5 public at the time of referral to the court of common pleas.

6 (3) Commission records for conclusions of insufficient
7 evidence of factual innocence to merit judicial review shall
8 remain confidential, except as provided in subsection (d).

9 Section 9. Postcommission three-judge panel.

10 (a) General rule.--If the commission concludes there is
11 sufficient evidence of factual innocence to merit judicial
12 review, the chair of the commission shall request the president
13 judge to appoint a three-judge panel, not to include any trial
14 judge who has had substantial previous involvement in the case,
15 and to order the members of the three-judge panel to convene a
16 special session of the superior court to hear evidence relevant
17 to the commission's recommendation. The senior judge of the
18 panel shall preside.

19 (b) Order for hearing and response.--The senior Superior
20 Court judge shall enter an order setting the case for hearing at
21 the special session of the Superior Court for which the three-
22 judge panel is commissioned and shall require the Commonwealth
23 to file a response to the commission's opinion within 60 days of
24 the date of the order.

25 (c) Representation of the Commonwealth.--The district
26 attorney of the county where the conviction occurred or the
27 district attorney's designee shall represent the Commonwealth at
28 the hearing before the three-judge panel.

29 (d) Evidentiary hearing.--

30 (1) The three-judge panel shall conduct an evidentiary

1 hearing. At the hearing, the court may compel the testimony
2 of any witness, including the convicted person.

3 (2) The convicted person may not assert any privilege or
4 prevent a witness from testifying. The convicted person has a
5 right to be present at the evidentiary hearing and to be
6 represented by counsel.

7 (3) A waiver of the right to be present shall be in
8 writing.

9 (e) Indigency status.--The presiding judge shall determine
10 the convicted person's indigency status and, if appropriate,
11 enter an order:

12 (1) For the appointment of counsel.

13 (2) Relieving the indigent convicted person of all or a
14 portion of the costs of the proceedings.

15 (f) Duty of clerk of courts to provide notice.--The clerk of
16 courts shall provide written notification to the victim 30 days
17 prior to any case-related hearings.

18 (g) Conference with attorneys.--Upon the motion of either
19 party, the presiding judge of the panel may direct the attorneys
20 for the parties to appear for a conference on any matter in the
21 case.

22 (h) Ruling.--

23 (1) The three-judge panel shall rule as to whether the
24 convicted person has proved by clear and convincing evidence
25 that the convicted person is innocent of the charges. Such a
26 determination shall require a unanimous vote.

27 (2) If the vote is unanimous, the panel shall enter
28 dismissal of all or any of the charges.

29 (3) If the vote is not unanimous, the panel shall deny
30 relief.

1 Section 10. Further review.

2 (a) General rule.--Unless otherwise authorized by this act,
3 the decisions of the commission and of the three-judge panel are
4 final and are not subject to further review by appeal,
5 certification, writ, motion or otherwise.

6 (b) Other postconviction relief.--A claim of factual
7 innocence asserted through the commission shall not adversely
8 affect the convicted person's rights to other postconviction
9 relief.

10 Section 11. Reports.

11 Beginning January 1, 2016, and annually thereafter, the
12 commission shall report on its activities to the Governor, the
13 Attorney General, the chairman and minority chairman of the
14 Judiciary Committee of the Senate, the chairman and minority
15 chairman of the Judiciary Committee of the House of
16 Representatives, the Department of Corrections, the Pennsylvania
17 Commission on Crime and Delinquency and the Pennsylvania Board
18 of Probation and Parole. The report may contain recommendations
19 of any needed legislative changes related to the activities of
20 the commission.

21 Section 12. Effective date.

22 This act shall take effect in 60 days.