

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE DRS15201-LH-125 (03/09)

Short Title: Establish NC Innocence Inquiry Commission. (Public)

---

Sponsors: Senator Clodfelter.

---

Referred to:

---

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 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 Inquiry Commission  
4 established by this Article.

5 (3) "Director" means the Director of the North Carolina 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 but  
16 shall be located 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 seven voting members appointed by the  
23 Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be  
24 a superior court judge, one shall be a prosecuting attorney, one shall be a victim  
25 advocate, one shall be engaged in the practice of criminal defense law, and one shall be  
26 a public member who is not an attorney and who is not an officer or employee of the  
27 Judicial Department. The vocations of the two remaining appointed voting members  
28 shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint  
29 alternate Commission members to serve in the event of scheduling conflicts, conflicts of  
30 interest, disability, or other disqualification arising in a particular case. The alternate  
31 members shall have the same qualifications for appointment as the original member. In  
32 making the appointments, the Chief Justice shall make a good faith effort to appoint  
33 members with different perspectives of the justice system. The Chief Justice shall also  
34 consider geographical location, gender, and racial diversity in making the appointments.

35 (b) The superior court judge who is appointed as a member under subsection (a)  
36 of this section shall serve as Chair of the Commission. The Commission shall have its  
37 initial meeting no later than January 31, 2006, at the call of the Chair. The Commission  
38 shall meet a minimum of once every six months and may also meet more often at the  
39 call of the Chair. The Commission shall meet at such time and place as designated by  
40 the Chair. Notice of the meetings shall be given at such time and manner as provided by  
41 the rules of the Commission. A majority of the members shall constitute a quorum. All  
42 Commission votes shall be by majority vote unless specified otherwise by this Article.

43 **§ 15A-1464. Terms of members; compensation; expenses.**

1       (a) The initial appointments shall be made within 30 days of the effective date of  
2 this section. Of the initial members, two appointments shall be for one-year terms, three  
3 appointments shall be for two-year terms, and two appointments shall be for three-year  
4 terms. Thereafter, all terms shall be for three years. Members of the Commission shall  
5 serve no more than two consecutive three-year terms plus any initial term of less than  
6 three years. Unless provided otherwise by this section, all terms of members shall begin  
7 on January 1 and end on December 31.

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

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

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

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

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

27       The Commission may, with the approval of the Legislative Services Commission,  
28 meet in the State Legislative Building or the Legislative Office Building, or may meet  
29 in an area provided by the Director of the Administrative Office of the Courts. The  
30 Director of the Administrative Office of the Courts shall provide office space for the  
31 Commission and the Commission staff.

32 **"§ 15A-1466. Duties.**

33       The Commission shall have the following duties and powers:

- 34       (1) To establish the criteria and screening process to be used to determine  
35 which cases shall be accepted for review.  
36       (2) To conduct inquiries into claims of factual innocence, with priority to  
37 be given to those cases in which the convicted person is currently  
38 incarcerated solely for the crime for which he or she claims factual  
39 innocence.  
40       (3) To coordinate the investigation of cases accepted for review.  
41       (4) To maintain records for all case investigations.  
42       (5) To prepare written reports outlining Commission investigations and  
43 recommendations to the trial court at the completion of each inquiry.

1           (6) To apply for and accept any funds that may become available for the  
2           Commission's work from government grants, private gifts, donations,  
3           or bequests from any source.

4 **"§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards**  
5 **and privileges; formal inquiry; notification of the crime victim.**

6           (a) A claim of factual innocence may be referred to the Commission by any  
7 court, person, or agency. The determination of whether to grant a formal inquiry  
8 regarding a claim of factual innocence is in the discretion of the Commission. The  
9 Commission may informally screen and dismiss a case summarily at its discretion.

10          (b) No formal inquiry into a claim of innocence shall be made by the  
11 Commission unless the Director or the Director's designee first obtains a signed  
12 agreement from the defendant in which the defendant waives his or her procedural  
13 safeguards and privileges, agrees to cooperate with the Commission, and agrees to  
14 provide full disclosure regarding all inquiry requirements of the Commission. The  
15 defendant shall have the right to advice of counsel prior to the execution of the  
16 agreement and, if counsel represents the defendant, then the defendant's counsel must be  
17 present at the signing of the agreement. If counsel does not represent the defendant, the  
18 Commission Chair shall determine the defendant's indigency status and, if appropriate,  
19 enter an order for the appointment of counsel for the purpose of advising on the  
20 agreement.

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

26          (d) The Commission may use any measure provided in Chapter 15A of the  
27 General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain  
28 information necessary to its inquiry. The Commission may also do any of the following:  
29 issue process to compel the attendance of witnesses and the production of evidence,  
30 administer oaths, petition the Superior Court of Wake County or of the original  
31 jurisdiction for enforcement of process or for other relief, and prescribe its own rules of  
32 procedure. All challenges with regard to the Commission's authority or the  
33 Commission's access to evidence shall be heard by the Commission Chair in the Chair's  
34 judicial capacity, including any in camera review required by G.S. 15A-908.

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

39          (f) All State discovery and disclosure statutes in effect at the time of formal  
40 inquiry shall be enforceable as if the defendant were currently being tried for the charge  
41 for which the defendant is claiming innocence.

42          (g) If, at any point during an inquiry, the defendant refuses to comply with  
43 requests of the Commission or is otherwise deemed to be uncooperative by the  
44 Commission, the Commission shall discontinue the inquiry.

1 "§ 15A-1468. Commission proceedings.

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

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

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

18 If five or more of the seven voting members of the Commission conclude there is  
19 sufficient evidence of factual innocence to merit judicial review, the case shall be  
20 referred to the senior resident superior court judge in the district of original jurisdiction  
21 by filing with the clerk of court the opinion of the Commission, as well as the record in  
22 support of such opinion, with service on the district attorney in noncapital cases and  
23 service on both the district attorney and Attorney General in capital cases.

24 If less than five of the seven voting members of the Commission conclude there is  
25 sufficient evidence of factual innocence to merit judicial review, the Commission shall  
26 conclude there is insufficient evidence of factual innocence to merit judicial review. The  
27 Commission shall document that opinion, along with supporting findings of fact, and  
28 file those documents and supporting materials with the clerk of superior court in the  
29 district of original jurisdiction, with a copy to the district attorney and the senior  
30 resident superior court judge.

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

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

38 (e) All proceedings of the Commission shall be recorded and transcribed as part  
39 of the record. All Commission member votes shall be recorded in the record. All records  
40 and proceedings of the Commission are confidential and are exempt from public record  
41 and public meeting laws except that the supporting records for the Commission's  
42 conclusion that there is sufficient evidence of factual innocence to merit judicial review,  
43 including all files and materials considered by the Commission and a full transcript of  
44 the hearing before the Commission, shall become public at the time of referral to the

1 superior court. Commission records for conclusions of insufficient evidence of factual  
2 innocence to merit judicial review shall remain confidential, except as provided in  
3 subsection (d) of this section.

4 **"§ 15A-1469. Postcommission three-judge panel.**

5 (a) If the Commission concludes there is sufficient evidence of factual innocence  
6 to merit judicial review, the senior resident superior court judge shall request the Chief  
7 Justice appoint a three-judge panel, not to include any trial judge that has had  
8 substantial previous involvement in the case, and issue commissions to the members of  
9 the three-judge panel to convene a special session of the superior court of the original  
10 jurisdiction to hear evidence relevant to the Commission's recommendation. The senior  
11 judge of the panel shall preside.

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

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

18 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing,  
19 the court may compel the testimony of any witness, including the defendant. The  
20 defendant may not assert any privilege or prevent a witness from testifying. The  
21 defendant has a right to be present at the evidentiary hearing and to be represented by  
22 counsel. A waiver of the right to be present shall be in writing.

23 (e) The senior resident superior court judge shall determine the defendant's  
24 indigency status and, if appropriate, enter an order for the appointment of counsel. The  
25 court may also enter an order relieving an indigent defendant of all or a portion of the  
26 costs of the proceedings.

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

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

32 (h) The three-judge panel shall rule as to whether the defendant has proved by  
33 clear and convincing evidence that the defendant is innocent of the charges. Such a  
34 determination shall require a unanimous vote. If the vote is unanimous, the panel shall  
35 enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall  
36 deny relief.

37 **"§ 15A-1470. No right to further review of decision by Commission or three-judge**  
38 **panel; defendant retains right to other postconviction relief.**

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

42 (b) A claim of factual innocence asserted through the Innocence Inquiry  
43 Commission shall not adversely affect the defendant's rights to other postconviction  
44 relief."

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

2   "**§ 15A-1401. Post-trial motions and appeal.**

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

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

6           (1a) Motion for innocence claim inquiry as provided in Article 92 of  
7               Chapter 15A of the General Statutes.

8           (2) Appeal and trial de novo in misdemeanor cases, as provided in Article  
9               90.

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

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

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

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

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

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

17           (3a) For claims of factual innocence, referral to the North Carolina  
18               Innocence Inquiry Commission established by Article 92 of Chapter  
19               15A of the General Statutes.

20           (4) Any other appropriate relief."

21       **SECTION 4.** G.S. 15A-1418(b) reads as rewritten:

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

31       **SECTION 5.** G.S. 143-318.18 is amended by adding a new subdivision to  
32 read:

33           "(3a) The North Carolina Innocence Inquiry Commission."

34       **SECTION 6.** This act is effective when it becomes law.