



HOUSE BILL 678: Amend Innocence Commission Statutes.

2016-2017 General Assembly

Committee:	Senate Judiciary I	Date:	June 15, 2016
Introduced by:	Reps. Glazier, Daughtry, Stam, Reives	Prepared by:	Jennifer H. Bedford
Analysis of:	PCS to Second Edition H678-CSTT-13		Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 678 would make various changes to the laws regarding the Innocence Inquiry Commission (Commission) including recommendations from the Joint Legislative Oversight Committee on Justice and Public Safety.*

BILL ANALYSIS:

Section 1 of the PCS would define "formal inquiry" as "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."

Section 2 of the PCS would direct the Commission Director to report to the Director of the Administrative Office of the Courts (AOC) and establishes procedures for Commission staff to report administrative details to the AOC.

Section 3 of the PCS would amend the process to claim factual innocence by:

- Specifying that claims for any type of conviction may be referred by counsel but direct claims are limited to specific felonies.
- Providing that codefendants be given notice if a claim of factual innocence is being investigated.
- Specifying that a co-defendant may be barred from filing a claim if they do not file a claim within 60 days from receipt of notice.
- Specifying that a claimant's waiver will not be construed as a waiver of a convicted person's right to be heard by the court before the court issues a protective order.
- Requiring the Director to provide a confidential case status update to the district attorney and defense counsel for each case in formal inquiry at least every 6 months.
- Specifying Indigent Defense Services (IDS) will appoint counsel to advise the convicted person on the execution of the formal inquiry agreement and be advised if specific counsel has been requested by the convicted person.

Section 4 of the PCS would amend the Commission proceedings by:

- Requiring that the full Commission meetings at the end of the formal inquiry be public.
- Authorizing the Commission chair to order a witness to testify if the witness's testimony is likely to be material and necessary.

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- Authorizing the district attorney to provide the Commission with a written statement at least 24 hours in advance of a Commission proceeding, that would become part of the record.
- Clarifying who must be served when the Commission concludes there is sufficient evidence of factual innocence to merit judicial review.
- Adding a provision that at any time the District Attorney and convicted person may agree there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the proceedings and determination by the full Commission.
- Requiring a full copy of the Commission file, including a full transcript to be provided to the district attorney and defense counsel. That file would be confidential until it is filed with the clerk of superior court.
- Providing that all files considered by the Commission become public when filed with the clerk of court.
- Specifying that the district attorney and defense counsel determine what evidence is presented to the three judge panel.

Section 5 of the PCS would clarify that counsel for indigent persons would be appointed by Indigent Defense Services and requests for specific attorneys should be considered.

Section 6 of the PCS would amend the laws regarding gathering evidence and seeking protective orders by:

- Requiring the Commission to notify the parties involved before requesting any protective order regarding any portion of the investigative file.
- Authorizing the Commission to conduct a search of any location where files or evidence are reasonably likely to be stored relating to a claim under inquiry.
- Requiring agencies to permit searches by the Commission within two weeks of receiving a proposed search procedure.

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