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Short Title: Establish NC Innocence Inquiry Commission.

(Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY
COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL
INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

§ 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

1 evidence of innocence that has not previously been presented at trial or
2 considered at a hearing granted through postconviction relief.

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

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

7 (4) "Victim" means the victim of the crime, or if the victim of the crime is
8 deceased, the next of kin of the victim.

9 **§ 15A-1461. Purpose of Article.**

10 This Article establishes an extraordinary procedure to investigate and determine
11 credible claims of factual innocence that shall require an individual to voluntarily waive
12 rights and privileges as described in this Article.

13 **§ 15A-1462. Commission established.**

14 (a) There is established the North Carolina Innocence Inquiry Commission. The
15 North Carolina Innocence Inquiry Commission shall be an independent commission
16 under the Judicial Department for administrative purposes.

17 (b) The Administrative Office of the Courts shall provide administrative support
18 to the Commission as needed. The Director of the Administrative Office of the Courts
19 shall not reduce or modify the budget of the Commission or use funds appropriated to
20 the Commission without the approval of the Commission.

21 **§ 15A-1463. Membership; chair; meetings; quorum.**

22 (a) The Commission shall consist of eight voting members as follows:

23 (1) One shall be a superior court judge.

24 (2) One shall be a prosecuting attorney.

25 (3) One shall be a victim advocate.

26 (4) One shall be engaged in the practice of criminal defense law.

27 (5) One shall be a public member who is not an attorney and who is not an
28 officer or employee of the Judicial Department.

29 (6) One shall be a sheriff holding office at the time of his or her
30 appointment.

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

33 The Chief Justice of the North Carolina Supreme Court shall make the initial
34 appointment for members identified in subdivisions (4) through (6) of this subsection.
35 The Chief Judge of the Court of Appeals shall make the initial appointment for
36 members identified in subdivisions (1) through (3) of this subsection. After an appointee
37 has served his or her first three-year term, the subsequent appointment shall be by the
38 Chief Justice or Chief Judge who did not make the previous appointment. Thereafter,
39 the Chief Justice or Chief Judge shall rotate the appointing power, except for the two
40 discretionary appointments identified by subdivision (7) of this subsection which shall
41 be appointed by the Chief Justice.

42 (a1) The appointing authority shall also appoint alternate Commission members
43 for the Commission members he or she has appointed to serve in the event of
44 scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a

1 particular case. The alternate members shall have the same qualifications for
2 appointment as the original member. In making the appointments, the appointing
3 authority shall make a good faith effort to appoint members with different perspectives
4 of the justice system. The appointing authority shall also consider geographical location,
5 gender, and racial diversity in making the appointments.

6 (b) The superior court judge who is appointed as a member under subsection (a)
7 of this section shall serve as Chair of the Commission. The Commission shall have its
8 initial meeting no later than January 31, 2007, at the call of the Chair. The Commission
9 shall meet a minimum of once every six months and may also meet more often at the
10 call of the Chair. The Commission shall meet at such time and place as designated by
11 the Chair. Notice of the meetings shall be given at such time and manner as provided by
12 the rules of the Commission. A majority of the members shall constitute a quorum. All
13 Commission votes shall be by majority vote.

14 **"§ 15A-1464. Terms of members; compensation; expenses.**

15 (a) Of the initial members, two appointments shall be for one-year terms, three
16 appointments shall be for two-year terms, and three appointments shall be for three-year
17 terms. Thereafter, all terms shall be for three years. Members of the Commission shall
18 serve no more than two consecutive three-year terms plus any initial term of less than
19 three years. Unless provided otherwise by this act, all terms of members shall begin on
20 January 1 and end on December 31.

21 Members serving by virtue of elective or appointive office, except for the sheriff,
22 may serve only so long as the officeholders hold those respective offices. The Chief
23 Justice may remove members, with cause. Vacancies occurring before the expiration of
24 a term shall be filled in the manner provided for the members first appointed.

25 (b) The Commission members shall receive no salary for serving. All
26 Commission members shall receive necessary subsistence and travel expenses in
27 accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

28 **"§ 15A-1465. Director and other staff.**

29 (a) The Commission shall employ a Director. The Director shall be an attorney
30 licensed to practice in North Carolina at the time of appointment and at all times during
31 service as Director. The Director shall assist the Commission in developing rules and
32 standards for cases accepted for review, coordinate investigation of cases accepted for
33 review, maintain records for all case investigations, prepare reports outlining
34 Commission investigations and recommendations to the trial court, and apply for and
35 accept on behalf of the Commission any funds that may become available from
36 government grants, private gifts, donations, or bequests from any source.

37 Subject to the approval of the Chair, the Director shall employ such other staff and
38 shall contract for services as is necessary to assist the Commission in the performance
39 of its duties, and as funds permit.

40 The Commission may, with the approval of the Legislative Services Commission,
41 meet in the State Legislative Building or the Legislative Office Building, or may meet
42 in an area provided by the Director of the Administrative Office of the Courts. The
43 Director of the Administrative Office of the Courts shall provide office space for the
44 Commission and the Commission staff.

1 **"§ 15A-1466. Duties.**

2 The Commission shall have the following duties and powers:

- 3 (1) To establish the criteria and screening process to be used to determine
4 which cases shall be accepted for review.
- 5 (2) To conduct inquiries into claims of factual innocence, with priority to
6 be given to those cases in which the convicted person is currently
7 incarcerated solely for the crime for which he or she claims factual
8 innocence.
- 9 (3) To coordinate the investigation of cases accepted for review.
- 10 (4) To maintain records for all case investigations.
- 11 (5) To prepare written reports outlining Commission investigations and
12 recommendations to the trial court at the completion of each inquiry.
- 13 (6) To apply for and accept any funds that may become available for the
14 Commission's work from government grants, private gifts, donations,
15 or bequests from any source.

16 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural**
17 **safeguards and privileges; formal inquiry; notification of the crime**
18 **victim.**

19 (a) A claim of factual innocence may be referred to the Commission by any
20 court, person, or agency. The Commission shall not consider a claim of factual
21 innocence if the convicted person entered and was convicted on a guilty plea or the
22 convicted person is deceased. The determination of whether to grant a formal inquiry
23 regarding any other claim of factual innocence is in the discretion of the Commission.
24 The Commission may informally screen and dismiss a case summarily at its discretion.

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

38 (c) If a formal inquiry regarding a claim of factual innocence is granted, the
39 Director shall use all due diligence to notify the victim in the case and explain the
40 inquiry process. The Commission shall give the victim notice that the victim has the
41 right to present his or her views and concerns throughout the Commission's
42 investigation.

43 (d) The Commission may use any measure provided in Chapter 15A of the
44 General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain

1 information necessary to its inquiry. The Commission may also do any of the following:
2 issue process to compel the attendance of witnesses and the production of evidence,
3 administer oaths, petition the Superior Court of Wake County or of the original
4 jurisdiction for enforcement of process or for other relief, and prescribe its own rules of
5 procedure. All challenges with regard to the Commission's authority or the
6 Commission's access to evidence shall be heard by the Commission Chair in the Chair's
7 judicial capacity, including any in camera review required by G.S. 15A-908.

8 (e) While performing duties for the Commission, the Director or the Director's
9 designee may serve subpoenas or other process issued by the Commission throughout
10 the State in the same manner and with the same effect as an officer authorized to serve
11 process of the General Court of Justice.

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

15 (g) If, at any point during an inquiry, the convicted person refuses to comply with
16 requests of the Commission or is otherwise deemed to be uncooperative by the
17 Commission, the Commission shall discontinue the inquiry.

18 **"§ 15A-1468. Commission proceedings.**

19 (a) At the completion of a formal inquiry, all relevant evidence shall be presented
20 to the full Commission. As part of its proceedings, the Commission may conduct public
21 hearings. The determination as to whether to conduct public hearings is solely in the
22 discretion of the Commission. Any public hearing held in accordance with this section
23 shall be subject to the Commission's rules of operation.

24 (b) The Director shall use all due diligence to notify the victim at least 30 days
25 prior to any proceedings of the full Commission held in regard to the victim's case. The
26 Commission shall notify the victim that the victim is permitted to attend proceedings
27 otherwise closed to the public, subject to any limitations imposed by this Article. If the
28 victim plans to attend proceedings otherwise closed to the public, the victim shall notify
29 the Commission at least 10 days in advance of the proceedings of his or her intent to
30 attend. If the Commission determines that the victim's presence may interfere with the
31 investigation, the Commission may close any portion of the proceedings to the victim.

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

35 If five or more of the eight voting members of the Commission conclude there is
36 sufficient evidence of factual innocence to merit judicial review, the case shall be
37 referred to the senior resident superior court judge in the district of original jurisdiction
38 by filing with the clerk of court the opinion of the Commission with supporting findings
39 of fact, as well as the record in support of such opinion, with service on the district
40 attorney in noncapital cases and service on both the district attorney and Attorney
41 General in capital cases.

42 If less than five of the eight voting members of the Commission conclude there is
43 sufficient evidence of factual innocence to merit judicial review, the Commission shall
44 conclude there is insufficient evidence of factual innocence to merit judicial review. The

1 Commission shall document that opinion, along with supporting findings of fact, and
2 file those documents and supporting materials with the clerk of superior court in the
3 district of original jurisdiction, with a copy to the district attorney and the senior
4 resident superior court judge.

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

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

12 (e) All proceedings of the Commission shall be recorded and transcribed as part
13 of the record. All Commission member votes shall be recorded in the record. All records
14 and proceedings of the Commission are confidential and are exempt from public record
15 and public meeting laws except that the supporting records for the Commission's
16 conclusion that there is sufficient evidence of factual innocence to merit judicial review,
17 including all files and materials considered by the Commission and a full transcript of
18 the hearing before the Commission, shall become public at the time of referral to the
19 superior court. Commission records for conclusions of insufficient evidence of factual
20 innocence to merit judicial review shall remain confidential, except as provided in
21 subsection (d) of this section.

22 **"§ 15A-1469. Postcommission three-judge panel.**

23 (a) If the Commission concludes there is sufficient evidence of factual innocence
24 to merit judicial review, the Chair of the Commission shall request the Chief Justice to
25 appoint a three-judge panel, not to include any trial judge that has had substantial
26 previous involvement in the case, and issue commissions to the members of the
27 three-judge panel to convene a special session of the superior court of the original
28 jurisdiction to hear evidence relevant to the Commission's recommendation. The senior
29 judge of the panel shall preside.

30 (b) The senior resident superior court judge shall enter an order setting the case
31 for hearing at the special session of superior court for which the three-judge panel is
32 commissioned and shall require the State to file a response to the Commission's opinion
33 within 60 days of the date of the order.

34 (c) The district attorney of the district of conviction, or the district attorney's
35 designee, shall represent the State at the hearing before the three-judge panel.

36 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing,
37 the court may compel the testimony of any witness, including the convicted person. The
38 convicted person may not assert any privilege or prevent a witness from testifying. The
39 convicted person has a right to be present at the evidentiary hearing and to be
40 represented by counsel. A waiver of the right to be present shall be in writing.

41 (e) The senior resident superior court judge shall determine the convicted
42 person's indigency status and, if appropriate, enter an order for the appointment of
43 counsel. The court may also enter an order relieving an indigent convicted person of all
44 or a portion of the costs of the proceedings.

1 (f) The clerk of court shall provide written notification to the victim 30 days
2 prior to any case-related hearings.

3 (g) Upon the motion of either party, the senior judge of the panel may direct the
4 attorneys for the parties to appear before him or her for a conference on any matter in
5 the case.

6 (h) The three-judge panel shall rule as to whether the convicted person has
7 proved by clear and convincing evidence that the convicted person is innocent of the
8 charges. Such a determination shall require a unanimous vote. If the vote is unanimous,
9 the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous,
10 the panel shall deny relief.

11 **"§ 15A-1470. No right to further review of decision by Commission or three-judge**
12 **panel; convicted person retains right to other postconviction relief.**

13 (a) Unless otherwise authorized by this Article, the decisions of the Commission
14 and of the three-judge panel are final and are not subject to further review by appeal,
15 certification, writ, motion, or otherwise.

16 (b) A claim of factual innocence asserted through the Innocence Inquiry
17 Commission shall not adversely affect the convicted person's rights to other
18 postconviction relief."

19 **SECTION 2.** G.S. 15A-1401 reads as rewritten:

20 **"§ 15A-1401. Post-trial motions and appeal.**

21 Relief from errors committed in criminal trials and proceedings and other post-trial
22 relief may be sought by:

23 (1) Motion for appropriate relief, as provided in Article 89.

24 (1a) Motion for innocence claim inquiry as provided in Article 92 of
25 Chapter 15A of the General Statutes.

26 (2) Appeal and trial de novo in misdemeanor cases, as provided in Article
27 90.

28 (3) Appeal, as provided in Article 91."

29 **SECTION 3.** G.S. 15A-1417(a) reads as rewritten:

30 "(a) The following relief is available when the court grants a motion for
31 appropriate relief:

32 (1) New trial on all or any of the charges.

33 (2) Dismissal of all or any of the charges.

34 (3) The relief sought by the State pursuant to G.S. 15A-1416.

35 (3a) For claims of factual innocence, referral to the North Carolina
36 Innocence Inquiry Commission established by Article 92 of Chapter
37 15A of the General Statutes.

38 (4) Any other appropriate relief."

39 **SECTION 4.** G.S. 15A-1411 reads as rewritten:

40 **"§ 15A-1411. Motion for appropriate relief.**

41 (a) Relief from errors committed in the trial division, or other post-trial relief,
42 may be sought by a motion for appropriate relief. Procedure for the making of the
43 motion is as set out in G.S. 15A-1420.

1 (b) A motion for appropriate relief, whether made before or after the entry of
2 judgment, is a motion in the original cause and not a new proceeding.

3 (c) The relief formerly available by motion in arrest of judgment, motion to set
4 aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all
5 other post-trial motions is available by motion for appropriate relief. The availability of
6 relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

7 (d) A claim of factual innocence asserted through the North Carolina Innocence
8 Inquiry Commission does not constitute a motion for appropriate relief and does not
9 impact rights or relief provided for in this Article."

10 **SECTION 5.** G.S. 15A-1418(b) reads as rewritten:

11 "(b) When a motion for appropriate relief is made in the appellate division, the
12 appellate court must decide whether the motion may be determined on the basis of the
13 materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for
14 taking evidence or conducting other ~~proceedings~~ proceedings, or, for claims of factual
15 innocence, whether to refer the case for further investigation to the North Carolina
16 Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General
17 Statutes. If the appellate court does not remand the case for proceedings on the motion,
18 it may determine the motion in conjunction with the appeal and enter its ruling on the
19 motion with its determination of the case."

20 **SECTION 6.** G.S. 143-318.18 is amended by adding a new subdivision to
21 read:

22 "(3a) The North Carolina Innocence Inquiry Commission."

23 **SECTION 7.** G.S. 132-1.4 reads as rewritten:

24 "**§ 132-1.4. Criminal investigations; intelligence information ~~records~~; records;**
25 **Innocence Inquiry Commission records.**

26 (a) Records of criminal investigations conducted by public law enforcement
27 ~~agencies or agencies~~, records of criminal intelligence information compiled by public
28 law enforcement ~~agencies~~ agencies, and records of investigations conducted by the
29 North Carolina Innocence Inquiry Commission, are not public records as defined by
30 G.S. 132-1. Records of criminal investigations conducted by public law enforcement
31 agencies or records of criminal intelligence information may be released by order of a
32 court of competent jurisdiction.

33"

34 **SECTION 8.** In order to allow staggered terms of members of the North
35 Carolina Innocence Inquiry Commission, as required by G.S. 15A-1464(a) as enacted
36 by this act, the Commission members identified in G.S. 15A-1463(a)(1), (2), and (4)
37 shall be appointed to initial terms of two years, the Commission members identified in
38 G.S. 15A-1463(a)(3), (5), and (6) shall be appointed to initial terms of three years, and
39 the Commission members identified in G.S. 15A-1463(a)(7) shall be appointed to initial
40 terms of one year.

41 **SECTION 9.** Beginning January 1, 2008, and annually thereafter, the North
42 Carolina Innocence Inquiry Commission shall report on its activities to the Joint
43 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and
44 the State Judicial Council. The report may contain recommendations of any needed

1 legislative changes related to the activities of the Commission. The report shall
2 recommend the funding needed by the Commission, the district attorneys, and the State
3 Bureau of Investigation in order to meet their responsibilities under this act.
4 Recommendations concerning the district attorneys or the State Bureau of Investigation
5 shall only be made after consultations with the North Carolina Conference of District
6 Attorneys and the Attorney General.

7 **SECTION 10.** The State Judicial Council shall report to the General
8 Assembly and the Chief Justice no later than December 31, 2009, and no later than
9 December 31 of every third year, regarding the implementation of this act and shall
10 include in its report the statistics regarding inquiries and any recommendations for
11 changes. The House of Representatives and the Senate shall refer the report of the State
12 Judicial Council to the Joint Legislative Corrections, Crime Control, and Juvenile
13 Justice Oversight Committee and such other committees as the Speaker of the House of
14 Representatives or the President Pro Tempore of the Senate shall deem appropriate, for
15 their review.

16 **SECTION 11.** The initial members of the North Carolina Innocence Inquiry
17 Commission shall be appointed not later than October 1, 2006. No claims of actual
18 innocence may be filed with the Commission until November 1, 2006.

19 **SECTION 12.** This act is effective when it becomes law and applies to
20 claims of factual innocence file on or before December 31, 2010.