

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-171
SENATE BILL 144

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING THE
INNOCENCE INQUIRY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1469 reads as rewritten:

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

(a) If the Commission concludes 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.

(a1) If there is an allegation of or evidence of prosecutorial misconduct in the case, the Chair of the Commission or the district attorney of the district of conviction may request the Director of the Administrative Office of the Courts to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the Director of the Administrative Office of the Courts may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, including one from the prosecutorial district where the convicted person was tried, to represent the State at the hearing before the three-judge panel. However, the Director of the Administrative Office of the Courts shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted person. The appointment shall be made pursuant to G.S. 7A-64 and shall be made no later than 20 days after the receipt of the request.

(b) The senior resident superior court judge 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 ~~60~~ 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.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge ~~panel~~ panel, except as otherwise provided by this section.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the ~~court~~ court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. 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 shall be in writing.

(e) The senior resident superior 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 30 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 or her 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. Such a determination shall require a 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.

(i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor."

SECTION 2. G.S. 7A-64 reads as rewritten:

"§ 7A-64. **Temporary assistance for district attorneys.**

(a) A district attorney may apply to the Director of the Administrative Office of the Courts to:

- (1) Temporarily assign an assistant district attorney from another district, after consultation with the district attorney thereof, to assist in the prosecution of cases in the requesting district;
- (2) Authorize the temporary appointment, by the requesting district attorney, of a qualified attorney to assist the requesting district attorney; or
- (3) Enter into contracts with local governments for the provision of services by the State pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

(a1) If there is an allegation of or evidence of prosecutorial misconduct in a case that is scheduled for a hearing of a claim of factual innocence under G.S. 15A-1469, the Chair of the North Carolina Innocence Inquiry Commission or the district attorney of the district of the conviction may apply to the Administrative Office of the Courts to authorize the temporary appointment of a district attorney, assistant district attorney, or other qualified attorney as a special prosecutor to represent the State in that hearing.

(b) The Director of the Administrative Office of the Courts may provide this assistance only upon a showing by the requesting ~~district attorney,~~ district attorney or the Chair of the North Carolina Innocence Inquiry Commission, as appropriate, supported by facts, that:

- (1) Criminal cases have accumulated on the dockets of the superior or district courts of the district beyond the capacity of the district attorney and the district attorney's full-time assistants to keep the dockets reasonably current;
~~or~~
- (2) The overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public ~~safety,~~ safety; or
- (3) There is an allegation of or evidence of prosecutorial misconduct in the case that is the subject of the hearing under G.S. 15A-1469.

(c) The length of service and compensation of any temporary appointee or the terms of any contract entered into with local governments shall be fixed by Director of the Administrative Office of the Courts in each case. Nothing in this section shall be construed to

obligate the General Assembly to make any appropriation to implement the provisions of this section or to obligate the Administrative Office of the Courts to provide the administrative costs of establishing or maintaining the positions or services provided for under this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts to maintain positions or services initially provided for under this section."

SECTION 3. G.S. 148-82 reads as rewritten:

"§ 148-82. Provision for compensation.

(a) Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the pardon.

(b) Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who is determined to be innocent of all charges and against whom the charges are dismissed pursuant to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the date that the dismissal of the charges is entered by the three-judge panel under G.S. 15A-1469."

SECTION 4. G.S. 148-84(a) reads as rewritten:

"(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or received a pardon of innocence for the reason that the crime was not committed by the claimant, or that the claimant was determined to be innocent of all charges by a three-judge panel under G.S. 15A-1469 and also finds that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to fifty thousand dollars (\$50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting trial. However, (i) in no event shall the compensation, including the compensation provided in subsection (c) of this section, exceed a total amount of seven hundred fifty thousand dollars (\$750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 5. Section 12 of S.L. 2006-184 reads as rewritten:

"SECTION 12. This act is effective when it becomes law ~~and applies to claims of factual innocence filed on or before December 31, 2010.~~law."

SECTION 6. Sections 1 and 2 of this act become effective October 1, 2010, and apply to all claims of factual innocence filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:21 p.m. this 2nd day of August, 2010