

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 678
Apr 13, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH40320-LH-163A (01/08)

Short Title: Amend Innocence Commission Statutes. (Public)

Sponsors: Representatives Glazier, Daughtry, and Stam (Primary Sponsors).

Referred to:

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

4 The General Assembly of North Carolina enacts:

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

6 "(a) The Commission shall employ a ~~Director~~ Director who shall report to the Director
7 of the Administrative Office of the Courts. The Director shall be an attorney licensed to
8 practice in North Carolina at the time of appointment and at all times during service as
9 Director. The Director shall assist the Commission in developing rules and standards for cases
10 accepted for review, coordinate investigation of cases accepted for review, maintain records for
11 all case investigations, prepare reports outlining Commission investigations and
12 recommendations to the trial court, and apply for and accept on behalf of the Commission any
13 funds that may become available from government grants, private gifts, donations, or devises
14 from any source."

15 **SECTION 2.** G.S. 15A-1466 is amended by adding a new subdivision to read:

16 "(7) To submit to the Director of the Administrative Office of the Courts an
17 annual report containing detailed data on the operations, expenses, and needs
18 of the Commission, and such other information as the Director of the
19 Administrative Office of the Courts may require."

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

21 "**§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards**
22 **and privileges; formal inquiry; notification of the crime victim.**

23 ...

24 (c1) If formal inquiry is granted, the Director shall use all due diligence to contact all
25 codefendants associated with the case. Each codefendant will be given an opportunity to have
26 his or her case simultaneously investigated with the pending claim. If a codefendant declines
27 the opportunity to have his or her case investigated at that time, the codefendant's case shall be
28 barred from future investigation by the Commission.

29 ...

30 (h) At least every six months, the Director shall provide a confidential case status
31 update, which includes a summary of the actions taken since the last update, to the district
32 attorney, defense counsel, and referring counsel, if any, for each case in formal inquiry."

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

34 "**§ 15A-1468. Commission proceedings.**

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



* D R H 4 0 3 2 0 - L H - 1 6 3 A *

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

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

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

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

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

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

1 convicted on a plea of guilty, if all of the eight voting members of the Commission conclude
2 there is sufficient evidence of factual innocence to merit judicial review, the case shall be
3 referred to the senior resident superior court judge in the district of original jurisdiction.

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

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

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

20 (e) All proceedings of the Commission shall be recorded and transcribed as part of the
21 record. All Commission member votes shall be recorded in the record. ~~All records and~~
22 ~~proceedings of the Commission are confidential and are exempt from public record and public~~
23 ~~meeting laws except that the supporting records for the Commission's conclusion that there is~~
24 ~~sufficient evidence of factual innocence to merit judicial review, including all files and~~
25 ~~materials considered by the Commission and a full transcript of the hearing before the~~
26 ~~Commission, One copy of the full Commission file, including a full transcript of the hearing~~
27 ~~before the Commission, but excluding all documents that are protected through a protective~~
28 ~~order, shall be disclosed to the parties immediately after completion of formal inquiry or~~
29 ~~immediately upon becoming available in an uncertified form. A protective order shall only be~~
30 ~~issued if the district attorney and the convicted person or the convicted person's counsel have~~
31 ~~been given an opportunity to be heard. All documents shall become public record when they~~
32 ~~are entered into evidence in the superior court by either of the parties, at the time of referral to~~
33 ~~the superior court.~~ Commission records for conclusions of insufficient evidence of factual
34 innocence to merit judicial review shall remain confidential, except as provided in subsection
35 (d) of this section."

36 **SECTION 5.** This act is effective when it becomes law.