

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 144
Judiciary II Committee Substitute Adopted 3/30/09
House Committee Substitute Favorable 5/26/10

Short Title: Amend Innocence Inquiry Commission.

(Public)

Sponsors:

Referred to:

February 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING THE
3 INNOCENCE INQUIRY COMMISSION.

4 The General Assembly of North Carolina enacts:

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

6 "§ 15A-1469. Postcommission three-judge panel.

7 (a) If the Commission concludes there is sufficient evidence of factual innocence to
8 merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a
9 three-judge panel, not to include any trial judge that has had substantial previous involvement
10 in the case, and issue commissions to the members of the three-judge panel to convene a
11 special session of the superior court of the original jurisdiction to hear evidence relevant to the
12 Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice
13 shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion
14 finding sufficient evidence of factual innocence to merit judicial review.

15 (a1) The Attorney General shall appoint a special prosecutor to represent the State at the
16 hearing before the three-judge panel within 20 days of the filing of the Commission's opinion
17 finding sufficient evidence of innocence to merit judicial review. Except as otherwise provided
18 by this subsection, the Attorney General may appoint as a special prosecutor a district attorney,
19 assistant district attorney, or other attorney, including one from the prosecutorial district where
20 the convicted person was tried, and may also appoint an attorney from the Department of
21 Justice as provided by G.S. 114-11.6. However, the Attorney General shall not appoint as
22 special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of
23 the convicted person.

24 (b) The senior resident superior court judge shall enter an order setting the case for
25 hearing at the special session of superior court for which the three-judge panel is commissioned
26 and shall require the ~~State~~ special prosecutor to file a response to the Commission's opinion
27 within ~~60~~ 90 days of the date of the order. Such response, at the time of original filing or
28 through amendment at any time before the hearing, may include joining the defense in a motion
29 to dismiss the charges with prejudice on the basis of innocence.

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

32 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the ~~court~~
33 court, and the defense and prosecution through the court, may compel the testimony of any
34 witness, including the convicted person. All evidence relevant to the case, even if considered
35 by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted
36 person may not assert any privilege or prevent a witness from testifying. The convicted person



1 has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver
2 of the right to be present shall be in writing.

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

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

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

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

15 **SECTION 2.** G.S. 114-11.6 reads as rewritten:

16 "**§ 114-11.6. Division established; duties.**

17 There is hereby established in the office of the Attorney General of North Carolina, a
18 Special Prosecution Division. The attorneys assigned to this Division shall be available to
19 prosecute or assist in the prosecution of criminal cases when requested to do so by a district
20 attorney and the Attorney General approves. The attorneys assigned to this Division shall also
21 be available to serve as special prosecutors pursuant to G.S. 15A-1469. In addition, these
22 attorneys assigned to this Division shall serve as legal advisers to the State Bureau of
23 Investigation and the Police Information Network and perform any other duties assigned to
24 them by the Attorney General."

25 **SECTION 3.** Section 12 of S.L. 2006-184 reads as rewritten:

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

28 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2010, and
29 apply to all claims of factual innocence filed on or after that date. The remainder of this act is
30 effective when it becomes law.