

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 901

Short Title: Modify NC Innocence Inquiry Provisions. (Public)

Sponsors: Representatives Richardson and Hardister (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 10, 2021

A BILL TO BE ENTITLED

AN ACT TO MODIFY PROVISIONS RELATED TO THE NORTH CAROLINA
INNOCENCE INQUIRY COMMISSION AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 15A-1417(a) reads as rewritten:

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

...

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

...."

SECTION 1.(b) This section is effective when it becomes law and applies to motions granted on or after that date.

SECTION 2.(a) G.S. 15A-1463 reads as rewritten:

"§ 15A-1463. Membership; chair; meetings; quorum.

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

...

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

...

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

...

(c) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. ~~The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair.~~ The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. One administrative meeting per year shall allow for public comment. The Commission shall meet at



1 such time and place as designated by the Chair. The date, time, and location for the meeting that
2 allows for public comment shall be published on the Commission's website at least 30 days prior
3 to the meeting. Notice of ~~the any other~~ meetings shall be given at such time and manner as
4 provided by the rules of the Commission. The procedure for Commission meetings shall be set
5 by the rules of the Commission. A majority of the members shall constitute a quorum. All
6 Commission votes shall be by majority vote."

7 **SECTION 2.(b)** This section is effective when it becomes law and applies to
8 members appointed and meetings held on or after that date.

9 **SECTION 3.(a)** G.S. 15A-1464(a) reads as rewritten:

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

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

20 **SECTION 3.(b)** This section is effective when it becomes law and applies to
21 members appointed on or after that date.

22 **SECTION 4.(a)** G.S. 15A-1467 reads as rewritten:

23 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and**
24 **privileges; formal inquiry; notification of the crime victim.**

25 ...

26 (a1) Any court, State or local agency, or a claimant's counsel that refers a case to the
27 Commission may request a confidential case status update of a referred case no more than once
28 every six months from the Director. The content of this update is in the discretion of the Director
29 and shall be confidential. If a request is made under this subsection, the Director may request that
30 the Commission Chair deny the case status update request for good cause shown. If a referred
31 claim is closed without a Commission hearing, the Director shall provide the referring court,
32 State or local agency, or claimant's counsel with a confidential explanation as to why the case
33 was closed.

34 (b) No formal inquiry into a claim of innocence shall be made by the Commission unless
35 the Director or the Director's designee first obtains a signed agreement from the convicted person
36 in which the convicted person waives his or her procedural safeguards and privileges, agrees to
37 cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry
38 requirements of the Commission. The waiver under this subsection does not apply to matters
39 unrelated to a convicted person's claim of innocence. The convicted person shall have the right
40 to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted,
41 throughout the formal inquiry. If counsel represents the convicted person, then the convicted
42 person's counsel must be present at the signing of the agreement. If counsel does not represent
43 the convicted person, the Commission Chair shall determine the convicted person's indigency
44 status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense
45 Services for the purpose of advising on the agreement. If the convicted person has requested a
46 specific attorney with knowledge of the case, or if an attorney has referred the convicted person's
47 case to the Commission, the Director shall inform Indigent Defense Services of that request or
48 referral for their consideration.

49 ...

50 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall
51 provide a confidential case status update for each case in formal inquiry to (i) the District

1 Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If there
2 is no defense counsel, the update shall be provided to the District Attorney, the convicted person,
3 and referring counsel, if any. The case status update shall include a complete summary of the
4 actions taken since the last ~~update~~ update, including witness interviews and the results of ~~any~~ all
5 forensic testing that has been conducted.

6"

7 **SECTION 4.(b)** This section is effective when it becomes law and applies to
8 referrals made, claims closed, counsel appointed, and case status updates provided on or after
9 that date.

10 **SECTION 5.(a)** G.S. 15A-1468 reads as rewritten:

11 "**§ 15A-1468. Commission proceedings.**

12 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the
13 full Commission in a public hearing. Notice of dates of upcoming public hearings shall be
14 published on the Commission's website at least 10 business days prior to any Commission
15 hearing. The Commission's Chair shall decide whether and when the name of the case being
16 presented will be published on the Commission's website. Any public hearing held in accordance
17 with this section shall be subject to the Commission's rules of operation. The Commission's rules
18 of operation shall not exclude the district attorney or defense counsel from any portion of the
19 hearing.

20 ...

21 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the
22 holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full
23 Commission. Only the following persons shall be notified and authorized to attend the prehearing
24 conference: the District Attorney, or the District Attorney's designee, of the district where the
25 claimant was convicted of the felony upon which the claim of factual innocence is based; the
26 claimant's counsel, if any; the Chair of the Commission; the Executive Director of the
27 Commission; and any Commission staff designated by the Director. The District Attorney, or
28 designee, and claimant's counsel shall be provided (i) an opportunity to inspect any evidence that
29 may be presented to the Commission that has not previously been presented to any judicial officer
30 or body and (ii) any information that the District Attorney, or the District Attorney's designee, or
31 claimant's counsel deems relevant to the proceedings. At least 72 hours prior to any Commission
32 proceedings, the District Attorney or designee is authorized to provide the Commission and
33 claimant's counsel with a written statement, which shall be part of the record.

34 ...

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

38 ~~Except in cases where the convicted person entered and was convicted on a plea of guilty,~~
39 Where a conviction resulted from a trial, an Alford plea, or a nolo contendere plea, if five or more
40 of the eight voting members of the Commission conclude there is sufficient evidence of factual
41 innocence to merit judicial review, the case shall be referred to the senior resident superior court
42 judge in the district of original jurisdiction by filing with the clerk of court the opinion of the
43 Commission with supporting findings of fact, as well as the record in support of such opinion,
44 with service on the convicted person or the convicted person's counsel, if any, and the district
45 attorney in noncapital cases or service on both the district attorney and Attorney General in
46 capital cases. In cases where the convicted person entered and was convicted on a plea of guilty,
47 if ~~all~~ six of the eight voting members of the Commission conclude there is sufficient evidence of
48 factual innocence to merit judicial review, the case shall be referred to the senior resident superior
49 court judge in the district of original jurisdiction.

50 If less than five of the eight voting members of the Commission, or in cases where the
51 convicted person entered and was convicted on a guilty ~~plea~~ plea, ~~less than all of the eight~~ six

1 voting members of the Commission, conclude there is sufficient evidence of factual innocence
 2 to merit judicial review, the Commission shall conclude there is insufficient evidence of factual
 3 innocence to merit judicial review. The Commission shall document ~~that its~~ opinion, along with
 4 supporting findings of fact, and file those documents and supporting materials with the clerk of
 5 superior court in the district of original jurisdiction, with a copy to the convicted person or the
 6 convicted person's counsel, if any, the district attorney and the senior resident superior court
 7 judge.

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

10 ...

11 (e) All proceedings of the Commission shall be recorded and transcribed as part of the
 12 record. All Commission member votes shall be recorded in the record. The supporting records
 13 for the Commission's ~~conclusion that there is sufficient evidence of factual innocence to merit~~
 14 ~~judicial review, conclusion,~~ including all files and materials considered by the Commission and
 15 a full transcript of the hearing before the Commission, shall become public when filed with the
 16 superior court as required in subsection (c) of this section. ~~Commission records for conclusions~~
 17 ~~of insufficient evidence of factual innocence to merit judicial review shall remain confidential,~~
 18 ~~except as provided in subsection (d) of this section.~~

19 ...

20 (g1) The otherwise confidential records of the North Carolina Innocence Inquiry
 21 Commission may only be released by order of a court of competent jurisdiction after notice to
 22 the Commission and an opportunity for the Commission to be heard and upon a finding that
 23 release of the confidential records is in the interest of justice.

24"

25 **SECTION 5.(b)** This section is effective when it becomes law and applies to
 26 proceedings held on or after that date.

27 **SECTION 6.(a)** G.S. 15A-1469 reads as rewritten:

28 "**§ 15A-1469. Postcommission three-judge panel.**

29 ...

30 (b1) The Commission's entire file, including files obtained from other agencies, shall be
 31 unencumbered by protective orders when transferred to the district attorney and defense counsel
 32 pursuant to G.S. 15A-1468(g), unless ~~either of the following apply:~~ the Commission, upon written
 33 motion and a finding of good cause, is granted a protective order by the senior judge of the
 34 three-judge panel.

35 (1) ~~The district attorney and defense counsel have consented to a protective order~~
 36 ~~over a portion of the file.~~

37 (2) ~~The district attorney and defense counsel have been given an opportunity to~~
 38 ~~be heard by the senior judge of the three judge panel before a protective order~~
 39 ~~is issued.~~

40 ...

41 (h) The three-judge panel shall rule as to whether the convicted person has proved by
 42 clear and convincing evidence that the convicted person is innocent of the charges. Such a
 43 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter
 44 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.
 45 Notwithstanding G.S. 15A-1413, if the claimant files a motion for appropriate relief pursuant to
 46 Article 89 of Chapter 15A of the General Statutes within one year of the denied relief, the motion
 47 shall be considered by the senior judge of the three-judge panel.

48"

49 **SECTION 6.(b)** This section is effective when it becomes law and applies to
 50 Commission files transferred and motions filed on or after that date.

1 **SECTION 7.(a)** There is appropriated from the General Fund to the North Carolina
2 Innocence Inquiry Commission the sum of twenty-five thousand dollars (\$25,000) in
3 nonrecurring funds in each year of the 2021-2023 fiscal biennium to be used to prepare and
4 deliver case status updates pursuant to this act and other provisions of Article 92 of Chapter 15A
5 of the General Statutes that require the same.

6 **SECTION 7.(b)** This section becomes effective July 1, 2021.

7 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
8 law.