

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1021
Committee Substitute Favorable 5/12/16

Short Title: Amend Innocence Commission Statutes.

(Public)

Sponsors:

Referred to:

May 4, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE
INNOCENCE INQUIRY COMMISSION, AS RECOMMENDED BY THE JOINT
LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1465(a) reads as rewritten:

"(a) The Commission shall employ a ~~Director~~ Director, who shall report to the Director of the Administrative Office of the Courts. 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. The Director shall establish procedures for Commission staff to report administrative details to the Director of the Administrative Office of the Courts."

SECTION 2. 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



1 requirements of the Commission. The waiver under this subsection does not apply to matters
2 unrelated to a convicted person's claim of innocence. The waiver under this subsection shall not be
3 construed to be a waiver of the convicted person's right to be heard by the court before the court
4 issues any protective order regarding any portion of the investigative file relating to the convicted
5 person's claim of factual innocence. The convicted person shall have the right to advice of counsel
6 prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal
7 inquiry. If counsel represents the convicted person, then the convicted person's counsel must be
8 present at the signing of the agreement. If counsel does not represent the convicted person, the
9 Commission Chair shall determine the convicted person's indigency status and, if appropriate,
10 enter an order for the appointment of counsel by Indigent Defense Services for the purpose of
11 advising on the agreement. If the convicted person has requested a specific attorney with
12 knowledge of the case, the Director shall inform Indigent Defense Services of that request for their
13 consideration.

14 ...

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

20 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall
21 provide a confidential case status update for each case in formal inquiry to the District Attorney,
22 the convicted person, or counsel, if any, and referring counsel, if any, at least once every six
23 months. The case status update shall include a summary of the actions taken since the last update.

24"

25 **SECTION 3.** G.S. 15A-1468 is amended by adding a new subsection to read:

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

31 **SECTION 4.** G.S. 15A-1469 reads as rewritten:

32 "**§ 15A-1469. Postcommission three-judge panel.**

33 (a) If the Commission ~~concludes~~—concludes, or the parties agree pursuant to
34 G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the
35 Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to
36 include any trial judge that has had substantial previous involvement in the case, and issue
37 commissions to the members of the three-judge panel to convene a special session of the superior
38 court of the original jurisdiction to hear evidence relevant to the Commission's recommendation.
39 The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel
40 within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual
41 innocence to merit judicial review.

42 ...

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

49"

50 **SECTION 5.** G.S. 15A-1471 is amended by adding a new subsection to read:

1 "(b1) The Commission shall notify the District Attorney or designee, and the convicted
2 person or counsel, before requesting any protective order regarding any portion of the
3 investigative file relating to the convicted person's claim of factual innocence. The District
4 Attorney, or designee, and the convicted person, or counsel, shall be given the right to be heard by
5 the court before the court issues a protective order regarding any portion of the investigative file
6 relating to the convicted person's claim of factual innocence."

7 **SECTION 6.** This act becomes effective December 1, 2016, and applies to claims of
8 factual innocence made on or after that date.