

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS35289-MS-112D (03/16)

Short Title: Amend Various Innocence Commission Statutes. (Public)

Sponsors: Senators Britt, McKissick, and Blue (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE DUTIES OF THE DIRECTOR OF THE INNOCENCE  
3 COMMISSION AND TO ENSURE ALL LANGUAGE AND TERMINOLOGY IS  
4 CONSISTENT WITHIN THE ARTICLE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-1417 reads as rewritten:

7 "§ 15A-1417. Relief available.

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

10 (1) New trial on all or any of the charges.

11 (2) Dismissal of all or any of the charges.

12 (3) The relief sought by the State pursuant to G.S. 15A-1416.

13 ~~(3a) For claims of factual innocence, referral to the North Carolina Innocence~~  
14 ~~Inquiry Commission established by Article 92 of Chapter 15A of the~~  
15 ~~General Statutes.~~

16 (4) Any other appropriate relief.

17 (b) When relief is granted in the trial court and the offense is divided into degrees or  
18 necessarily includes lesser offenses, and the court is of the opinion that the evidence does not  
19 sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser  
20 offense necessarily included in the one charged, the court may, with consent of the State, accept  
21 a plea of guilty to the lesser degree or lesser offense.

22 (c) If resentencing is required, the trial division may enter an appropriate sentence. If a  
23 motion is granted in the appellate division and resentencing is required, the case must be  
24 remanded to the trial division for entry of a new sentence."

25 SECTION 2. G.S. 15A-1418 reads as rewritten:

26 "§ 15A-1418. Motion for appropriate relief in the appellate division.

27 (a) When a case is in the appellate division for review, a motion for appropriate relief  
28 based upon grounds set out in G.S. 15A-1415 must be made in the appellate division. For the  
29 purpose of this section a case is in the appellate division when the jurisdiction of the trial court  
30 has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has  
31 been granted. When a petition for a writ of certiorari has been filed but not granted, a copy or  
32 written statement of any motion made in the trial court, and of any disposition of the motion,  
33 must be filed in the appellate division.

34 (b) When a motion for appropriate relief is made in the appellate division, the appellate  
35 court must decide whether the motion may be determined on the basis of the materials before  
36 ~~it,~~ it or whether it is necessary to remand the case to the trial division for taking evidence or



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1 conducting other proceedings, or, for claims of factual innocence, whether to refer the case for  
2 further investigation to the North Carolina Innocence Inquiry Commission established by  
3 ~~Article 92 of Chapter 15A of the General Statutes.~~ proceedings. If the appellate court does not  
4 remand the case for proceedings on the motion, it may determine the motion in conjunction  
5 with the appeal and enter its ruling on the motion with its determination of the case.

6 (c) The order of remand must provide that the time periods for perfecting or proceeding  
7 with the appeal are tolled, and direct that the order of the trial division with regard to the  
8 motion be transmitted to the appellate division so that it may proceed with the appeal or enter  
9 an appropriate order terminating it."

10 **SECTION 3.** G.S. 15A-1460 reads as rewritten:

11 **"§ 15A-1460. Definitions.**

12 The following definitions apply in this Article:

- 13 (1) "Claim of factual innocence" means a claim on behalf of a living person  
14 convicted of a felony in the General Court of Justice of the State of North  
15 Carolina, asserting the complete innocence of any criminal responsibility for  
16 the felony for which the person was convicted and for any other reduced  
17 level of criminal responsibility relating to the crime, and for which there is  
18 some credible, verifiable evidence of innocence that has not previously been  
19 presented at trial or considered at a hearing granted through postconviction  
20 relief.
- 21 (1a) "Claimant" means a person asserting that he or she is completely innocent of  
22 any criminal responsibility for a felony crime upon which the person was  
23 convicted and for any other reduced level of criminal responsibility relating  
24 to the crime.
- 25 (2) "Commission" means the North Carolina Innocence Inquiry Commission  
26 established by this Article.
- 27 (3) "Director" means the Director of the North Carolina Innocence Inquiry  
28 ~~Commission.~~ Commission or the Director's designee.
- 29 (3a) "Formal inquiry" means the stage of an investigation when the Commission  
30 has entered into a signed agreement with the original claimant and the  
31 Commission has made efforts to notify the victim.
- 32 (4) "Victim" means the victim of the crime, or if the victim of the crime is  
33 deceased, the next of kin of the victim."

34 **SECTION 4.** G.S. 15A-1463 reads as rewritten:

35 **"§ 15A-1463. Membership; chair; meetings; quorum.**

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

- 37 (1) One shall be a superior court judge.  
38 (2) One shall be a prosecuting attorney.  
39 (3) One shall be a victim advocate.  
40 (4) One shall be engaged in the practice of criminal defense law.  
41 (5) One shall be a public member who is not an attorney and who is not an  
42 officer or employee of the Judicial Department.  
43 (6) One shall be a ~~sheriff holding office at the time of his or her~~  
44 ~~appointment.~~ sheriff.  
45 (7) The vocations of the two remaining appointed voting members shall be at  
46 the discretion of the Chief Justice.

47 The Chief Justice of the North Carolina Supreme Court shall make the initial appointment  
48 for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of  
49 the Court of Appeals shall make the initial appointment for members identified in subdivisions  
50 (1) through (3) of this subsection. After an appointee has served his or her first three-year term,  
51 the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the

1 previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing  
2 power, except for the two discretionary appointments identified by subdivision (7) of this  
3 subsection which shall be appointed by the Chief Justice.

4 (b) The appointing authority shall also appoint alternate Commission members for the  
5 Commission members he or she has appointed to serve in the event of scheduling conflicts,  
6 conflicts of interest, disability, or other disqualification arising in a particular case. The  
7 alternate members shall have the same qualifications for appointment as the original member.  
8 In making the appointments, the appointing authority shall make a good faith effort to appoint  
9 members with different perspectives of the justice system. The appointing authority shall also  
10 consider geographical location, gender, and racial diversity in making the appointments.

11 (c) The superior court judge who is appointed as a member under subsection (a) of this  
12 section shall serve as Chair of the Commission. ~~The Commission shall have its initial meeting~~  
13 ~~no later than January 31, 2007, at the call of the Chair.~~ The Commission shall meet a minimum  
14 of once every six months and may also meet more often at the call of the Chair. The  
15 Commission shall meet at such time and place as designated by the Chair. ~~Notice~~Public notice  
16 of the meetings shall be given at such time and manner as provided by the rules of the  
17 ~~Commission.~~Commission and an opportunity for public comment regarding Commission  
18 operations and rules shall be scheduled for each meeting. A majority of the members shall  
19 constitute a quorum. All Commission votes shall be by majority vote."

20 **SECTION 5.** G.S. 15A-1465 reads as rewritten:

21 "**§ 15A-1465. Director and other staff.**

22 (a) The Commission shall employ a Director. The Director shall report to the Director  
23 of the Administrative Office of the Courts, who shall consult with the Commission chair. The  
24 Director shall be an attorney licensed to practice in North Carolina at the time of appointment  
25 and at all times during service as Director. The Director shall assist the Commission in  
26 developing rules and standards for cases accepted for review, coordinate investigation of cases  
27 accepted for review, maintain records for all case investigations, prepare reports ~~outlining~~  
28 ~~Commission investigations and recommendations to the trial court,~~as requested by the  
29 Commission or Administrative Office of the Courts, and apply for and accept on behalf of the  
30 Commission any funds that may become available from government grants, private gifts,  
31 donations, or devises from any source.

32 (b) Subject to the approval of the Chair, the Director shall employ such other staff and  
33 shall contract for services as is necessary to assist the Commission in the performance of its  
34 duties, and as funds permit.

35 (c) The Commission may, with the approval of the Legislative Services Commission,  
36 meet in the State Legislative Building or the Legislative Office Building, or may meet in an  
37 area provided by the Director of the Administrative Office of the Courts. The Director of the  
38 Administrative Office of the Courts shall provide office space for the Commission and the  
39 Commission staff."

40 **SECTION 6.** G.S. 15A-1466 reads as rewritten:

41 "**§ 15A-1466. Duties.**

42 The ~~Commission~~Director shall have the following duties and powers:

- 43 (1) To establish the criteria and screening process to be used to determine which  
44 cases shall be accepted for review.
- 45 (2) ~~To conduct inquiries into claims of factual innocence, with priority to be~~  
46 ~~given to those cases in which the convicted person is currently incarcerated~~  
47 ~~solely for the crime for which he or she claims factual innocence.~~
- 48 (3) To coordinate the investigation of cases accepted for ~~review.~~review, with  
49 priority to be given to those cases in which the convicted person is currently  
50 incarcerated solely for the crime for which the convicted person claims  
51 factual innocence.

1 (4) To maintain records for all case investigations.

2 (5) ~~To prepare written reports outlining Commission investigations and~~  
3 ~~recommendations to the trial court at the completion of each inquiry.~~To  
4 prepare and present cases to the Commission for consideration pursuant to  
5 G.S. 15A-1468.

6 (6) To apply for and accept any funds that may become available for the  
7 Commission's work from government grants, private gifts, donations, or  
8 devises from any source."

9 **SECTION 7.** G.S. 15A-1467 reads as rewritten:

10 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards**  
11 **and privileges; formal inquiry; notification of the crime victim.**

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

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

40 (b1) Forensic testing and claimant interviews shall not be conducted ~~by the Commission~~  
41 prior to obtainingbefore a signed agreement from the convicted ~~person.~~person is obtained  
42 pursuant to section (b) of this section.

43 (c) If a formal inquiry regarding a claim of factual innocence is granted, the Director  
44 shall use all due diligence to notify the victim in the case and explain the inquiry process. The  
45 ~~Commission Director~~ shall give the victim notice that the victim has the right to present his or  
46 her views and concerns throughout the ~~Commission's~~ investigation.

47 (c1) Absent a showing of good cause and approval of the Commission ~~chair,~~Chair, if a  
48 formal inquiry regarding a claim of factual innocence is granted, the ~~Commission Director~~ shall  
49 use all due diligence to notify each codefendant of the claim that an investigation will be  
50 conducted and that if the codefendant wishes to also file a claim, they must do so within 60

1 days from receipt of the notice or their claim may be barred from future ~~investigation by the~~  
2 ~~Commission investigation.~~

3 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director  
4 shall provide a confidential case status update for each case in formal inquiry to (i) the District  
5 Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If  
6 there is no defense counsel, the update shall be provided to the District Attorney, the convicted  
7 person, and referring counsel, if any. The case status update shall include a summary of the  
8 actions taken since the last update and the results of any forensic testing that has been  
9 conducted.

10 (d) The Commission may use any measure provided in Chapter 15A of the General  
11 Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information  
12 necessary to its inquiry. The Commission may also do any of the following: issue process to  
13 compel the attendance of witnesses and the production of evidence, administer oaths, petition  
14 the Superior Court of Wake County or of the original jurisdiction for enforcement of process or  
15 for other ~~relief, and~~ relief. The Commission may prescribe its own rules of procedure. All  
16 challenges with regard to the Commission's authority or the Commission's access to evidence  
17 shall be heard by the Commission Chair in the Chair's judicial capacity, including any in  
18 camera review required by G.S. 15A-908.

19 (e) While performing duties for the Commission, the Director ~~or the Director's designee~~  
20 may serve subpoenas or other process issued by the Commission throughout the State in the  
21 same manner and with the same effect as an officer authorized to serve process of the General  
22 Court of Justice.

23 (f) All State discovery and disclosure statutes in effect at the time of formal inquiry  
24 shall be enforceable as if the convicted person were currently being tried for the charge for  
25 which the convicted person is claiming innocence.

26 (g) If, at any point during an inquiry, the convicted person refuses to comply with  
27 requests of the ~~Commission~~ Director or is otherwise deemed to be uncooperative by the  
28 ~~Commission~~ Director, the ~~Commission~~ Director shall have the discretion to discontinue the  
29 inquiry."

30 **SECTION 8.** G.S. 15A-1468 reads as rewritten:

31 **"§ 15A-1468. Commission proceedings.**

32 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the  
33 full Commission in a public hearing. Any public hearing held in accordance with this section  
34 shall be subject to the Commission's rules of operation. The Commission's rules of operation  
35 shall not exclude the district attorney or defense counsel from any portion of the hearing.

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

1       (a2) ~~The Innocence Inquiry Commission shall include, as part of its rules of operation,~~  
2 ~~the holding of a~~ prehearing conference ~~to~~shall be held at least 10 days prior to ~~any~~  
3 ~~proceedings of a presentation of the case to~~ the full Commission. Only the following persons  
4 shall be notified and authorized to attend the prehearing conference: the District Attorney, or  
5 the District Attorney's designee, of the district where the claimant was convicted of the felony  
6 upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of  
7 the Commission; the Executive Director of the Commission; and any Commission staff  
8 designated by the Director. The District Attorney, or designee, shall be provided (i) an  
9 opportunity to inspect any evidence that may be presented to the Commission that has not  
10 previously been presented to any judicial officer or body and (ii) any information that the  
11 District Attorney, or the District Attorney's designee, deems relevant to the proceedings. At  
12 least 72 hours prior to any Commission proceedings, the District Attorney or designee is  
13 authorized to provide the Commission with a written statement, which shall be part of the  
14 record.

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

21       (c) After hearing the evidence, the full Commission shall ~~vote~~ deliberate in a closed  
22 meeting to establish further case disposition as provided by this subsection. All eight voting  
23 members of the Commission shall participate in ~~that a public~~ vote.

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

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

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

46       (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed  
47 through formal inquiry or Commission proceedings shall be referred to the appropriate  
48 authority. Evidence favorable to the convicted person disclosed through formal inquiry or  
49 Commission proceedings shall be disclosed to the convicted person and the convicted person's  
50 counsel, if the convicted person has counsel.

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

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

14 (g) Except as otherwise provided in this section, all files and records not filed with the  
15 clerk of superior court or presented at the Commission hearings are ~~confidential and exempt~~  
16 from the public record.

17 (h) ~~If the Commission concludes there is sufficient evidence of factual innocence to  
18 merit judicial review, For formal inquiry cases which are not presented to the Commission, the  
19 Director shall provide a copy of the full case file, in accordance with G.S. 132-1.4,  
20 G.S. 15A-1415(h), and Article 48 of Chapter 15A of the General Statutes, to the district  
21 attorney and defense counsel when formal inquiry is completed. For cases presented to the full  
22 commission after formal inquiry, the Commission the Director shall make a copy of the its entire  
23 case file available to the district attorney and defense counsel. Upon availability, the  
24 Commission shall provide the district attorney and defense counsel counsel, as well as a copy of  
25 the uncertified and certified transcript of the Commission's proceedings. Absent a judicial  
26 finding of malicious conduct, the Commission and Commission staff shall not be civilly liable  
27 for acting in compliance with this subsection.~~

28 (h) ~~With respect to the evidence presented to the three-judge panel, the district attorney  
29 and defense counsel may determine which evidence, if any, will be presented to the three-judge  
30 panel."~~

31 **SECTION 9.** G.S. 15A-1469 reads as rewritten:

32 **"§ 15A-1469. Postcommission three-judge panel.**

33 (a) If the Commission concludes or the district attorney and the convicted person's  
34 counsel agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual innocence to  
35 merit judicial review, the ~~Chair of the Commission~~ Chair shall request the Chief Justice to  
36 appoint a three-judge panel, not to include any trial judge that has had substantial previous  
37 involvement in the case, and issue commissions to the members of the three-judge panel to  
38 convene a special session of the superior court of the original jurisdiction to hear evidence  
39 relevant to the Commission's recommendation. The senior judge of the panel shall preside. The  
40 Chief Justice shall appoint the three-judge panel within 20 days of the filing of the  
41 Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

42 (a1) If the Commission concludes that there is credible evidence of prosecutorial  
43 misconduct in the case, the ~~Chair of the Commission~~ Chair may request the Attorney General  
44 to appoint a special prosecutor to represent the State in lieu of the district attorney of the district  
45 of conviction or the district attorney's designee. The request for the special prosecutor shall be  
46 made within 20 days of the filing of the Commission's opinion finding sufficient evidence of  
47 innocence to merit judicial review.

48 Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney  
49 General may temporarily assign a district attorney, assistant district attorney, or other qualified  
50 attorney, to represent the State at the hearing before the three-judge panel. However, the  
51 Attorney General shall not appoint as special prosecutor any attorney who prosecuted or

1 assisted with the prosecution in the trial of the convicted person, or is a prosecuting attorney in  
2 the district where the convicted person was tried. The appointment shall be made no later than  
3 20 days after the receipt of the request.

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

10 (b1) The Commission's entire file, including files obtained from other agencies, shall be  
11 unencumbered by protective orders when transferred to the district attorney and defense  
12 counsel pursuant to ~~subsection (g) of this section,~~G.S. 15A-1468(h) unless either of the  
13 following apply:

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

16 (2) ~~The district attorney and defense counsel have been given an opportunity to~~  
17 ~~be heard by the senior judge of the three-judge panel before a protective~~  
18 ~~order is issued.~~The senior judge of the three-judge panel, after the district  
19 attorney and defense counsel have been given an opportunity to be heard,  
20 finds good cause shown pursuant to G.S. 15A-908.

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

24 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the  
25 court, and the defense and prosecution through the court, may compel the testimony of any  
26 witness, including the convicted person. All credible, verifiable evidence relevant to the case,  
27 even if considered by a jury or judge in a prior proceeding, may be presented during the  
28 hearing. The convicted person may not assert any privilege or prevent a witness from testifying.  
29 The convicted person has a right to be present at the evidentiary hearing and to be represented  
30 by counsel. A waiver of the right to be present shall be in writing.

31 (e) The senior resident superior court judge in the district of original jurisdiction shall  
32 determine the convicted person's indigency status and, if appropriate, enter an order for the  
33 appointment of counsel by Indigent Defense Services. If the convicted person has requested a  
34 specific attorney with knowledge of the case, the Director shall inform Indigent Defense  
35 Services of that request for their consideration. The court may also enter an order relieving an  
36 indigent convicted person of all or a portion of the costs of the proceedings.

37 (f) The clerk of court shall provide written notification to the victim 30 days prior to  
38 any case-related ~~hearings~~hearings, with the exception of consent hearings, which shall require  
39 reasonable notice.

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

42 (g1) With respect to the evidence presented to the three-judge panel, the district attorney  
43 and defense counsel may determine which evidence, if any, will be presented to the three-judge  
44 panel.

45 (h) The three-judge panel shall rule as to whether the convicted person has proved by  
46 clear and convincing evidence that the convicted person is innocent of the charges. Such a  
47 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter  
48 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

49 (i) A person who is determined by the three-judge panel to be innocent of all charges  
50 and against whom the charges are dismissed pursuant to this section is eligible for



1 compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a  
2 pardon of innocence from the Governor."

3 **SECTION 10.** G.S. 15A-1471 reads as rewritten:

4 "**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic  
5 and DNA testing.**

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

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

13 (c) Upon request of the Commission, the State shall transfer custody of physical  
14 evidence to the Commission's Director, or the Director's designee, for forensic and DNA  
15 testing. ~~The Commission evidence shall preserve evidence~~ be preserved in a manner reasonably  
16 calculated to prevent contamination or degradation of any biological evidence that might be  
17 present, while subject to a continuous chain of custody and securely retained with sufficient  
18 official documentation to locate the evidence. At or prior to the completion of the  
19 Commission's inquiry, ~~the Commission shall return all remaining evidence.~~ all remaining  
20 evidence shall be returned.

21 (d) The Commission shall have the right to subject physical evidence to forensic and  
22 DNA testing, including consumption of biological ~~material,~~ material with written consent of the  
23 claimant, as necessary for the Commission's inquiry. If testing complies with FBI requirements  
24 and the data meets NDIS criteria, profiles obtained from the testing shall be searched and  
25 uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance  
26 with FBI requirements and NDIS criteria."

27 **SECTION 11.** G.S. 143-318.18 reads as rewritten:

28 "**§ 143-318.18. Exceptions.**

29 This Article does not apply to:

- 30 (1) Grand and petit juries.
- 31 (2) Any public body that is specifically authorized or directed by law to meet in  
32 executive or confidential session, to the extent of the authorization or  
33 direction.
- 34 (3) The Judicial Standards Commission.
- 35 ~~(3a) The North Carolina Innocence Inquiry Commission.~~
- 36 (4) Repealed by Session Laws 1991, c. 694, s. 9.
- 37 (4a) The Legislative Ethics Committee.
- 38 (4b) A conference committee of the General Assembly.
- 39 (4c) A caucus by members of the General Assembly; however, no member of the  
40 General Assembly shall participate in a caucus which is called for the  
41 purpose of evading or subverting this Article.
- 42 (5) Law enforcement agencies.
- 43 (6) A public body authorized to investigate, examine, or determine the character  
44 and other qualifications of applicants for professional or occupational  
45 licenses or certificates or to take disciplinary actions against persons holding  
46 such licenses or certificates, (i) while preparing, approving, administering, or  
47 grading examinations or (ii) while meeting with respect to an individual  
48 applicant for or holder of such a license or certificate. This exception does  
49 not amend, repeal, or supersede any other statute that requires a public  
50 hearing or other practice and procedure in a proceeding before such a public  
51 body.

- 1           (7) Any public body subject to the State Budget Act, Chapter 143C of the  
2           General Statutes and exercising quasi-judicial functions, during a meeting or  
3           session held solely for the purpose of making a decision in an adjudicatory  
4           action or proceeding.  
5           (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or  
6           G.S. 116-238.  
7           (9) Repealed by Session Laws 1991, c. 694, s. 9.  
8           (10) Repealed by Session Laws 2013-234, s. 10, effective July 3, 2013.  
9           (11) The General Court of Justice."  
10           **SECTION 12.** This act is effective when it becomes law and applies to all cases  
11           under Article 92 of Chapter 15A of the General Statutes.