

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 678  
Committee Substitute Favorable 4/28/15  
Senate Judiciary I Committee Substitute Adopted 6/23/16

Short Title: Amend Innocence Commission Statutes.

(Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE  
INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1460 reads as rewritten:

**"§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North 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 postconviction relief.

(1a) "Claimant" means a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.

(3a) "Formal inquiry" means the stage of an investigation when the Commission has entered into a signed agreement with the original claimant and the Commission has made efforts to notify the victim.

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

"(a) The Commission shall employ a ~~Director~~ Director. The Director shall report to the Director of the Administrative Office of the Courts, who shall consult with the Commission chair. 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



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1 investigations and recommendations to the trial court, and apply for and accept on behalf of the  
2 Commission any funds that may become available from government grants, private gifts,  
3 donations, or devises from any source."

4 **SECTION 3.** G.S. 15A-1467 reads as rewritten:

5 "**§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and**  
6 **privileges; formal inquiry; notification of the crime victim.**

7 (a) A claim of factual innocence for any conviction may be referred to the Commission by  
8 any court, a State or local agency, ~~a claimant~~, or a claimant's counsel. A claim of factual innocence  
9 for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery  
10 pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration  
11 pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony  
12 may be made directly by the claimant. The Commission shall not consider a claim of factual  
13 innocence if the convicted person is deceased. A claimant who received notice pursuant to  
14 subsection (c1) of this section and did not make a claim of factual innocence shall be barred from  
15 investigation of a claim of factual innocence by the Commission absent a showing of good cause  
16 and approval of the Commission Chair. The determination of whether to grant a formal inquiry  
17 regarding any other claim of factual innocence is in the discretion of the Commission. The  
18 Commission may informally screen and dismiss a case summarily at its discretion.

19 (b) No formal inquiry into a claim of innocence shall be made by the Commission unless  
20 the Director or the Director's designee first obtains a signed agreement from the convicted person  
21 in which the convicted person waives his or her procedural safeguards and privileges, agrees to  
22 cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry  
23 requirements of the Commission. The waiver under this subsection does not apply to matters  
24 unrelated to a convicted person's claim of innocence. The convicted person shall have the right to  
25 advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted,  
26 throughout the formal inquiry. If counsel represents the convicted person, then the convicted  
27 person's counsel must be present at the signing of the agreement. If counsel does not represent the  
28 convicted person, the Commission Chair shall determine the convicted person's indigency status  
29 and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services for  
30 the purpose of advising on the agreement. If the convicted person has requested a specific attorney  
31 with knowledge of the case, the Director shall inform Indigent Defense Services of that request for  
32 their consideration.

33 (b1) Forensic testing and claimant interviews shall not be conducted by the Commission  
34 prior to obtaining a signed agreement from the convicted person.

35 ...

36 (c1) Absent a showing of good cause and approval of the Commission chair, if a formal  
37 inquiry regarding a claim of factual innocence is granted, the Commission shall use all due  
38 diligence to notify each codefendant of the claim that an investigation will be conducted and that if  
39 the codefendant wishes to also file a claim, they must do so within 60 days from receipt of the  
40 notice or their claim may be barred from future investigation by the Commission.

41 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall  
42 provide a confidential case status update for each case in formal inquiry to (i) the District Attorney  
43 and (ii) the convicted person, or counsel, if any, at least once every six months. If there is no  
44 defense counsel, the update shall be provided to the District Attorney, the convicted person, and  
45 referring counsel, if any. The case status update shall include a summary of the actions taken since  
46 the last update and the results of any forensic testing that has been conducted.

47 ...."

48 **SECTION 4.** G.S. 15A-1468 reads as rewritten:

49 "**§ 15A-1468. Commission proceedings.**

50 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the  
51 full Commission. ~~As part of its proceedings, the Commission may conduct public hearings. The~~

1 ~~determination as to whether to conduct public hearings is solely in the discretion of the~~  
2 ~~Commission.~~ Commission in a public hearing. Any public hearing held in accordance with this  
3 section shall be subject to the Commission's rules of operation. The Commission's rules of  
4 operation shall not exclude the district attorney or defense counsel from any portion of the hearing.

5 (a1) The Commission may compel the testimony of any witness. If a witness asserts his or  
6 her privilege against self-incrimination in a proceeding under this Article, the Commission chair,  
7 in the chair's judicial capacity, may order the witness to testify or produce other information if the  
8 chair first determines that the witness's testimony will likely be material to the investigation and  
9 necessary to reach a correct factual determination in the case at hand. However, the Commission  
10 chair shall not order the witness to testify or produce other information that would incriminate the  
11 witness in the prosecution of any offense other than an offense for which the witness is granted  
12 immunity under this subsection. The order shall prevent a prosecutor from using the compelled  
13 testimony, or evidence derived therefrom, to prosecute the witness for previous false statements  
14 made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the  
15 Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply  
16 throughout all proceedings conducted pursuant to this Article. The limited immunity granted under  
17 this section shall not prohibit prosecution of statements made under oath that are unrelated to the  
18 Commission's formal inquiry, false statements made under oath during proceedings under this  
19 Article, or prosecution for any other crimes.

20 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the  
21 holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full  
22 Commission. Only the following persons shall be notified and authorized to attend the prehearing  
23 conference: the District Attorney, or the District Attorney's designee, of the district where the  
24 claimant was convicted of the felony upon which the claim of factual innocence is based; the  
25 claimant's counsel, if any; the Chair of the Commission; the Executive Director of the  
26 Commission; and any Commission staff designated by the Director. The District Attorney, or  
27 designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the  
28 Commission that has not previously been presented to any judicial officer or body and (ii) any  
29 information that ~~he or she~~ the District Attorney, or the District Attorney's designee, deems relevant  
30 to the proceedings. ~~Prior~~ At least 72 hours prior to any Commission proceedings, the District  
31 Attorney or designee is authorized to provide the Commission with a written statement, which  
32 shall be ~~included in the record of the Commission's proceedings.~~ ~~Any statement included in the~~  
33 ~~record shall be part of the Commission's record of proceedings pursuant to subsection (e) of this~~  
34 ~~section.~~ part of the record.

35 (b) The Director shall use all due diligence to notify the victim at least 30 days prior to any  
36 proceedings of the full Commission held in regard to the victim's case. The Commission shall  
37 notify the victim that the victim is permitted to attend proceedings otherwise closed to the public,  
38 subject to any limitations imposed by this Article. If the victim plans to attend proceedings  
39 otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance  
40 of the proceedings of ~~his or her~~ the victim's intent to attend.

41 (c) After hearing the evidence, the full Commission shall vote to establish further case  
42 disposition as provided by this subsection. All eight voting members of the Commission shall  
43 participate in that vote.

44 Except in cases where the convicted person entered and was convicted on a plea of guilty, if  
45 five or more of the eight voting members of the Commission conclude there is sufficient evidence  
46 of factual innocence to merit judicial review, the case shall be referred to the senior resident  
47 superior court judge in the district of original jurisdiction by filing with the clerk of court the  
48 opinion of the Commission with supporting findings of fact, as well as the record in support of  
49 such opinion, with service on the convicted person or the convicted person's counsel, if any, and  
50 the district attorney in noncapital cases ~~and or~~ service on both the district attorney and Attorney  
51 General in capital cases. In cases where the convicted person entered and was convicted on a plea

1 of guilty, if all of the eight voting members of the Commission conclude there is sufficient  
2 evidence of factual innocence to merit judicial review, the case shall be referred to the senior  
3 resident superior court judge in the district of original jurisdiction.

4 If less than five of the eight voting members of the Commission, or in cases where the  
5 convicted person entered and was convicted on a guilty plea less than all of the eight voting  
6 members of the Commission, conclude there is sufficient evidence of factual innocence to merit  
7 judicial review, the Commission shall conclude there is insufficient evidence of factual innocence  
8 to merit judicial review. The Commission shall document that opinion, along with supporting  
9 findings of fact, and file those documents and supporting materials with the clerk of superior court  
10 in the district of original jurisdiction, with a copy to the convicted person or the convicted person's  
11 counsel, if any, the district attorney and the senior resident superior court judge.

12 The Director of the Commission shall use all due diligence to notify immediately the victim of  
13 the Commission's conclusion in a case.

14 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed  
15 through formal inquiry or Commission proceedings shall be referred to the appropriate authority.  
16 Evidence favorable to the convicted person disclosed through formal inquiry or Commission  
17 proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the  
18 convicted person has counsel.

19 (e) All proceedings of the Commission shall be recorded and transcribed as part of the  
20 record. All Commission member votes shall be recorded in the record. ~~All records and~~  
21 ~~proceedings of the Commission are confidential and are exempt from public record and public~~  
22 ~~meeting laws except that the~~ The supporting records for the Commission's conclusion that there is  
23 sufficient evidence of factual innocence to merit judicial review, including all files and materials  
24 considered by the Commission and a full transcript of the hearing before the Commission, shall  
25 become public at the time of referral to when filed with the superior court. court as required in  
26 subsection (c) of this section. Commission records for conclusions of insufficient evidence of  
27 factual innocence to merit judicial review shall remain confidential, except as provided in  
28 subsection (d) of this section.

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

34 (g) Except as otherwise provided in this section, all files and records not filed with the  
35 clerk of superior court or presented at the Commission hearings are confidential and exempt from  
36 the public record. If the Commission concludes there is sufficient evidence of factual innocence to  
37 merit judicial review, the Commission shall make a copy of the entire file available to the district  
38 attorney and defense counsel. Upon availability, the Commission shall provide the district attorney  
39 and defense counsel a copy of the uncertified and certified transcript of the Commission's  
40 proceedings. Absent a judicial finding of malicious conduct, the Commission and Commission  
41 staff shall not be civilly liable for acting in compliance with this subsection.

42 (h) With respect to the evidence presented to the three-judge panel, the district attorney  
43 and defense counsel may determine which evidence, if any, will be presented to the three-judge  
44 panel."

45 **SECTION 5.** G.S. 15A-1469 reads as rewritten:

46 **"§ 15A-1469. Postcommission three-judge panel.**

47 (a) If the Commission concludes or the district attorney and the convicted  
48 person's counsel agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual  
49 innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to  
50 appoint a three-judge panel, not to include any trial judge that has had substantial previous  
51 involvement in the case, and issue commissions to the members of the three-judge panel to

1 convene a special session of the superior court of the original jurisdiction to hear evidence relevant  
2 to the Commission's recommendation. The senior judge of the panel shall preside. The Chief  
3 Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's  
4 opinion finding sufficient evidence of factual innocence to merit judicial review.

5 (b) The senior resident superior court judge in the district of original jurisdiction shall  
6 enter an order setting the case for hearing at the special session of superior court for which the  
7 three judge panel is commissioned and shall require the State to file a response to the  
8 Commission's opinion within 90 days of the date of the order. Such response, at the time of  
9 original filing or through amendment at any time before or during the proceedings, may include  
10 joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.

11 (b1) The Commission's entire file, including files obtained from other agencies, shall be  
12 unencumbered by protective orders when transferred to the district attorney and defense counsel  
13 pursuant to subsection (g) of this section, unless either of the following apply:

14 (1) The district attorney and defense counsel have consented to a protective order  
15 over a portion of the file.

16 (2) The district attorney and defense counsel have been given an opportunity to be  
17 heard by the senior judge of the three-judge panel before a protective order is  
18 issued.

19 ...

20 (e) The senior resident superior court judge in the district of original jurisdiction shall  
21 determine the convicted person's indigency status and, if appropriate, enter an order for the  
22 appointment of ~~counsel~~ counsel by Indigent Defense Services. If the convicted person has  
23 requested a specific attorney with knowledge of the case, the Director shall inform Indigent  
24 Defense Services of that request for their consideration. The court may also enter an order  
25 relieving an indigent convicted person of all or a portion of the costs of the proceedings.

26 ...."

27 **SECTION 6.** G.S. 15A-1471 is amended by adding a new subsection to read:

28 "(e) The Commission chair, in the chair's judicial capacity, shall have the authority to direct  
29 the Commission staff to search any state or local governmental agency where files or evidence  
30 relating to a claim of factual innocence are reasonably likely to be stored. The Commission shall  
31 provide the head of the agency to be searched, or an agency designee, with proposed search  
32 procedures in advance of the search. The Commission will make reasonable efforts to  
33 accommodate the agency without compromising the validity of the search. The agency shall  
34 permit the Commission to conduct its search within two weeks of the search procedure being  
35 provided or at a mutually agreed upon time."

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