

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40552-NDa-100A

Short Title: Modify NC Innocence Inquiry Provisions. (Public)

Sponsors: Representative Richardson.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY PROVISIONS RELATED TO THE NORTH CAROLINA  
3 INNOCENCE INQUIRY COMMISSION AND TO APPROPRIATE FUNDS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) G.S. 15A-1417(a) reads as rewritten:

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

7 ...

8 ~~(3a) For claims of factual innocence, referral to the North Carolina Innocence~~  
9 ~~Inquiry Commission established by Article 92 of Chapter 15A of the General~~  
10 ~~Statutes.~~

11 ...."

12 SECTION 1.(b) This section is effective when it becomes law and applies to motions  
13 granted on or after that date.

14 SECTION 2.(a) G.S. 15A-1463 reads as rewritten:

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

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

17 ...

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

20 ...

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

29 ...

30 (c) The superior court judge who is appointed as a member under subsection (a) of this  
31 section shall serve as Chair of the Commission. ~~The Commission shall have its initial meeting~~  
32 ~~no later than January 31, 2007, at the call of the Chair.~~ The Commission shall meet a minimum  
33 of once every six months and may also meet more often at the call of the Chair. One  
34 administrative meeting per year shall allow for public comment. The Commission shall meet at  
35 such time and place as designated by the Chair. The date, time, and location for the meeting that  
36 allows for public comment shall be published on the Commission's website at least 30 days prior



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1 to the meeting. Notice of ~~the any other~~ meetings shall be given at such time and manner as  
2 provided by the rules of the Commission. The procedure for Commission meetings shall be set  
3 by the rules of the Commission. A majority of the members shall constitute a quorum. All  
4 Commission votes shall be by majority vote."

5 **SECTION 2.(b)** This section is effective when it becomes law and applies to  
6 members appointed and meetings held on or after that date.

7 **SECTION 3.(a)** G.S. 15A-1464(a) reads as rewritten:

8 "(a) Of the initial members, two appointments shall be for one-year terms, three  
9 appointments shall be for two-year terms, and three appointments shall be for three-year terms.  
10 Thereafter, all terms shall be for three years. Members of the Commission shall serve no more  
11 than two consecutive three-year terms plus any initial term of less than three years. Unless  
12 provided otherwise by this act, all terms of members shall begin on January 1 and end on  
13 December 31.

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

18 **SECTION 3.(b)** This section is effective when it becomes law and applies to  
19 members appointed on or after that date.

20 **SECTION 4.(a)** G.S. 15A-1467 reads as rewritten:

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

23 ...

24 (a1) Any court, State or local agency, or a claimant's counsel that refers a case to the  
25 Commission may request a confidential case status update of a referred case no more than once  
26 every six months from the Director. The content of this update is in the discretion of the Director  
27 and shall be confidential. If a request is made under this subsection, the Director may request that  
28 the Commission Chair deny the case status update request for good cause shown. If a referred  
29 claim is closed without a Commission hearing, the Director shall provide the referring court,  
30 State or local agency, or claimant's counsel with a confidential explanation as to why the case  
31 was closed.

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

47 ...

48 (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall  
49 provide a confidential case status update for each case in formal inquiry to (i) the District  
50 Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If there  
51 is no defense counsel, the update shall be provided to the District Attorney, the convicted person,

1 and referring counsel, if any. The case status update shall include a complete summary of the  
2 actions taken since the last ~~update~~ update, including witness interviews and the results of any all  
3 forensic testing that has been conducted.

4 ...."

5 **SECTION 4.(b)** This section is effective when it becomes law and applies to  
6 referrals made, claims closed, counsel appointed, and case status updates provided on or after  
7 that date.

8 **SECTION 5.(a)** G.S. 15A-1468 reads as rewritten:

9 **"§ 15A-1468. Commission proceedings.**

10 (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the  
11 full Commission in a public hearing. Notice of dates of upcoming public hearings shall be  
12 published on the Commission's website at least 10 business days prior to any Commission  
13 hearing. The Commission's Chair shall decide whether and when the name of the case being  
14 presented will be published on the Commission's website. Any public hearing held in accordance  
15 with this section shall be subject to the Commission's rules of operation. The Commission's rules  
16 of operation shall not exclude the district attorney or defense counsel from any portion of the  
17 hearing.

18 ...

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

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

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

1 innocence to merit judicial review. The Commission shall document ~~that its~~ opinion, along with  
2 supporting findings of fact, and file those documents and supporting materials with the clerk of  
3 superior court in the district of original jurisdiction, with a copy to the convicted person or the  
4 convicted person's counsel, if any, the district attorney and the senior resident superior court  
5 judge.

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

8 ...

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

17 ...

18 (g1) The otherwise confidential records of the North Carolina Innocence Inquiry  
19 Commission may only be released by order of a court of competent jurisdiction after notice to  
20 the Commission and an opportunity for the Commission to be heard and upon a finding that  
21 release of the confidential records is in the interest of justice.

22 ...."

23 **SECTION 5.(b)** This section is effective when it becomes law and applies to  
24 proceedings held on or after that date.

25 **SECTION 6.(a)** G.S. 15A-1469 reads as rewritten:

26 "**§ 15A-1469. Postcommission three-judge panel.**

27 ...

28 (b1) The Commission's entire file, including files obtained from other agencies, shall be  
29 unencumbered by protective orders when transferred to the district attorney and defense counsel  
30 pursuant to G.S. 15A-1468(g), unless ~~either of the following apply:~~ the Commission, upon written  
31 motion and a finding of good cause, is granted a protective order by the senior judge of the  
32 three-judge panel.

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

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

38 ...

39 (h) The three-judge panel shall rule as to whether the convicted person has proved by  
40 clear and convincing evidence that the convicted person is innocent of the charges. Such a  
41 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter  
42 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.  
43 Notwithstanding G.S. 15A-1413, if the claimant files a motion for appropriate relief pursuant to  
44 Article 89 of Chapter 15A of the General Statutes within one year of the denied relief, the motion  
45 shall be considered by the senior judge of the three-judge panel.

46 ...."

47 **SECTION 6.(b)** This section is effective when it becomes law and applies to  
48 Commission files transferred and motions filed on or after that date.

49 **SECTION 7.(a)** There is appropriated from the General Fund to the North Carolina  
50 Innocence Inquiry Commission the sum of twenty-five thousand dollars (\$25,000) in  
51 nonrecurring funds in each year of the 2021-2023 fiscal biennium to be used to prepare and

1 deliver case status updates pursuant to this act and other provisions of Article 92 of Chapter 15A  
2 of the General Statutes that require the same.

3           **SECTION 7.(b)** This section becomes effective July 1, 2021.

4           **SECTION 8.** Except as otherwise provided, this act is effective when it becomes  
5 law.