

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 678
Committee Substitute Favorable 4/28/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H678-CSTT-13 [v.5]
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Short Title: Amend Innocence Commission Statutes.

(Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE
INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1460 reads as rewritten:

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

(1a) "Claimant" means a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime.

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

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

(3a) "Formal inquiry" means the stage of an investigation when the Commission has entered into a signed agreement with the original claimant and the Commission has made efforts to notify the victim.

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

SECTION 2. 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



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1 apply for and accept on behalf of the Commission any funds that may become available from
2 government grants, private gifts, donations, or devises from any source. The Director shall
3 establish procedures for Commission staff to report administrative details to the Director of the
4 Administrative Office of the Courts."

5 **SECTION 3.** G.S. 15A-1467 reads as rewritten:

6 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and**
7 **privileges; formal inquiry; notification of the crime victim.**

8 (a) A claim of factual innocence for any conviction may be referred to the Commission by
9 any court, a State or local agency, ~~a claimant~~, or a claimant's counsel. A claim of factual innocence
10 for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery
11 pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration
12 pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony
13 may be made directly by the claimant. The Commission shall not consider a claim of factual
14 innocence if the convicted person is deceased. A claimant who received notice pursuant to
15 subsection (c1) of this section and did not make a claim of factual innocence shall be barred from
16 investigation of a claim of factual innocence by the Commission absent a showing of good cause
17 and approval of the Commission Chair. The determination of whether to grant a formal inquiry
18 regarding any other claim of factual innocence is in the discretion of the Commission. The
19 Commission may informally screen and dismiss a case summarily at its discretion.

20 (b) No formal inquiry into a claim of innocence shall be made by the Commission unless
21 the Director or the Director's designee first obtains a signed agreement from the convicted person
22 in which the convicted person waives his or her procedural safeguards and privileges, agrees to
23 cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry
24 requirements of the Commission. The waiver under this subsection does not apply to matters
25 unrelated to a convicted person's claim of innocence. The waiver under this subsection shall not be
26 construed to be a waiver of the convicted person's right to be heard by the court before the court
27 issues any protective order regarding any portion of the investigative file relating to the convicted
28 person's claim of factual innocence. The convicted person shall have the right to advice of counsel
29 prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal
30 inquiry. If counsel represents the convicted person, then the convicted person's counsel must be
31 present at the signing of the agreement. If counsel does not represent the convicted person, the
32 Commission Chair shall determine the convicted person's indigency status and, if appropriate,
33 enter an order for the appointment of counsel by Indigent Defense Services for the purpose of
34 advising on the agreement. If the convicted person has requested a specific attorney with
35 knowledge of the case, the Director shall inform Indigent Defense Services of that request for their
36 consideration.

37 ...

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

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

47"

48 **SECTION 4.** G.S. 15A-1468 reads as rewritten:

49 **"§ 15A-1468. Commission proceedings.**

50 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the
51 full ~~Commission. As part of its proceedings, the Commission may conduct public hearings. The~~

~~determination as to whether to conduct public hearings is solely in the discretion of the Commission.~~ Commission in a public hearing. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation and necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

(a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that ~~he or she~~ the District Attorney, or the District Attorney's designee, deems relevant to the proceedings. ~~Prior~~ At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be ~~included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to subsection (c) of this section.~~ part of the record.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of ~~his or her~~ their intent to attend.

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

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel, if any, and the district attorney in noncapital cases ~~and or~~ service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient

1 evidence of factual innocence to merit judicial review, the case shall be referred to the senior
2 resident superior court judge in the district of original jurisdiction.

3 If less than five of the eight voting members of the Commission, or in cases where the
4 convicted person entered and was convicted on a guilty plea less than all of the eight voting
5 members of the Commission, conclude there is sufficient evidence of factual innocence to merit
6 judicial review, the Commission shall conclude there is insufficient evidence of factual innocence
7 to merit judicial review. The Commission shall document that opinion, along with supporting
8 findings of fact, and file those documents and supporting materials with the clerk of superior court
9 in the district of original jurisdiction, with a copy to the convicted person or the convicted person's
10 counsel, if any, the district attorney and the senior resident superior court judge.

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

13 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed
14 through formal inquiry or Commission proceedings shall be referred to the appropriate authority.
15 Evidence favorable to the convicted person disclosed through formal inquiry or Commission
16 proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the
17 convicted person has counsel.

18 (e) All proceedings of the Commission shall be recorded and transcribed as part of the
19 record. All Commission member votes shall be recorded in the record. ~~All records and~~
20 ~~proceedings of the Commission are confidential and are exempt from public record and public~~
21 ~~meeting laws except that the~~ The supporting records for the Commission's conclusion that there is
22 sufficient evidence of factual innocence to merit judicial review, including all files and materials
23 considered by the Commission and a full transcript of the hearing before the Commission, shall
24 become public ~~at the time of referral to when filed with~~ the superior court. court as required in
25 subsection (c) of this section. Commission records for conclusions of insufficient evidence of
26 factual innocence to merit judicial review shall remain confidential, except as provided in
27 subsection (d) of this section.

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

33 (g) Except as otherwise provided in this section, all files and records not filed with the
34 clerk of superior court or presented at the hearings are confidential and exempt from the public
35 record. Upon completion of the Commission hearing, the Commission shall make available to the
36 district attorney and defense counsel a copy of the entire file, including a full transcript of the
37 hearing before the Commission. That file shall remain confidential and may not be released by the
38 district attorney or defense counsel until filed with the clerk of superior court.

39 (h) With respect to the evidence presented to the three judge panel, the district attorney and
40 defense counsel may determine which evidence, if any, will be presented to the three judge panel."

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

42 **"§15A-1469. Postcommission three-judge panel.**

43 (a) If the Commission ~~concludes~~ concludes, or the parties agree pursuant to G.S. 15A-
44 1468(f), there is sufficient evidence of factual innocence to merit judicial review, the Chair of the
45 Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial
46 judge that has had substantial previous involvement in the case, and issue commissions to the
47 members of the three-judge panel to convene a special session of the superior court of the original
48 jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of
49 the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the
50 filing of the Commission's opinion finding sufficient evidence of factual innocence to merit
51 judicial review.

1 ...
2 (e) The senior resident superior court judge shall determine the convicted person's
3 indigency status and, if appropriate, enter an order for the appointment of ~~counsel~~counsel by
4 Indigent Defense Services. If the convicted person has requested a specific attorney with
5 knowledge of the case, the Director shall inform Indigent Defense Services of that request for their
6 consideration. The court may also enter an order relieving an indigent convicted person of all or a
7 portion of the costs of the proceedings.

8"

9 **SECTION 6.** G.S. 15A-1471 reads as rewritten:

10 **"§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic**
11 **and DNA testing.**

12 (a) Upon receiving written notice from the Commission of a Commission inquiry, the
13 State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the
14 Commission provides written notice to the State that the Commission's inquiry is complete, the
15 duty to preserve under this section shall cease; however, other preservation requirements may be
16 applicable.

17 (b) The Commission is entitled to a copy of all records preserved under subsection (a) of
18 this section, including access to inspect and examine all physical evidence.

19 (b1) The Commission shall notify the District Attorney or designee, and the convicted
20 person or counsel, before requesting any protective order regarding any portion of the
21 investigative file relating to the convicted person's claim of factual innocence. The District
22 Attorney, or designee, and the convicted person, or counsel, shall be given the right to be heard by
23 the court before the court issues a protective order regarding any portion of the investigative file
24 relating to the convicted person's claim of factual innocence.

25 (c) Upon request of the Commission, the State shall transfer custody of physical evidence
26 to the Commission's Director, or the Director's designee, for forensic and DNA testing. The
27 Commission shall preserve evidence in a manner reasonably calculated to prevent contamination
28 or degradation of any biological evidence that might be present, while subject to a continuous
29 chain of custody and securely retained with sufficient official documentation to locate the
30 evidence. At or prior to the completion of the Commission's inquiry, the Commission shall return
31 all remaining evidence.

32 (d) The Commission shall have the right to subject physical evidence to forensic and DNA
33 testing, including consumption of biological material, as necessary for the Commission's inquiry.
34 If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from
35 the testing shall be searched and uploaded to CODIS. The Commission shall incur all costs
36 associated with ensuring compliance with FBI requirements and NDIS criteria.

37 (e) Upon request, the Commission shall have the authority to search any location where
38 files or evidence are reasonably likely to be stored relating to a claim subject to the Commission's
39 inquiry. The Commission shall provide the head of the agency to be searched, or his or her
40 designee, with proposed search procedures in advance of the search. The Commission will make
41 reasonable efforts to accommodate the agency without compromising the validity of the search.
42 The agency shall permit the Commission to conduct its search within two weeks of the search
43 procedure being provided or at a mutually agreed upon time."

44 **SECTION 7.** Section 2 of this act becomes effective August 1, 2016. All remaining
45 sections of this act are effective when it becomes law, and applies to any claim filed on or after
46 that date and any claim pending on that date. However, nothing in this act shall abate a claim filed
47 prior to that date or invalidate any action taken on a claim prior to that date.