

1 SB237  
2 175084-4  
3 By Senators Brewbaker, Hightower, Whatley, Stutts, Marsh,  
4 Reed, Ward, Smitherman and Figures  
5 RFD: Judiciary  
6 First Read: 16-FEB-16

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To create the Alabama Innocence Inquiry Commission  
12 within the Administrative Office of Courts; to provide for the  
13 duties and functions of the commission; to authorize the  
14 commission to order judicial review of certain capital cases  
15 in which the defendant has been sentenced to death and there  
16 is found to exist credible, verifiable evidence of innocence  
17 that has not previously been presented at trial or considered  
18 at a hearing granted through postconviction relief; and to  
19 provide that no execution date shall be set for any person  
20 while that person's case is pending before the commission.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. There is established the Alabama  
23 Innocence Inquiry Commission. The commission shall be an  
24 independent commission under the Administrative Office of  
25 Courts for administrative purposes. The Administrative Office  
26 of Courts shall provide administrative support to the  
27 commission as needed. The Director of the Administrative

1 Office of Courts shall not reduce or modify the budget of the  
2 commission or use funds appropriated to the commission without  
3 the approval of the commission.

4 Section 2. For purposes of this act, the following  
5 words have the following meanings:

6 (1) CLAIMANT. A person asserting that he or she is  
7 completely innocent of any criminal responsibility for a  
8 capital crime upon which the person was convicted and  
9 sentenced to death.

10 (2) CLAIM OF FACTUAL INNOCENCE. A claim on behalf of  
11 a living person convicted of a capital crime in Alabama,  
12 asserting the complete innocence of any criminal  
13 responsibility for the capital crime for which the person was  
14 convicted, and for which there is some credible, verifiable  
15 evidence of innocence that has not previously been presented  
16 at trial or considered at an evidentiary hearing granted  
17 through postconviction relief.

18 (3) COMMISSION. The Alabama Innocence Inquiry  
19 Commission established by this act.

20 (4) DIRECTOR. The Director of the Alabama Innocence  
21 Inquiry Commission.

22 (5) VICTIM. The next of kin of the victim.

23 Section 3. This act establishes an extraordinary  
24 procedure to investigate and determine credible claims of  
25 factual innocence that shall require an individual to  
26 voluntarily waive rights and privileges as described in this  
27 act.

1           Section 4. (a) The commission shall consist of nine  
2 voting members as follows:

3           (1) One circuit court judge appointed by the Circuit  
4 Judges Association.

5           (2) One district attorney appointed by the District  
6 Attorneys Association.

7           (3) One victim advocate appointed by the Governor.

8           (4) One person engaged in the practice of criminal  
9 defense law appointed by the Alabama Criminal Defense Lawyers  
10 Association.

11           (5) One member of the public who is not an attorney  
12 and who is not an officer or employee of the judicial branch  
13 of government appointed by the Governor.

14           (6) One sheriff appointed by the Alabama Sheriffs  
15 Association.

16           (7) One member appointed by the President Pro  
17 Tempore of the Senate.

18           (8) One member appointed by the Speaker of the House  
19 of Representatives.

20           (9) One member appointed by the Alabama Lawyers  
21 Association.

22           (b) The makeup of the commission shall be inclusive  
23 and reflect the racial, gender, geographic, urban/rural, and  
24 economic diversity of the state.

25           (c) The circuit court judge who is appointed as a  
26 member under subsection (a) shall serve as chair of the  
27 commission. The commission shall have its initial meeting no

1 later than 30 days after the effective date of this act, at  
2 the call of the chair. The commission shall meet a minimum of  
3 once every six months and may also meet more often at the call  
4 of the chair. The commission shall meet at such time and place  
5 as designated by the chair. A majority of the members shall  
6 constitute a quorum.

7 (d) Each member shall be appointed to a term of  
8 three years. Members serving by virtue of elective or  
9 appointed office may serve only so long as they hold those  
10 respective offices. Vacancies occurring before the expiration  
11 of a term shall be filled in the manner provided for the  
12 members first appointed.

13 Section 5. The members of the commission, while  
14 engaged in the performance of their duties outside the  
15 counties of their residence or in attending meetings of the  
16 commission, shall be reimbursed as authorized by law for per  
17 diem and mileage as provided by Article 2 of Chapter 7 of  
18 Title 36, Code of Alabama 1975.

19 Section 6. (a) The commission shall employ a  
20 director. The director shall be an attorney licensed to  
21 practice in the state at the time of appointment and at all  
22 times during service as director. The director shall assist  
23 the commission in developing rules and standards for cases  
24 accepted for review, coordinate investigation of cases  
25 accepted for review, maintain records for all case  
26 investigations, prepare reports outlining commission  
27 investigations and recommendations to the trial court, and

1 apply for and accept on behalf of the commission any funds  
2 that may become available from government grants, private  
3 gifts, donations, or devises from any source.

4 (b) Subject to the approval of the chair, the  
5 director may employ such other staff and may contract for  
6 services as is necessary to assist the commission in the  
7 performance of its duties, and as funds permit.

8 (c) The commission may meet in an area provided by  
9 the Director of the Administrative Office of Courts. The  
10 Director of the Administrative Office of Courts shall provide  
11 office space for the commission and the commission staff.

12 Section 7. The commission shall have the following  
13 duties and powers:

14 (1) To establish the criteria and screening process  
15 to be used to determine which cases shall be accepted for  
16 review.

17 (2) To conduct inquiries into claims of factual  
18 innocence, with priority to be given to those cases in which  
19 the convicted person is currently incarcerated solely for the  
20 crime for which he or she claims factual innocence.

21 (3) To coordinate the investigation of cases  
22 accepted for review.

23 (4) To maintain records for all case investigations.

24 (5) To prepare written reports outlining  
25 investigations and recommendations of the commission to the  
26 trial court at the completion of each inquiry.

1           (6) To apply for and accept any funds that may  
2 become available for the commission's work from government  
3 grants, private gifts, donations, or devises from any source.

4           Section 8. (a) A claim of factual innocence may be  
5 referred to the commission by any court, a state or local  
6 government agency, a claimant, or a claimant's counsel. The  
7 commission may not consider a claim of factual innocence if  
8 the convicted person is deceased. The determination of whether  
9 to grant a formal inquiry regarding any other claim of factual  
10 innocence is in the discretion of the commission. The  
11 commission may informally screen and dismiss a case summarily  
12 at its discretion. After receiving a claim of factual  
13 innocence, the commission has 90 days to determine whether or  
14 not to proceed with a formal inquiry into the claim. If the  
15 commission takes no action, at the expiration of 90 days, the  
16 claim shall be deemed dismissed. Upon good cause shown, the  
17 commission may grant one extension of 60 days beyond the  
18 initial 90-day period in order to make a determination.

19           (b) No formal inquiry into a claim of innocence  
20 shall be made by the commission unless the director or the  
21 director's designee first obtains a signed agreement from the  
22 convicted person in which the convicted person waives his or  
23 her procedural safeguards and privileges, agrees to cooperate  
24 with the commission, and agrees to provide full disclosure  
25 regarding all inquiry requirements of the commission. The  
26 waiver under this subsection does not apply to matters  
27 unrelated to a convicted person's claim of innocence. The

1 convicted person shall have the right to advice of counsel  
2 prior to the execution of the agreement and, if a formal  
3 inquiry is granted, throughout the formal inquiry. If counsel  
4 represents the convicted person, then the convicted person's  
5 counsel must be present at the signing of the agreement. If  
6 counsel does not represent the convicted person, the chair of  
7 the commission shall determine the convicted person's  
8 indigency status and, if appropriate, enter an order for the  
9 appointment of counsel for the purpose of advising on the  
10 agreement.

11 (c) If a formal inquiry regarding a claim of factual  
12 innocence is granted, the director shall use all due diligence  
13 to notify the victim in the case and explain the inquiry  
14 process. The commission shall give the victim notice that the  
15 victim has the right to present his or her views and concerns  
16 throughout the commission's investigation.

17 (d) The commission may subpoena information  
18 necessary to its inquiry. The commission may also do any of  
19 the following: Issue process to compel the attendance of  
20 witnesses and the production of evidence, administer oaths,  
21 petition the Circuit Court of Montgomery County or of original  
22 jurisdiction for enforcement of process or for other relief,  
23 and prescribe its own rules of procedure. All challenges with  
24 regard to the commission's authority or the commission's  
25 access to evidence shall be heard by the chair of the  
26 commission in his or her judicial capacity.



1           (e) While performing duties for the commission, the  
2 director or the director's designee may serve subpoenas or  
3 other process issued by the commission throughout the state in  
4 the same manner and with the same effect as an officer  
5 authorized to serve process of the circuit courts.

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

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

14          Section 9. (a) At the completion of a formal  
15 inquiry, all relevant evidence shall be presented to the full  
16 commission. As part of its proceedings, the commission may  
17 conduct public hearings. The determination as to whether to  
18 conduct public hearings is solely in the discretion of the  
19 commission. Any public hearing held in accordance with this  
20 section shall be subject to the rules of operation of the  
21 commission.

22          (b) The commission may subpoena witnesses to testify  
23 or produce other information. A witness may assert his or her  
24 privilege against self incrimination. If the chair determines  
25 that the testimony of the witness will likely be material to  
26 reach a correct factual determination in the case, the  
27 commission may offer a witness immunity from perjury or

1 obstruction of justice for previous testimony in exchange for  
2 his or her testimony before the commission. Notwithstanding  
3 the foregoing, the commission may not offer the witness  
4 immunity for the underlying crime for which the defendant who  
5 is the subject of the inquiry by the commission was convicted.  
6 Once granted, the immunity shall apply throughout all  
7 proceedings conducted pursuant to this act. The limited  
8 immunity granted under this section shall not prohibit  
9 prosecution of statements made under oath that are unrelated  
10 to the commission's formal inquiry, false statements made  
11 under oath during proceedings under this act, or prosecution  
12 for any other crimes.

13 (c) The Alabama Innocence Inquiry Commission shall  
14 require, as part of its rules of operation, the holding of a  
15 prehearing conference at least 10 days prior to any proceeding  
16 of the full commission. Only the following persons shall be  
17 notified and authorized to attend the prehearing conference:  
18 The district attorney, or the district attorney's designee, of  
19 the district where the claimant was convicted of the capital  
20 crime upon which the claim of factual innocence is based; the  
21 counsel of the plaintiff, if any; the chair; the director of  
22 the commission; and any commission staff designated by the  
23 director. The district attorney, or designee, shall be  
24 provided with both an opportunity to inspect any evidence that  
25 may be presented to the commission that has not previously  
26 been presented to any judicial officer or body and with any  
27 information that he or she deems relevant to the proceedings.

1 Prior to any commission proceedings, the district attorney or  
2 designee is authorized to provide the commission with a  
3 written statement, which shall be included in the record of  
4 the commission's proceedings. Any statement included in the  
5 record shall be part of the commission's record of proceedings  
6 pursuant to subsection (g).

7 (d) The director shall use all due diligence to  
8 notify the victim at least 30 days prior to any proceedings of  
9 the full commission held in regard to the victim's case. The  
10 commission shall notify the victim that the victim is  
11 permitted to attend proceedings otherwise closed to the  
12 public, subject to any limitations imposed by this act. If the  
13 victim plans to attend proceedings otherwise closed to the  
14 public, the victim shall notify the commission at least 10  
15 days in advance of the proceedings of his or her intent to  
16 attend.

17 (e) After hearing the evidence, the full commission  
18 shall vote to establish further case disposition as provided  
19 by this subsection. All nine voting members of the commission  
20 shall participate in that vote. Except in cases where the  
21 convicted person entered and was convicted on a plea of  
22 guilty, if five or more of the nine voting members of the  
23 commission conclude there is sufficient evidence of factual  
24 innocence to merit judicial review, the case shall be referred  
25 to the presiding judge of the circuit court in the circuit of  
26 original jurisdiction by filing with the clerk of the circuit  
27 court the opinion of the commission with supporting findings

1 of fact, as well as the record in support of such opinion,  
2 with service on the district attorney in noncapital cases and  
3 service on both the district attorney and Attorney General in  
4 capital cases. In cases where the convicted person entered and  
5 was convicted on a plea of guilty, if all of the nine voting  
6 members of the commission conclude there is sufficient  
7 evidence of factual innocence to merit judicial review, the  
8 case shall be referred to the presiding circuit court judge in  
9 the district of original jurisdiction. If less than five of  
10 the nine voting members of the commission, or in cases where  
11 the convicted person entered and was convicted on a guilty  
12 plea less than all of the nine voting members of the  
13 commission, conclude there is sufficient evidence of factual  
14 innocence to merit judicial review, the commission shall  
15 conclude there is insufficient evidence of factual innocence  
16 to merit judicial review. The commission shall document that  
17 opinion, along with supporting findings of fact, and file  
18 those documents and supporting materials with the clerk of the  
19 circuit court of the original jurisdiction, with a copy to the  
20 district attorney and the presiding judge of the circuit  
21 court. The director shall use all due diligence to notify  
22 immediately the victim of the commission's conclusion in a  
23 case.

24 (f) Evidence of criminal acts, professional  
25 misconduct, or other wrongdoing disclosed through formal  
26 inquiry or commission proceedings shall be referred to the  
27 appropriate authority. Evidence favorable to the convicted

1 person disclosed through formal inquiry or commission  
2 proceedings shall be disclosed to the convicted person and the  
3 convicted person's counsel, if the convicted person has  
4 counsel.

5 (g) All commission member votes shall be recorded in  
6 the record. All claims of factual innocence and all file  
7 records associated with claims of factual innocence  
8 proceedings of the commission are confidential and are exempt  
9 from public record and public meeting laws except that the  
10 supporting records for the commission's conclusion that there  
11 is sufficient evidence of factual innocence to merit judicial  
12 review, including all files and materials considered by the  
13 commission shall become public at the time of referral to the  
14 circuit court. Commission records for conclusions of  
15 insufficient evidence of factual innocence to merit judicial  
16 review shall remain confidential, except as provided in  
17 subsection (e).

18 Section 10. (a) If the commission concludes there is  
19 sufficient evidence of factual innocence to merit judicial  
20 review, the chair shall request the Chief Justice of the  
21 Alabama Supreme Court to appoint a three-judge panel, not to  
22 include any trial judge who has had substantial previous  
23 involvement in the case, and issue commissions to the members  
24 of the three-judge panel to convene a special session of the  
25 circuit court of the original jurisdiction to hear evidence  
26 relevant to the commission's recommendation. The senior judge  
27 of the panel shall preside. The Chief Justice shall appoint

1 the three-judge panel within 20 days of the filing of the  
2 commission's opinion finding sufficient evidence of factual  
3 innocence to merit judicial review. If the commission  
4 concludes that there is credible evidence of prosecutorial  
5 misconduct in the case, the chair may request the Attorney  
6 General to appoint a special prosecutor to represent the state  
7 in lieu of the district attorney of the district of conviction  
8 or the district attorney's designee. The request for the  
9 special prosecutor shall be made within 20 days of the filing  
10 of the commission's opinion finding sufficient evidence of  
11 innocence to merit judicial review. Upon receipt of a request  
12 under this subsection to appoint a special prosecutor, the  
13 Attorney General may temporarily assign a district attorney,  
14 assistant district attorney, or other qualified attorney, to  
15 represent the state at the hearing before the three-judge  
16 panel. The Attorney General shall not appoint as special  
17 prosecutor any attorney who prosecuted or assisted with the  
18 prosecution in the trial of the convicted person, or is a  
19 prosecuting attorney in the district where the convicted  
20 person was tried. The appointment shall be made no later than  
21 20 days after the receipt of the request.

22 (b) The senior circuit court judge shall enter an  
23 order setting the case for hearing at the special session of  
24 circuit court for which the three-judge panel is commissioned  
25 and shall require the state to file a response to the  
26 commission's opinion within 90 days of the date of the order.  
27 Such response, at the time of original filing or through

1 amendment at any time before or during the proceedings, may  
2 include joining the defense in a motion to dismiss the charges  
3 with prejudice on the basis of innocence.

4 (c) The district attorney of the district of  
5 conviction, or the district attorney's designee, shall  
6 represent the state at the hearing before the three-judge  
7 panel, except as otherwise provided by this section.

8 (d) The three-judge panel shall conduct an  
9 evidentiary hearing. At the hearing, the court, and the  
10 defense and prosecution through the court, may compel the  
11 testimony of any witness, including the convicted person. All  
12 credible, verifiable evidence relevant to the case, even if  
13 considered by a jury or judge in a prior proceeding, may be  
14 presented during the hearing. The convicted person may not  
15 assert any privilege or prevent a witness from testifying. The  
16 convicted person has a right to be present at the evidentiary  
17 hearing and to be represented by counsel. A waiver of the  
18 right to be present shall be in writing.

19 (e) The senior circuit court judge on the panel  
20 shall determine the convicted person's indigency status and,  
21 if appropriate, enter an order for the appointment of counsel.  
22 The court may also enter an order relieving an indigent  
23 convicted person of all or a portion of the costs of the  
24 proceedings.

25 (f) The clerk of court shall provide written  
26 notification to the victim 30 days before any case-related  
27 hearings.

1 (g) Upon the motion of either party, the senior  
2 judge of the panel may direct the attorneys for the parties to  
3 appear before him or her for a conference on any matter in the  
4 case.

5 (h) The three-judge panel shall rule as to whether  
6 the convicted person has proved by clear and convincing  
7 evidence that the convicted person is innocent of the charges.  
8 Such a determination shall require a unanimous vote. If the  
9 vote is unanimous, the panel shall enter dismissal of all or  
10 any of the charges. If the vote is not unanimous, the panel  
11 shall deny relief.

12 Section 11. The Alabama Innocence Inquiry Commission  
13 shall report to the Chairs of the House and Senate Judiciary  
14 Committees annually by the third legislative day. The report  
15 shall recommend the funding needed by the commission to meet  
16 its responsibilities under this act.

17 Section 12. No execution date shall be set for any  
18 person while that person's case is pending before the  
19 commission.

20 Section 13. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.



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Senate

Read for the first time and referred to the Senate committee on Judiciary.....	16-FEB-16
Reported from Judiciary as Favorable with 1 sub- stitute.....	25-FEB-16
Read for the third time and passed as amended ....	07-APR-16

Yeas 20  
Nays 6

Patrick Harris  
Secretary