**South Carolina General Assembly**

118th Session, 2009-2010

**S. 210**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Jackson

Document Path: l:\council\bills\swb\5624cm09.docx

Introduced in the Senate on January 13, 2009

Currently residing in the Senate Committee on **Judiciary**

Summary: Innocence Inquiry Commission

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/17/2008 Senate Prefiled

12/17/2008 Senate Referred to Committee on **Judiciary**

1/13/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\01-13-09.docx)‑171

1/13/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\01-13-09.docx)‑171

**VERSIONS OF THIS BILL**

[12/17/2008](file:///p:\pprever\2009-10\210_20081217.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 4 TO CHAPTER 28, TITLE 17 SO AS TO ESTABLISH THE “SOUTH CAROLINA INNOCENCE INQUIRY COMMISSION” WHOSE PURPOSE IT IS TO INVESTIGATE AND DETERMINE CREDIBLE CLAIMS OF FACTUAL INNOCENCE OF A CONVICTION THAT REQUIRES AN INDIVIDUAL TO VOLUNTARILY WAIVE CERTAIN RIGHTS AND PRIVILEGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 28, Title 17 of the 1976 Code is amended by adding:

“Article 4

South Carolina Innocence Inquiry Commission

Section 17‑28‑410. As contained in this chapter:

(1) ‘claim of factual innocence’ means a claim on behalf of a living person convicted of a felony in South Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post‑conviction relief;

(2) ‘commission’ means the South Carolina Innocence Inquiry Commission established by this chapter;

(3) ‘director’ means the Director of the South Carolina Innocence Inquiry Commission; and

(4) ‘victim’ means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

Section 17‑28‑420. This chapter establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that requires an individual to voluntarily waive rights and privileges as described in this chapter.

Section 17‑28‑430. (A) There is established the South Carolina Innocence Inquiry Commission. The South Carolina Innocence Inquiry Commission is an independent commission within the Judicial Department for administrative purposes.

(B) The Court Administration shall provide administrative support to the commission as needed. The director of the Office of Court Administration shall not reduce or modify the budget of the commission or use funds appropriated to the commission without the approval of the commission.

Section 17‑28‑440. (A) The commission shall consist of eight voting members as follows:

(1) a circuit court judge;

(2) a prosecuting attorney;

(3) a victim advocate;

(4) a person engaged in the practice of criminal defense law; (5) a public member who is not an attorney and who is not an officer or employee of the Judicial Department;

(6) a sheriff holding office at the time of his appointment; and

(7) the vocations of the two remaining appointed voting members are at the discretion of the Chief Justice.

(B) The Chief Justice of the South Carolina Supreme Court shall make the initial appointment for members identified in items (4) through (6) of subsection (A). The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in items (1) through (3) of subsection (A). After an appointee has served his first three‑year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by item (7) of subsection (A) which must be appointed by the Chief Justice.

(C) The appointing authority shall also appoint alternate commission members for the commission members he has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a case. The alternate members shall have the same qualifications for appointment as the original members. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(D) The circuit court judge who is appointed as a member shall serve as chairman of the commission. The commission shall have its initial meeting no later than January 31, 2008, at the call of the chairman. The commission shall meet a minimum of once every six months and may meet more often at the call of the chairman. The commission shall meet at a time and place as designated by the chairman. Notice of the meetings must be given at a time and manner as provided by the rules of the commission. A majority of the members shall constitute a quorum. All commission votes must be by majority vote.

Section 17‑28‑450. (A) Of the initial members, two appointments must be for one‑year terms, three appointments must be for two‑year terms, and three appointments must be for three‑year terms. Thereafter, all terms must be for three years. Members of the commission shall serve no more than two three‑year terms plus any initial term of less than three years. Unless provided otherwise by this chapter, all terms of members begin on January first and end on December thirty-first.

(B) Members serving by virtue of elective or appointive office, except for the sheriff, may serve only as long as the office holders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term must be filled in the manner provided for the members first appointed.

(C) The commission members shall receive no salary for serving. All commission members shall receive necessary subsistence and travel expenses.

Section 17‑28‑460. The commission shall employ a director. The director must be an attorney licensed to practice in South Carolina at the time of appointment and at all times during service as director. The director shall assist the commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining commission investigations and recommendations to the trial court, and 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.

(B) Subject to the approval of the chairman, the director 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.

Section 17‑28‑470. The commission shall have the following duties and powers:

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

(2) to conduct inquiries into claims of factual innocence, with priority given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence;

(3) to coordinate the investigation of cases accepted for review; (4) to maintain records for all case investigations;

(5) to prepare written reports outlining commission investigations and recommendations to the trial court at the completion of each inquiry; and

(6) to apply for and accept any funds that may become available for the commission’s work from government grants, private gifts, donations, or bequests from any source.

Section 17‑28‑480. (A) A claim of factual innocence may be referred to the commission by any court, person, or agency. The commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding another claim of factual innocence is in the discretion of the commission. The commission may informally screen and dismiss a case summarily at its discretion. (B) A formal inquiry into a claim of innocence must not be made by the commission unless the director or the director’s designee first obtains a signed agreement from the convicted person in which the convicted person waives his procedural safeguards and privileges, agrees to cooperate with the commission, and agrees to provide full disclosure regarding all inquiry requirements of the commission. The waiver under this subsection does not apply to matters unrelated to a convicted person’s claim of innocence. The convicted person shall have the right to advice of counsel before the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person’s counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the commission chairman shall determine the convicted person’s indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(C) If a formal inquiry regarding a claim of factual innocence is granted, the director shall use all due diligence to notify the victim in the case and explain the inquiry process. The commission shall give the victim notice that he has the right to present his views and concerns throughout the commission’s investigation.

(D) The commission may use any measure provided under law to obtain information necessary to its inquiry. The commission may issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the court for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the commission’s authority or the commission’s access to evidence must be heard by the commission chairman in the chairman’s judicial capacity, including any in‑camera review required law.

(E) While performing duties for the commission, the director or his designee may serve subpoenas or other process issued by the commission throughout the State.

(F) All state discovery and disclosure statutes in effect at the time of formal inquiry are enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

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

Section 17‑28‑490. (A) At the completion of a formal inquiry, all relevant evidence must be presented to the full commission. As part of its proceedings, the commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the commission. Any public hearing held in accordance with this section is subject to the commission’s rules of operation.

(B) The director shall use all due diligence to notify the victim at least thirty days before any proceedings of the full commission held in regard to the victim’s case. The commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this chapter. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the commission at least ten days in advance of the proceedings of his intent to attend. If the commission determines that the victim’s presence may interfere with the investigation, the commission may close any portion of the proceedings to the victim.

(C) After hearing the evidence, the full commission shall vote to establish further case disposition as provided by this section. All eight voting members of the commission shall participate in that vote.

(D) Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case must be referred to the senior resident circuit court judge in the circuit of original jurisdiction. This must be done by filing with the clerk of court in the county of original jurisdiction the opinion of the commission with supporting findings of fact, as well as the record in support of the opinion, with service on the solicitor in non‑capital cases and service on both the solicitor and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case must be referred to the senior resident circuit court judge in the circuit of original jurisdiction.

(E) If less than five of the eight voting members of the commission, or in cases where the convicted person entered and was convicted on a guilty plea and less than all of the eight voting members of the commission conclude there is sufficient evidence of factual innocence to merit judicial review, the commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of the circuit court in the county of original jurisdiction, with a copy to the solicitor and the senior circuit court judge.

(F) The director of the commission shall use all due diligence to notify immediately the victim of the commission’s conclusion in a case.

(G) Evidence of criminal acts, professional misconduct, or other wrong doing disclosed through formal inquiry or commission proceedings must be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or commission proceedings must be disclosed to the convicted person and the convicted person’s counsel, if the convicted person has counsel.

(H) All proceedings of the commission must be recorded and transcribed as part of the record. All commission member votes must be recorded in the record. All records and proceedings of the commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the commission’s conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the commission and a full transcript of the hearing before the commission, become public at the time of referral to the circuit court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (D) of this section.

Section 17‑28‑500. (A) If the commission concludes there is sufficient evidence of factual innocence to merit judicial review, the chairman of the commission shall request the Chief Justice to appoint a three‑judge panel of circuit court judges, not to include a judge that has had substantial previous involvement in the case, and issue commissions to the members of the three‑judge panel to convene a special session of the circuit court of the original jurisdiction to hear evidence relevant to the commission’s recommendation. The circuit judge of the panel shall preside.

(B) The senior circuit court judge shall enter an order setting the case for hearing at the special session of circuit court for which the three‑judge panel is commissioned and shall require the State to file a response to the commission’s opinion within sixty days of the date of the order.

(C) The solicitor of the circuit of conviction, or his designee, shall represent the State at the hearing before the three‑judge panel.

(D) The three‑judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the convicted person. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present must be in writing.

(E) The senior circuit court judge shall determine the convicted person’s indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(F) The clerk of court shall provide written notification to the victim thirty days prior to any case‑related hearings.

(G) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him for a conference on any matter in the case.

(H) The three‑judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. This determination requires an unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

Section 17‑28‑510. (A) Unless otherwise authorized by this chapter, the decisions of the commission and of the three‑judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(B) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person’s rights to other postconviction relief.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑