

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-73
HOUSE BILL 678

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 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."

SECTION 3. 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 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 prior to 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 Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services for the purpose of advising on the agreement. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.

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

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

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

...."

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

"§ 15A-1468. Commission proceedings.

(a) ~~At the completion of a formal inquiry, all relevant evidence shall 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. Commission in a public hearing. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation. The Commission's rules of operation shall not exclude the district attorney or defense counsel from any portion of the hearing.~~

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

prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

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

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to 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 Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of ~~his or her~~ the victim's intent to attend.

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

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 shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel, if any, and the district attorney in noncapital cases and or service on both the district attorney 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 shall be referred to the senior resident superior court judge in the district of original jurisdiction.

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 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 superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

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

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

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall 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~~ 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, shall become public ~~at the time of referral to when filed with the superior court.~~ court as required in subsection (c) of this section. 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.

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

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

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

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

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

(a) If the Commission ~~concludes~~ concludes or the district attorney and the convicted person's counsel agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial 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 superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

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

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

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

...

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

...."

SECTION 6. This act becomes effective August 1, 2016, and applies to any claim filed on or after that date and any claim pending on that date. However, nothing in this act shall abate a claim filed prior to that date or invalidate any action taken on a claim prior to that date.

In the General Assembly read three times and ratified this the 29th day of June, 2016.

s/ Harry Brown
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:02 a.m. this 30th day of June, 2016