

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 778

Short Title: Amend Innocence Commission Laws. (Public)

Sponsors: Representative Stevens (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B.

April 7, 2011

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

4 The General Assembly of North Carolina enacts:

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

6 **"§ 15A-1460. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) "Claim of factual innocence" means a claim on behalf of a living person  
9 convicted of a felony in the General Court of Justice of the State of North  
10 Carolina, to which the person originally pled not guilty or nolo contendere,  
11 asserting the complete innocence of any criminal responsibility for the  
12 felony for which the person was convicted and for any other reduced level of  
13 criminal responsibility relating to the crime, and for which there is some  
14 credible, verifiable evidence of innocence that has not previously been  
15 presented at trial or considered at a hearing granted through postconviction  
16 relief.
- 17 (2) "Commission" means the North Carolina Innocence Inquiry Commission  
18 established by this Article.
- 19 (3) "Director" means the Director of the North Carolina Innocence Inquiry  
20 Commission.
- 21 (4) "Victim" means the victim of the crime, or if the victim of the crime is  
22 deceased, the next of kin of the victim."

23 **SECTION 2.** G.S. 15A-1467(a) reads as rewritten:

24 ..."

25 (a) A claim of factual innocence may be referred to the Commission by ~~any court,~~  
26 ~~person, or agency.~~ the trial court or the defendant. The Commission shall not consider a claim  
27 of factual innocence if the convicted person is deceased. The determination of whether to grant  
28 a formal inquiry regarding any other claim of factual innocence is in the discretion of the  
29 Commission. The Commission may informally screen and dismiss a case summarily at its  
30 discretion."

31 **SECTION 3.** G.S. 15A-1468 reads as rewritten:

32 **"§ 15A-1468. Commission proceedings.**

33 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the  
34 full Commission. During Commission proceedings, the prosecutor or any other representative  
35 for the State shall be given the opportunity to cross-examine any witness or present rebuttal



1 evidence relevant to any new evidence presented by the Director. As part of its proceedings, the  
2 Commission may conduct public hearings. The determination as to whether to conduct public  
3 hearings is solely in the discretion of the Commission. Any public hearing held in accordance  
4 with this section shall be subject to the Commission's rules of operation.

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

20 (b) The Director shall use all due diligence to notify the victim at least 30 days prior to  
21 any proceedings of the full Commission held in regard to the victim's case. The Commission  
22 shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the  
23 public, subject to any limitations imposed by this Article. If the victim plans to attend  
24 proceedings otherwise closed to the public, the victim shall notify the Commission at least 10  
25 days in advance of the proceedings of his or her intent to attend. ~~If the Commission determines  
26 that the victim's presence may interfere with the investigation, the Commission may close any  
27 portion of the proceedings to the victim.~~

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

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

42 If less than five of the eight voting members of the Commission, ~~or in cases where the  
43 convicted person entered and was convicted on a guilty plea less than all of the eight voting  
44 members of the Commission,~~ conclude there is sufficient evidence of factual innocence to merit  
45 judicial review, the Commission shall conclude there is insufficient evidence of factual  
46 innocence to merit judicial review. The Commission shall document that opinion, along with  
47 supporting findings of fact, and file those documents and supporting materials with the clerk of  
48 superior court in the district of original jurisdiction, with a copy to the district attorney and the  
49 senior resident superior court judge.

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

1 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed  
2 through formal inquiry or Commission proceedings shall be referred to the appropriate  
3 authority. Evidence favorable to the convicted person disclosed through formal inquiry or  
4 Commission proceedings shall be disclosed to the convicted person and the convicted person's  
5 counsel, if the convicted person has counsel.

6 (e) All proceedings of the Commission shall be recorded and transcribed as part of the  
7 record. All Commission member votes shall be recorded in the record. All records and  
8 proceedings of the Commission are confidential and are exempt from public record and public  
9 meeting laws except that the supporting records for the Commission's conclusion that there is  
10 sufficient evidence of factual innocence to merit judicial review, including all files and  
11 materials considered by the Commission and a full transcript of the hearing before the  
12 Commission, shall become public at the time of referral to the superior court. Commission  
13 records for conclusions of insufficient evidence of factual innocence to merit judicial review  
14 shall remain confidential, except as provided in subsection (d) of this section."

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

16 **"§ 15A-1469. Postcommission three-judge panel.**

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

25 (a1) If there is ~~an allegation of or significant~~ evidence of prosecutorial misconduct in the  
26 case, the Chair of the Commission or the district attorney of the district of conviction may  
27 request the Director of the ~~Administrative Office of the Courts~~ Conference of District  
28 Attorneys to appoint a special prosecutor to represent the State in lieu of the district attorney of  
29 the district of conviction or the district attorney's designee. The request for the special  
30 prosecutor shall be made within 20 days of the filing of the Commission's opinion finding  
31 sufficient evidence of innocence to merit judicial review.

32 Upon receipt of a request under this subsection to appoint a special prosecutor, the Director  
33 of the ~~Administrative Office of the Courts~~ Conference of District Attorneys may temporarily  
34 assign a district attorney, assistant district attorney, or other qualified attorney, including one  
35 from the prosecutorial district where the convicted person was tried, to represent the State at the  
36 hearing before the three-judge panel. ~~However, the Director of the Administrative Office of the~~  
37 ~~Courts shall not appoint as special prosecutor any attorney who prosecuted or assisted with the~~  
38 ~~prosecution in the trial of the convicted person.~~ The appointment shall be made pursuant to  
39 G.S. 7A-64 and shall be made no later than 20 days after the receipt of the request.

40 (b) The senior resident superior court judge shall enter an order setting the case for  
41 hearing at the special session of superior court for which the three-judge panel is commissioned  
42 and shall require the State to file a response to the Commission's opinion within 90 days of the  
43 date of the order. Such response, at the time of original filing or through amendment at any  
44 time before or during the proceedings, may include joining the defense in a motion to dismiss  
45 the charges with prejudice on the basis of innocence.

46 (c) The district attorney of the district of conviction, or the district attorney's designee,  
47 shall represent the State at the hearing before the three-judge panel, except as otherwise  
48 provided by this section.

49 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the  
50 court, and the defense and prosecution through the court, may compel the testimony of any  
51 witness, including the convicted person. ~~All evidence relevant to the case, even if considered~~

1 ~~by a jury or judge in a prior proceeding.~~ Only credible, verifiable evidence of innocence that has  
2 not previously been presented at trial or considered at a hearing granted through postconviction  
3 relief may be presented during the hearing. The convicted person may not assert any privilege  
4 or prevent a witness from testifying. The convicted person has a right to be present at the  
5 evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall  
6 be in writing.

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

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

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

15 (h) The three-judge panel shall rule as to whether the convicted person has proved ~~by~~  
16 ~~clear and convincing evidence beyond a reasonable doubt~~ that the convicted person is innocent  
17 of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous,  
18 the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the  
19 panel shall deny relief.

20 (i) A person who is determined by the three-judge panel to be innocent of all charges  
21 and against whom the charges are dismissed pursuant to this section is eligible for  
22 compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a  
23 pardon of innocence from the Governor."

24 **SECTION 5.** G.S. 15A-1470(b) is repealed.

25 **SECTION 6.** G.S. 7A-413(a) is amended by adding a new subdivision to read:

26 "(5) Upon receipt of a request from the North Carolina Innocence Inquiry  
27 Commission, assign a district attorney, assistant district attorney, or other  
28 qualified attorney to serve temporarily as a prosecutor to represent the State  
29 in a hearing regarding a claim of factual innocence pursuant to  
30 G.S. 15A-1469."

31 **SECTION 7.** This act becomes effective October 1, 2011, and applies to claims of  
32 factual innocence filed on or after that date.