

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

S

1

SENATE BILL 484

Short Title: Modifications to NC Innocence Inquiry Commiss. (Public)

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

Referred to: Rules and Operations of the Senate

April 3, 2019

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY VARIOUS STATUTORY PROVISIONS REGARDING THE NORTH  
3 CAROLINA INNOCENCE INQUIRY COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 92 of Chapter 15A of the General Statutes reads as rewritten:

6 "Article 92.

7 "North Carolina Innocence Inquiry Commission.

8 **"§ 15A-1460. Definitions.**

9 The following definitions apply in this Article:

10 (1) "Claim of factual innocence" means a claim on behalf of a ~~living~~ person  
11 convicted of a felony in the General Court of Justice of the State of North  
12 Carolina, asserting the complete innocence of any criminal responsibility for  
13 the felony for which the person was ~~convicted and for any other reduced level~~  
14 ~~of criminal responsibility relating to the crime, convicted,~~ and for which there  
15 is some credible, verifiable evidence of innocence that has not previously been  
16 presented at trial or considered at a hearing granted through postconviction  
17 relief.

18 (1a) "Claimant" means a person asserting that he or she is completely innocent of  
19 any criminal responsibility for a felony crime upon which the person was  
20 ~~convicted and for any other reduced level of criminal responsibility relating~~  
21 ~~to the crime convicted.~~

22 ...

23 (3a) "Formal inquiry" means the stage of an investigation when the Commission  
24 has entered into a signed agreement with the original claimant ~~and the~~  
25 ~~Commission has made efforts to notify the victim pursuant to 15A-1467(b).~~

26 (4) "Victim" means the victim of the crime, or if the victim of the crime is  
27 deceased, the next of kin of the ~~victim.~~ victim, as defined in 15A-830(a)(6).

28 ...

29 **"§ 15A-1463. Membership; chair; meetings; quorum.**

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

31 ...

32 (6) One shall be a ~~sheriff holding office at the time of his or her~~  
33 ~~appointment.~~ sheriff.

34 (7) The vocations of the two remaining appointed voting members shall be at the  
35 discretion of the Chief Justice.



1 The Chief Justice of the North Carolina Supreme Court shall make the initial appointment  
2 for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the  
3 Court of Appeals shall make the initial appointment for members identified in subdivisions (1)  
4 through (3) of this subsection. After an appointee has served his or her first three-year term, the  
5 subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the  
6 previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing  
7 power, except for the two discretionary appointments identified by subdivision (7) of this  
8 subsection which shall be appointed by the Chief Justice.

9 ...

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

19 **"§ 15A-1464. Terms of members; compensation; expenses.**

20 (a) ~~Of the initial members, two appointments shall be for one year terms, three~~  
21 ~~appointments shall be for two year terms, and three appointments shall be for three year terms.~~  
22 ~~Thereafter, all~~ All terms shall be for three years. Members of the Commission shall serve no  
23 more than two consecutive three-year terms plus any initial term of less than three years. Unless  
24 provided otherwise by this act, all terms of members shall begin on January 1 and end on  
25 December 31.

26 Members serving by virtue of elective or appointive ~~office, except for the sheriff,~~ office may  
27 serve only so long as the officeholders hold those respective offices. The Chief Justice may  
28 remove members, with cause. Vacancies occurring before the expiration of a term shall be filled  
29 in the manner provided for the members first appointed.

30 (b) The Commission members shall receive no salary for serving. All Commission  
31 members shall receive necessary subsistence and travel expenses in accordance with the  
32 provisions of G.S. 138-5 and G.S. 138-6, as applicable.

33 ...

34 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and**  
35 **privileges; formal inquiry; notification of the crime victim.**

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

50 ...

1 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall  
2 provide a confidential case status update for each case in formal inquiry to (i) the District  
3 Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If there  
4 is no defense counsel, the update shall be provided to the District Attorney, the convicted person,  
5 and referring counsel, if any. The case status update shall include a complete summary of the  
6 actions taken since the last ~~update~~ update, including all witness interviews and the results of ~~any~~  
7 all forensic testing that has been conducted, conducted, with the goal of encouraging cooperation  
8 pursuant to G.S. 15A-1468(f).

9 ...

10 **"§ 15A-1468. Commission proceedings.**

11 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the  
12 full Commission in a public hearing. Any public hearing held in accordance with this section  
13 shall be subject to the Commission's rules of operation. Public notice of the hearing shall be made  
14 by the Administrative Office of the Courts at least two weeks prior to the hearing. The  
15 Commission's rules of operation shall not exclude the district attorney or defense counsel from  
16 any portion of the hearing.

17 ...

18 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the  
19 holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full  
20 Commission. Only the following persons shall be notified and authorized to attend the prehearing  
21 conference: the District Attorney, or the District Attorney's designee, of the district where the  
22 claimant was convicted of the felony upon which the claim of factual innocence is based; the  
23 claimant's counsel, if any; the Chair of the Commission; the Executive Director of the  
24 Commission; and any Commission staff designated by the Director. The District Attorney, or  
25 designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to  
26 the Commission that has not previously been presented to any judicial officer or body and (ii)  
27 any information that the District Attorney, or the District Attorney's designee, deems relevant to  
28 the proceedings. At least 72 hours prior to any Commission proceedings, the District Attorney or  
29 designee is authorized to provide the Commission with a written statement, which shall be part  
30 of the record. A copy of the statement shall be provided to the claimant's counsel or to the  
31 claimant if the claimant does not have counsel.

32 ...

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

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

47 If less than five of the eight voting members of the Commission, ~~or in cases where the~~  
48 ~~convicted person entered and was convicted on a guilty plea less than all of the eight voting~~  
49 ~~members of the Commission,~~ Commission conclude there is sufficient evidence of factual  
50 innocence to merit judicial review, the Commission shall conclude there is insufficient evidence  
51 of factual innocence to merit judicial review. The Commission shall document that opinion, along

1 with supporting findings of fact, and file those documents and supporting materials with the clerk  
2 of superior court in the district of original jurisdiction, with a copy to the convicted person or the  
3 convicted person's counsel, if any, the district attorney and the senior resident superior court  
4 judge.

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

7 ...

8 (g) Except as otherwise provided in this section, all files and records not filed with the  
9 clerk of superior court or presented at the Commission hearings are confidential and exempt from  
10 the public record. If the Commission concludes there is sufficient evidence of factual innocence  
11 to merit judicial review, or the parties reach an agreement pursuant to subsection (f) of this  
12 section, the Commission shall make a copy of the entire file available to the district attorney and  
13 defense counsel. Upon availability, the Commission shall provide the district attorney and  
14 defense counsel a copy of the uncertified and certified transcript of the Commission's  
15 proceedings. Absent a judicial finding of malicious conduct, the Commission and Commission  
16 staff shall not be civilly liable for acting in compliance with this subsection.

17 (g1) For formal inquiry cases which are not presented to the Commission, the Director  
18 shall provide a copy of the full case file, in accordance with G.S. 132-1.4, G.S. 15A-1415(f), and  
19 Article 48 of Chapter 15A of the General Statutes, to the district attorney and defense counsel  
20 when formal inquiry is completed.

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

24 "**§ 15A-1469. Postcommission three-judge panel.**

25 ...

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

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

31 (2) ~~The district attorney and defense counsel have been given an opportunity to~~  
32 ~~be heard by the senior judge of the three-judge panel before a protective order~~  
33 ~~is issued.~~

34 ...

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

38 (h) The three-judge panel shall rule as to whether the convicted person has proved by  
39 clear and convincing evidence that the convicted person is innocent of the charges. Such a  
40 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter  
41 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief. If  
42 the claimant files a motion for appropriate relief pursuant to Article 89 of Chapter 15A of the  
43 General Statutes any time within a year of the denied relief, the motion shall be considered by  
44 the senior judge of the three-judge panel.

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

49 ...."

50 **SECTION 2.** This act becomes effective December 1, 2019, and applies to offenses  
51 committed on or after that date.