

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 1021  
Committee Substitute Favorable 5/12/16  
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Short Title: Amend Innocence Commission Statutes.

(Public)

Sponsors:

Referred to:

May 4, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE  
INNOCENCE INQUIRY COMMISSION, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1465(a) reads as rewritten:

"(a) The Commission shall employ a ~~Director~~ Director, who shall report to the Director of the Administrative Office of the Courts. The Director shall be an attorney licensed to practice in North 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 devises from any source. The Director shall establish procedures for Commission staff to report administrative details to the Director of the Administrative Office of the Courts."

**SECTION 2.** G.S. 15A-1467 reads as rewritten:

**"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence for any conviction may be referred to the Commission by any court, a State or local agency, ~~a claimant~~, or a claimant's counsel. A claim of factual innocence for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony may be made directly by the claimant. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. A claimant who received notice pursuant to subsection (c1) of this section and did not make a claim of factual innocence shall be barred from investigation of a claim of factual innocence by the Commission absent a showing of good cause and approval of the Commission Chair. The determination of whether to grant a formal inquiry regarding any other 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) No formal inquiry into a claim of innocence shall 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 or her procedural safeguards and privileges, agrees to



1 cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry  
2 requirements of the Commission. The waiver under this subsection does not apply to matters  
3 unrelated to a convicted person's claim of innocence. The waiver under this subsection shall not be  
4 construed to be a waiver of the convicted person's right to be heard by the court before the court  
5 issues any protective order regarding any portion of the investigative file relating to the convicted  
6 person's claim of factual innocence. The convicted person shall have the right to advice of counsel  
7 prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal  
8 inquiry. If counsel represents the convicted person, then the convicted person's counsel must be  
9 present at the signing of the agreement. If counsel does not represent the convicted person, the  
10 Commission Chair shall determine the convicted person's indigency status and, if appropriate,  
11 enter an order for the appointment of counsel by Indigent Defense Services for the purpose of  
12 advising on the agreement. If the convicted person has requested a specific attorney with  
13 knowledge of the case, the Director shall inform Indigent Defense Services of that request for their  
14 consideration.

15 ...

16 (c1) If a formal inquiry regarding a claim of factual innocence is granted, the Commission  
17 shall use all due diligence to notify each codefendant of the claim, that an investigation will be  
18 conducted, and that if the codefendant wishes to also file a claim, they must do so within 60 days  
19 from receipt of the notice or their claim may be barred from future investigation by the  
20 Commission.

21 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall  
22 provide a confidential case status update for each case in formal inquiry to the District Attorney,  
23 the convicted person, or counsel, if any, and referring counsel, if any, at least once every six  
24 months. The case status update shall include a summary of the actions taken since the last update.

25 ...."

26 **SECTION 3.** G.S. 15A-1468 is amended by adding a new subsection to read:

27 "(f) At any point in the formal inquiry regarding a claim of factual innocence, the District  
28 Attorney and the convicted person or the convicted person's counsel may agree that there is  
29 sufficient evidence of factual innocence to merit judicial review by the three-judge panel and  
30 bypass the eight-member panel. The Director and the Chair of the Commission shall be notified in  
31 writing of any such agreement."

32 **SECTION 4.** G.S. 15A-1469 reads as rewritten:

33 "**§ 15A-1469. Postcommission three-judge panel.**

34 (a) If the Commission ~~concludes~~—concludes, or the parties agree pursuant to  
35 G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the  
36 Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to  
37 include any trial judge that has had substantial previous involvement in the case, and issue  
38 commissions to the members of the three-judge panel to convene a special session of the superior  
39 court of the original jurisdiction to hear evidence relevant to the Commission's recommendation.  
40 The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel  
41 within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual  
42 innocence to merit judicial review.

43 ...

44 (e) The senior resident superior court judge shall determine the convicted person's  
45 indigency status and, if appropriate, enter an order for the appointment of ~~counsel~~—counsel by  
46 Indigent Defense Services. If the convicted person has requested a specific attorney with  
47 knowledge of the case, the Director shall inform Indigent Defense Services of that request for their  
48 consideration. The court may also enter an order relieving an indigent convicted person of all or a  
49 portion of the costs of the proceedings.

50 ...."

51 **SECTION 5.** G.S. 15A-1471 is amended by adding a new subsection to read:

1        "(b1) The Commission shall notify the District Attorney or designee, and the convicted  
2 person or counsel, before requesting any protective order regarding any portion of the  
3 investigative file relating to the convicted person's claim of factual innocence. The District  
4 Attorney, or designee, and the convicted person, or counsel, shall be given the right to be heard by  
5 the court before the court issues a protective order regarding any portion of the investigative file  
6 relating to the convicted person's claim of factual innocence."

7            **SECTION 6.** G.S. 15A-1460 reads as rewritten:

8        **"§ 15A-1460. Definitions.**

9        The following definitions apply in this Article:

- 10            (1) "Claim of factual innocence" means a claim on behalf of a living person  
11            convicted of a felony in the General Court of Justice of the State of North  
12            Carolina, asserting the complete innocence of any criminal responsibility for  
13            the felony for which the person was convicted and for any other reduced level  
14            of criminal responsibility relating to the crime, and for which there is some  
15            credible, verifiable evidence of innocence that has not previously been  
16            presented at trial or considered at a hearing granted through postconviction  
17            relief.
- 18            (1a) "Claimant" means a person asserting that he or she is completely innocent of  
19            any criminal responsibility for a felony crime upon which the person was  
20            convicted and for any other reduced level of criminal responsibility relating to  
21            the crime.
- 22            (2) "Commission" means the North Carolina Innocence Inquiry Commission  
23            established by this Article.
- 24            (3) "Director" means the Director of the North Carolina Innocence Inquiry  
25            Commission.
- 26            (3a) "Formal inquiry" means the stage of an investigation when the Commission has  
27 entered into a signed agreement with the original claimant and the Commission  
28 has made efforts to notify the victim.
- 29            (4) "Victim" means the victim of the crime, or if the victim of the crime is  
30            deceased, the next of kin of the victim."

31            **SECTION 7.** This act becomes effective August 1, 2016, and applies to any claim  
32 filed on or after that date and any claim pending on that date. However, nothing in this act shall  
33 abate a claim filed prior to that date or invalidate any action taken on a claim prior to that date.