

Senate Bill 290

By: Senators Ramsey, Sr. of the 43rd, Brown of the 26th, Fort of the 39th, Orrock of the 36th, Thompson of the 5th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to
2 create the Georgia Innocence Inquiry Commission; to provide a purpose; to define certain
3 terms; to provide for membership and appointment of members; to provide for administrative
4 support; to provide for a director and staff and duties of the director; to provide for powers
5 and duties of the commission; to provide for referrals of claims of innocence before the
6 commission; to provide for inquiries; to provide for a waiver of procedural safeguards and
7 privileges by the convicted person; to provide for discovery of information; to provide for
8 hearings; to provide for judicial review; to provide for a report to the General Assembly; to
9 provide for a contingency effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by adding
13 a new chapter to read as follows:

14 CHAPTER 25

15 15-25-1.

16 This chapter establishes an extraordinary procedure to investigate and determine credible
17 claims of factual innocence that shall require an individual to voluntarily waive rights and
18 privileges as described in this chapter.

19 15-25-2.

20 As used in this chapter, the term:

21 (1) 'Claim of factual innocence' means a claim on behalf of a living person convicted of
22 a felony in the superior court, asserting the complete innocence of any criminal
23 responsibility for the felony for which the person was convicted and for any other

24 reduced level of criminal responsibility relating to the crime, and for which there is some
 25 credible, verifiable evidence of innocence that has not previously been presented at trial
 26 or considered at a hearing granted through post-conviction relief.

27 (2) 'Commission' means the Georgia Innocence Inquiry Commission established by this
 28 chapter.

29 (3) 'Director' means the director of the Georgia Innocence Inquiry Commission.

30 (4) 'Victim' means the victim of the crime or, if the victim of the crime is deceased, the
 31 next of kin of the victim.

32 15-25-3.

33 (a) There is established the Georgia Innocence Inquiry Commission. The commission
 34 shall be an independent commission under the judicial branch for administrative purposes.

35 (b) The Administrative Office of the Courts shall provide administrative support to the
 36 commission as needed. The director of the Administrative Office of the Courts shall not
 37 reduce or modify the budget of the commission or use funds appropriated to the
 38 commission without the approval of the commission.

39 15-25-4.

40 (a) The commission shall consist of eight voting members as follows:

41 (1) One shall be a superior court judge;

42 (2) One shall be a prosecuting attorney;

43 (3) One shall be a victim advocate;

44 (4) One shall be engaged in the practice of criminal defense law;

45 (5) One shall be a member of the public who is not an attorney and who is not an officer
 46 or employee of the judicial branch;

47 (6) One shall be a sheriff holding office at the time of his or her appointment; and

48 (7) The vocations of the two remaining appointed voting members shall be at the
 49 discretion of the Chief Justice.

50 (b) The Chief Justice of the Supreme Court of Georgia shall make the initial appointment
 51 for the members identified in paragraphs (4) through (6) of subsection (a) of this Code
 52 section. The Chief Judge of the Court of Appeals shall make the initial appointment for
 53 the members identified in paragraphs (1) through (3) of subsection (a) of this Code section.

54 After an appointee has served his or her first three-year term, the subsequent appointment
 55 shall be by the Chief Justice or Chief Judge who did not make the previous appointment.

56 Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for
 57 the two discretionary appointments identified by paragraph (7) of subsection (a) of this
 58 Code section, which shall be appointed by the Chief Justice.

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

67 (d) The superior court judge who is appointed as a member under subsection (a) of this
68 Code section shall serve as chairperson of the commission. The commission shall have its
69 initial meeting no later than six months following the date this chapter becomes effective,
70 at the call of the chairperson. The commission shall meet a minimum of once every six
71 months and may also meet more often at the call of the chairperson. The commission shall
72 meet at such time and place as designated by the chairperson. Notice of the meetings shall
73 be given at such time and manner as provided by the rules of the commission. A majority
74 of the members shall constitute a quorum. All commission votes shall be by majority vote.

75 15-25-5.

76 (a) Of the initial members, two appointments shall be for one-year terms, three
77 appointments shall be for two-year terms, and three appointments shall be for three-year
78 terms. Thereafter, all terms shall be for three years. Members of the commission shall
79 serve no more than two consecutive three-year terms plus any initial term of less than three
80 years. Unless provided otherwise by this chapter, all terms of members shall begin on
81 January 1 and end on December 31. Members serving by virtue of elective or appointive
82 office may serve only so long as the officeholders hold those respective offices. The Chief
83 Justice may remove members with cause. Vacancies occurring before the expiration of a
84 term shall be filled in the manner provided for the members first appointed.

85 (b) The commissioners shall receive no salary but shall be reimbursed for their reasonable
86 and necessary expenses actually incurred in the performance of their functions; provided,
87 however, that such expenses shall not exceed those allowed to members of the General
88 Assembly.

89 15-25-6.

90 (a) The commission shall employ a director. The director shall be an attorney licensed to
91 practice in this state at the time of appointment and at all times during service as director.
92 The director shall assist the commission in developing rules and standards for cases
93 accepted for review, coordinate investigation of cases accepted for review, maintain

94 records for all case investigations, prepare reports outlining commission investigations and
 95 recommendations to the trial court, and apply for and accept on behalf of the commission
 96 any funds that may become available from government grants, private gifts, donations, or
 97 bequests from any source.

98 (b) Subject to the approval of the chairperson, the director shall employ such other staff
 99 and shall contract for services as is necessary to assist the commission in the performance
 100 of its duties and as funds permit.

101 (c) The commission may, with the approval of the Legislative Services Committee, meet
 102 in the Coverdell Legislative Office Building or may meet in an area provided by the
 103 director of the Administrative Office of the Courts. The director of the Administrative
 104 Office of the Courts shall provide office space for the commission and the commission
 105 staff.

106 15-25-7.

107 The commission shall have the following duties and powers:

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

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

113 (3) To coordinate the investigation of cases accepted for review;

114 (4) To maintain records for all case investigations;

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

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

119 15-25-8.

120 (a) A claim of factual innocence may be referred to the commission by any court, person,
 121 or agency. The commission shall not consider a claim of factual innocence if the convicted
 122 person is deceased. The determination of whether to grant a formal inquiry regarding any
 123 other claim of factual innocence is in the discretion of the commission. The commission
 124 may informally screen and dismiss a case summarily at its discretion.

125 (b) No formal inquiry into a claim of factual innocence shall be made by the commission
 126 unless the director or the director's designee first obtains a signed agreement from the
 127 convicted person in which the convicted person waives his or her procedural safeguards
 128 and privileges, agrees to cooperate with the commission, and agrees to provide full

129 disclosure regarding all inquiry requirements of the commission. The waiver under this
130 subsection shall not apply to matters unrelated to a convicted person's claim of factual
131 innocence. The convicted person shall have the right to advice of counsel prior to the
132 execution of the agreement and, if a formal inquiry is granted, throughout the formal
133 inquiry. If counsel represents the convicted person, then the convicted person's counsel
134 shall be present at the signing of the agreement. If counsel does not represent the convicted
135 person, the commission chairperson shall determine the convicted person's indigency status
136 and, if appropriate, enter an order for the appointment of counsel for the purpose of
137 advising on the agreement.

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

142 (d) The commission may use any measure provided in Title 17, relating to criminal
143 procedure, and Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' to obtain information
144 necessary to its inquiry. The commission may also do any of the following: issue process
145 to compel the attendance of witnesses and the production of evidence, administer oaths,
146 petition the Superior Court of Fulton County or of the original jurisdiction for enforcement
147 of process or for other relief, and prescribe its own rules of procedure. All challenges with
148 regard to the commission's authority or the commission's access to evidence shall be heard
149 by the commission chairperson in the chairperson's judicial capacity.

150 (e) While performing duties for the commission, the director or the director's designee may
151 serve subpoenas or other process issued by the commission throughout the state in the same
152 manner and with the same effect as an officer authorized to serve process of the superior
153 court.

154 (f) State discovery and disclosure statutes in effect at the time of formal inquiry shall be
155 enforceable as if the convicted person were currently being tried for the charge for which
156 the convicted person is claiming innocence.

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

160 15-25-9.

161 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the
162 full commission. As part of its proceedings, the commission may conduct public hearings.
163 The determination as to whether to conduct public hearings shall be solely in the discretion

164 of the commission. Any public hearing held in accordance with this subsection shall be
165 subject to the commission's rules of operation.

166 (b) The commission may compel the testimony of any witness. If a witness asserts his or
167 her privilege against self-incrimination in a proceeding under this chapter, the commission
168 chairperson, in the chairperson's judicial capacity, may order the witness to testify or
169 produce other information if the chairperson first determines that the witness's testimony
170 will likely be material to reach a correct factual determination in the case at hand.
171 However, the commission chairperson shall not order the witness to testify or produce
172 other information that would incriminate the witness in the prosecution of any offense other
173 than an offense for which the witness is granted immunity under this subsection. The order
174 shall prevent a prosecutor from using the compelled testimony, or evidence derived
175 therefrom, to prosecute the witness for previous false statements made under oath by the
176 witness in prior proceedings. The prosecutor has a right to be heard by the commission
177 chairperson prior to the chairperson issuing the order. Once granted, the immunity shall
178 apply throughout all proceedings conducted pursuant to this chapter. The limited immunity
179 granted under this subsection shall not prohibit prosecution of statements made under oath
180 that are unrelated to the commission's formal inquiry, false statements made under oath
181 during proceedings under this chapter, or prosecution for any other crimes.

182 (c) The director shall use all due diligence to notify the victim at least 30 days prior to any
183 proceedings of the full commission held in regard to the victim's case. The commission
184 shall notify the victim that the victim is permitted to attend proceedings otherwise closed
185 to the public, subject to any limitations imposed by this chapter. If the victim plans to
186 attend proceedings otherwise closed to the public, the victim shall notify the commission
187 at least ten days in advance of the proceedings of his or her intent to attend. If the
188 commission determines that the victim's presence may interfere with the investigation, the
189 commission may close any portion of the proceedings to the victim.

190 (d) After hearing the evidence, the full commission shall vote to establish further case
191 disposition as provided by this subsection. All eight voting members of the commission
192 shall participate in that vote. Except in cases where the convicted person entered and was
193 convicted on a plea of guilty, if five or more of the eight voting members of the
194 commission conclude there is sufficient evidence of factual innocence to merit judicial
195 review, the case shall be referred to the senior superior court judge in the district of original
196 jurisdiction by filing with the clerk of court the opinion of the commission with supporting
197 findings of fact, as well as the record in support of such opinion, with service on the district
198 attorney in noncapital cases and service on both the district attorney and Attorney General
199 in capital cases. In cases where the convicted person entered and was convicted on a plea
200 of guilty, if all of the eight voting members of the commission conclude there is sufficient

201 evidence of factual innocence to merit judicial review, the case shall be referred to the
202 senior superior court judge in the district of original jurisdiction. If less than five of the
203 eight voting members of the commission or, in cases where the convicted person entered
204 and was convicted on a guilty plea, less than all of the eight voting members of the
205 commission conclude there is sufficient evidence of factual innocence to merit judicial
206 review, the commission shall conclude there is insufficient evidence of factual innocence
207 to merit judicial review. The commission shall document that opinion, along with
208 supporting findings of fact, and file those documents and supporting materials with the
209 clerk of superior court in the district of original jurisdiction, with a copy to the district
210 attorney and the senior superior court judge. The director of the commission shall use all
211 due diligence to notify immediately the victim of the commission's conclusion in a case.
212 (e) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed
213 through formal inquiry or commission proceedings shall be referred to the appropriate
214 authority. Evidence favorable to the convicted person disclosed through formal inquiry or
215 commission proceedings shall be disclosed to the convicted person and the convicted
216 person's counsel, if the convicted person has counsel.
217 (f) All proceedings of the commission shall be recorded and transcribed as part of the
218 record. All commission member votes shall be recorded in the record. All records and
219 proceedings of the commission shall be confidential and shall be exempt from public
220 record and public meeting laws, except that the supporting records for the commission's
221 conclusion that there is sufficient evidence of factual innocence to merit judicial review,
222 including all files and materials considered by the commission and a full transcript of the
223 hearing before the commission, shall become public at the time of referral to the superior
224 court. Commission records for conclusions of insufficient evidence of factual innocence
225 to merit judicial review shall remain confidential, except as provided in subsection (e) of
226 this Code section.

227 15-25-10.

228 (a) If the commission concludes there is sufficient evidence of factual innocence to merit
229 judicial review, the chairperson or a person designated by the chairperson shall present
230 such evidence to the full court. If the court concludes that there is sufficient evidence of
231 factual innocence, the court shall remand the case to the original trial court for further
232 action.

233 (b) If there is an allegation of or evidence of prosecutorial misconduct in the case, the
234 chairperson of the commission or the district attorney of the district of conviction may
235 request the director of the Administrative Office of the Courts to appoint a special
236 prosecutor to represent the state in lieu of the district attorney of the district of conviction

237 or the district attorney's designee. The request for the special prosecutor shall be made
238 within 20 days of the filing of the commission's opinion finding sufficient evidence of
239 factual innocence to merit judicial review. Upon receipt of a request under this subsection
240 to appoint a special prosecutor, the director of the Administrative Office of the Courts may
241 temporarily assign a district attorney, assistant district attorney, or other qualified attorney,
242 including one from the prosecutorial district where the convicted person was tried, to
243 represent the state at the hearing before the superior court judge. However, the director of
244 the Administrative Office of the Courts shall not appoint as special prosecutor any attorney
245 who prosecuted or assisted with the prosecution in the trial of the convicted person. The
246 appointment shall be made no later than 20 days after the receipt of the request.

247 (c) The superior court judge shall enter an order setting the case for hearing and shall
248 require the state to file a response to the commission's opinion within 90 days of the date
249 of the order. Such response, at the time of original filing or through amendment at any
250 time before or during the proceedings, may include joining the defense in a motion to
251 dismiss the charges with prejudice on the basis of innocence.

252 (d) The district attorney of the district of conviction, or the district attorney's designee,
253 shall represent the state at the hearing before the superior court judge, except as otherwise
254 provided by this Code section.

255 (e) The superior court judge shall conduct an evidentiary hearing. At the hearing, the
256 court, and the defense and prosecution through the court, may compel the testimony of any
257 witness, including the convicted person. All evidence relevant to the case, even if
258 considered by a jury or judge in a prior proceeding, may be presented during the hearing.
259 The convicted person shall not assert any privilege or prevent a witness from testifying.
260 The convicted person shall have a right to be present at the evidentiary hearing and to be
261 represented by counsel. A waiver of the right to be present shall be in writing.

262 (f) The superior court judge shall determine the convicted person's indigency status and,
263 if appropriate, enter an order for the appointment of counsel. The court may also enter an
264 order relieving an indigent convicted person of all or a portion of the costs of the
265 proceedings.

266 (g) The clerk of court shall provide written notification to the victim 30 days prior to any
267 case related hearings.

268 (h) Upon the motion of either party, the superior court judge may direct the attorneys for
269 the parties to appear before him or her for a conference on any matter in the case.

270 (i) The superior court judge shall rule as to whether the convicted person has proved by
271 clear and convincing evidence that the convicted person is innocent of the charges. If the
272 ruling is in the affirmative, the court shall enter dismissal of all or any of the charges. A

273 final ruling of the superior court shall be appealable in the same manner as a final order of
274 conviction.

275 15-25-11.

276 (a) Unless otherwise authorized by this chapter, the decisions of the commission shall be
277 final and shall not be subject to further review by appeal, certification, writ, motion, or
278 otherwise.

279 (b) A claim of factual innocence asserted through the Georgia Innocence Inquiry
280 Commission shall not adversely affect the convicted person's rights to other post-conviction
281 relief.

282 15-25-12.

283 Beginning on the first day of January following the first full year of the commission's
284 existence, and annually thereafter, the commission shall report on its activities to the Senate
285 Judiciary Committee and the House Committee on Judiciary. The report may contain
286 recommendations of any needed legislative changes related to the activities of the
287 commission. The report shall recommend the funding needed by the commission, the
288 district attorneys, and the Georgia Bureau of Investigation in order to meet their
289 responsibilities under this chapter. Recommendations concerning the district attorneys or
290 the Georgia Bureau of Investigation shall only be made after consultations with the
291 prosecuting attorneys council and the Attorney General."

292 **SECTION 2.**

293 This Act shall become effective only upon the effective date of a specific appropriation of
294 funds for the purposes of this Act as expressed in a line item making specific reference to
295 such funds in a General Appropriations Act enacted by the General Assembly.

296 **SECTION 3.**

297 All laws and parts of laws in conflict with this Act are repealed.