

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1410 Session of  
2010

INTRODUCED BY STACK, WASHINGTON, FERLO, HUGHES AND GREENLEAF,  
JUNE 16, 2010

REFERRED TO JUDICIARY, JUNE 16, 2010

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) A judge of a court of common pleas.
- (2) A district attorney.
- (3) A crime victim advocate.
- (4) A licensed attorney engaged in the practice of criminal defense law in this Commonwealth.
- (5) A member of the public who is not an attorney or an officer or employee of the judicial branch.
- (6) A law enforcement officer.
- (7) Two at-large members.

(b) Initial appointments.--

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

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

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

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

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

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

(7) The appointing authority shall also consider geographic location, gender and racial diversity in making the appointments and shall make a good faith effort to

1       appoint members with different perspectives of the justice  
2       system.

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

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

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

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

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

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

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

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

26       (d) Alternate members.--

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

1 case. The alternate members shall have the same  
2 qualifications for appointment as the original member.

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

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

11 (f) Organization and meetings.--The commission shall have an  
12 organization meeting at the call of the chair but no later than  
13 January 31, 2011. The commission shall meet a minimum of once  
14 every six months and may also meet more often at the call of the  
15 chair. The commission shall meet at such time and place as  
16 designated by the chair. Notice of the meetings shall be given  
17 at such time and manner as provided by the rules of the  
18 commission. A majority of the members shall constitute a quorum.  
19 All commission votes shall be by majority vote.

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

24 Section 5. Executive director and other staff.

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

30 (1) Assist the commission in developing rules and

standards for cases accepted for review.

(2) Coordinate investigation of cases accepted for review.

(3) Maintain records for all case investigations.

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

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

(6) Any other duties assigned by the commission.

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

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

#### Section 6. Duties of commission.

The commission shall have the following powers and duties:

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

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

(3) Coordinate the investigation of cases accepted for

1 review.

2 (4) Maintain records for all case investigations.

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

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

9 Section 7. Claims of innocence.

10 (a) General rule.--

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

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

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

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

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

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

1           (3) (i) The convicted person shall have the right to  
2           advice of counsel prior to the execution of the agreement  
3           and, if a formal inquiry is granted, throughout the  
4           formal inquiry.

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

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

13       (c) Formal inquiry.--

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

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

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

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

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



1 (e) Subpoenas.--While performing duties for the commission,  
2 the executive director or his designee may serve subpoenas.

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

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

12 Section 8. Commission proceedings.

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

20 (b) Witnesses and immunity.--

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

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

30 (3) The chair shall not order the witness to testify or

1 produce other information that would incriminate the witness  
2 in the prosecution of any offense other than an offense for  
3 which the witness is granted immunity under this subsection.

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

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

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

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

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

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

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

29 (4) If the commission determines that the victim's  
30 presence may interfere with the investigation, the commission

1       may close any portion of the proceedings to the victim.

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

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

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

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

30       (ii) In a case where the convicted person entered and

1           was convicted on a plea of guilty, if fewer than all of  
2           the eight voting members of the commission vote that  
3           there is sufficient evidence of factual innocence to  
4           merit judicial review, the commission shall conclude  
5           there is insufficient evidence of factual innocence to  
6           merit judicial review.

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

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

16          (e) Referral of wrongdoing.--

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

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

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

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

29               (2) All records and proceedings of the commission are  
30               confidential and are exempt from public record and public

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

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

10 Section 9. Postcommission three-judge panel.

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

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

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

30 (d) Evidentiary hearing.--

1           (1) The three-judge panel shall conduct an evidentiary  
2 hearing. At the hearing, the court may compel the testimony  
3 of any witness, including the convicted person.

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

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

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

13           (1) For the appointment of counsel.

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

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

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

23          (h) Ruling.--

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

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

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

1 relief.

2 Section 10. Further review.

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

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

11 Section 11. Reports.

12 Beginning January 1, 2012, and annually thereafter, the  
13 commission shall report on its activities to the Governor, the  
14 Attorney General, the chairman and minority chairman of the  
15 Judiciary Committee of the Senate, the chairman and minority  
16 chairman of the Judiciary Committee of the House of  
17 Representatives, the Department of Corrections, the Pennsylvania  
18 Commission on Crime and Delinquency and the Pennsylvania Board  
19 of Probation and Parole. The report may contain recommendations  
20 of any needed legislative changes related to the activities of  
21 the commission.

22 Section 12. Effective date.

23 This act shall take effect in 60 days.