

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1323*

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors: Representatives Glazier, Hackney, Cunningham (Primary Sponsors); Alexander, B. Allen, Bordsen, Dickson, Fisher, Goforth, Haire, Harrison, Insko, Jones, Lucas, Luebke, Miller, Parmon, Rapp, Ross, Tucker, Wainwright, Weiss, and Womble.

Referred to: Judiciary IV.

April 20, 2005

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY
2 COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL
3 INNOCENCE COMMISSION.
4

5 Whereas, postconviction review of credible claims of factual innocence
6 supported by verifiable evidence not previously presented at trial or at a hearing granted
7 through postconviction relief should be addressed expeditiously to ensure the innocent
8 as well as the guilty receive justice; and

9 Whereas, public confidence in the justice system is strengthened by thorough
10 and timely inquiry into claims of factual innocence; and

11 Whereas, factual claims of innocence, which are determined to be credible,
12 can most effectively and efficiently be evaluated through complete and independent
13 investigation and review of the same; Now, therefore,

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** Chapter 15A of the General Statutes is amended by adding a
16 new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

19 **§ 15A-1460. Definitions.**

20 The following definitions apply in this Article:

21 (1) "Claim of factual innocence" means a claim on behalf of a living
22 person convicted of a felony in the General Court of Justice of the
23 State of North Carolina, asserting the complete innocence of any
24 criminal responsibility for the felony for which the person was
25 convicted and for any other reduced level of criminal responsibility
26 relating to the crime, and for which there is credible, verifiable

1 evidence of innocence that has not previously been presented at trial or
2 considered at a hearing granted through postconviction relief.

3 (2) "Commission" means the North Carolina Inquiry Commission
4 established by this Article.

5 (3) "Director" means the Director of the North Carolina Inquiry
6 Commission.

7 (4) "Victim" means the victim of the crime, or if the victim of the crime is
8 deceased, the next of kin of the victim.

9 **§ 15A-1461. Purpose of Article.**

10 This Article establishes an extraordinary procedure to investigate and determine
11 credible claims of factual innocence that shall require an individual to voluntarily waive
12 rights and privileges as described in this Article.

13 **§ 15A-1462. Commission established.**

14 (a) There is established the North Carolina Innocence Inquiry Commission. The
15 North Carolina Innocence Inquiry Commission shall be an independent commission but
16 shall be located under the Judicial Department for administrative purposes.

17 (b) The Administrative Office of the Courts shall provide administrative support
18 to the Commission as needed. The Director of the Administrative Office of the Courts
19 shall not reduce or modify the budget of the Commission or use funds appropriated to
20 the Commission without the approval of the Commission.

21 **§ 15A-1463. Membership; chair; meetings; quorum.**

22 (a) The Commission shall consist of seven voting members appointed by the
23 Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be
24 a superior court judge, one shall be a prosecuting attorney, one shall be a victim
25 advocate, one shall be engaged in the practice of criminal defense law, and one shall be
26 a public member who is not an attorney and who is not an officer or employee of the
27 Judicial Department. The vocations of the two remaining appointed voting members
28 shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint
29 alternate Commission members to serve in the event of scheduling conflicts, conflicts of
30 interest, disability, or other disqualification arising in a particular case. The alternate
31 members shall have the same qualifications for appointment as the original member. In
32 making the appointments, the Chief Justice shall make a good faith effort to appoint
33 members with different perspectives of the justice system. The Chief Justice shall also
34 consider geographical location, gender, and racial diversity in making the appointments.

35 (b) The superior court judge who is appointed as a member under subsection (a)
36 of this section shall serve as Chair of the Commission. The Commission shall have its
37 initial meeting no later than January 31, 2006, at the call of the Chair. The Commission
38 shall meet a minimum of once every six months and may also meet more often at the
39 call of the Chair. The Commission shall meet at such time and place as designated by
40 the Chair. Notice of the meetings shall be given at such time and manner as provided by
41 the rules of the Commission. A majority of the members shall constitute a quorum. All
42 Commission votes shall be by majority vote unless specified otherwise by this Article.

43 **§ 15A-1464. Terms of members; compensation; expenses.**

1 (a) The initial appointments shall be made within 30 days of the effective date of
2 this section. Of the initial members, two appointments shall be for one-year terms, three
3 appointments shall be for two-year terms, and two appointments shall be for three-year
4 terms. Thereafter, all terms shall be for three years. Members of the Commission shall
5 serve no more than two consecutive three-year terms plus any initial term of less than
6 three years. Unless provided otherwise by this section, all terms of members shall begin
7 on January 1 and end on December 31.

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

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

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

16 (a) The Commission shall employ a Director. The Director shall be an attorney
17 licensed to practice in North Carolina at the time of appointment and at all times during
18 service as Director. The Director shall assist the Commission in developing rules and
19 standards for cases accepted for review, coordinate investigation of cases accepted for
20 review, maintain records for all case investigations, prepare reports outlining
21 Commission investigations and recommendations to the trial court, and apply for and
22 accept on behalf of the Commission any funds that may become available from
23 government grants, private gifts, donations, or bequests from any source.

24 Subject to the approval of the Chair, the Director shall employ such other staff and
25 shall contract for services as is necessary to assist the Commission in the performance
26 of its duties, and as funds permit.

27 The Commission may, with the approval of the Legislative Services Commission,
28 meet in the State Legislative Building or the Legislative Office Building, or may meet
29 in an area provided by the Director of the Administrative Office of the Courts. The
30 Director of the Administrative Office of the Courts shall provide office space for the
31 Commission and the Commission staff.

32 **"§ 15A-1466. Duties.**

33 The Commission shall have the following duties and powers:

- 34 (1) To establish the criteria and screening process to be used to determine
35 which cases shall be accepted for review.
36 (2) To conduct inquiries into claims of factual innocence, with priority to
37 be given to those cases in which the convicted person is currently
38 incarcerated solely for the crime for which he or she claims factual
39 innocence.
40 (3) To coordinate the investigation of cases accepted for review.
41 (4) To maintain records for all case investigations.
42 (5) To prepare written reports outlining Commission investigations and
43 recommendations to the trial court at the completion of each inquiry.

1 (6) To apply for and accept any funds that may become available for the
2 Commission's work from government grants, private gifts, donations,
3 or bequests from any source.

4 **"§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards**
5 **and privileges; formal inquiry; notification of the crime victim.**

6 (a) A claim of factual innocence may be referred to the Commission by any
7 court, person, or agency. The determination of whether to grant a formal inquiry
8 regarding a claim of factual innocence is in the discretion of the Commission. The
9 Commission may informally screen and dismiss a case summarily at its discretion.

10 (b) No formal inquiry into a claim of innocence shall be made by the
11 Commission unless the Director or the Director's designee first obtains a signed
12 agreement from the defendant in which the defendant waives his or her procedural
13 safeguards and privileges, agrees to cooperate with the Commission, and agrees to
14 provide full disclosure regarding all inquiry requirements of the Commission. The
15 defendant shall have the right to advice of counsel prior to the execution of the
16 agreement and, if counsel represents the defendant, then the defendant's counsel must be
17 present at the signing of the agreement. If counsel does not represent the defendant, the
18 Commission Chair shall determine the defendant's indigency status and, if appropriate,
19 enter an order for the appointment of counsel for the purpose of advising on the
20 agreement.

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

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

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

39 (f) All State discovery and disclosure statutes in effect at the time of formal
40 inquiry shall be enforceable as if the defendant were currently being tried for the charge
41 for which the defendant is claiming innocence.

42 (g) If, at any point during an inquiry, the defendant refuses to comply with
43 requests of the Commission or is otherwise deemed to be uncooperative by the
44 Commission, the Commission shall discontinue the inquiry.

1 "§ 15A-1468. Commission proceedings.

2 (a) At the completion of a formal inquiry, all relevant evidence shall be presented
3 to the full Commission. As part of its proceedings, the Commission may conduct public
4 hearings. The determination as to whether to conduct public hearings is solely in the
5 discretion of the Commission. Any public hearing held in accordance with this section
6 shall be subject to the Commission's rules of operation.

7 (b) The Director shall use all due diligence to notify the victim at least 30 days
8 prior to any proceedings of the full Commission held in regard to the victim's case. The
9 Commission shall notify the victim that the victim is permitted to attend proceedings
10 otherwise closed to the public, subject to any limitations imposed by this Article. If the
11 victim plans to attend proceedings otherwise closed to the public, the victim shall notify
12 the Commission at least 10 days in advance of the proceedings of his or her intent to
13 attend. If the Commission determines that the victim's presence may interfere with the
14 investigation, the Commission may close any portion of the proceedings to the victim.

15 (c) After hearing the evidence, the full Commission shall vote to establish further
16 case disposition as provided by this subsection. All seven voting members of the
17 Commission shall participate in that vote.

18 If five or more of the seven voting members of the Commission conclude there is
19 sufficient evidence of factual innocence to merit judicial review, the case shall be
20 referred to the senior resident superior court judge in the district of original jurisdiction
21 by filing with the clerk of court the opinion of the Commission, as well as the record in
22 support of such opinion, with service on the district attorney in noncapital cases and
23 service on both the district attorney and Attorney General in capital cases.

24 If less than five of the seven voting members of the Commission conclude there is
25 sufficient evidence of factual innocence to merit judicial review, the Commission shall
26 conclude there is insufficient evidence of factual innocence to merit judicial review. The
27 Commission shall document that opinion, along with supporting findings of fact, and
28 file those documents and supporting materials with the clerk of superior court in the
29 district of original jurisdiction, with a copy to the district attorney and the senior
30 resident superior court judge.

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

33 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing
34 disclosed through formal inquiry or Commission proceedings shall be referred to the
35 appropriate authority. Evidence favorable to the defendant disclosed through formal
36 inquiry or Commission proceedings shall be disclosed to the defendant and the
37 defendant's counsel, if the defendant has counsel.

38 (e) All proceedings of the Commission shall be recorded and transcribed as part
39 of the record. All Commission member votes shall be recorded in the record. All records
40 and proceedings of the Commission are confidential and are exempt from public record
41 and public meeting laws except that the supporting records for the Commission's
42 conclusion that there is sufficient evidence of factual innocence to merit judicial review,
43 including all files and materials considered by the Commission and a full transcript of
44 the hearing before the Commission, shall become public at the time of referral to the

1 superior court. Commission records for conclusions of insufficient evidence of factual
2 innocence to merit judicial review shall remain confidential, except as provided in
3 subsection (d) of this section.

4 **"§ 15A-1469. Postcommission three-judge panel.**

5 (a) If the Commission concludes there is sufficient evidence of factual innocence
6 to merit judicial review, the senior resident superior court judge shall request the Chief
7 Justice appoint a three-judge panel, not to include any trial judge that has had
8 substantial previous involvement in the case, and issue commissions to the members of
9 the three-judge panel to convene a special session of the superior court of the original
10 jurisdiction to hear evidence relevant to the Commission's recommendation. The senior
11 judge of the panel shall preside.

12 (b) The senior resident superior court judge shall enter an order setting the case
13 for hearing at the special session of superior court for which the three-judge panel is
14 commissioned and shall require the State to file a response to the Commission's opinion
15 within 60 days of the date of the order.

16 (c) The district attorney of the district of conviction, or the district attorney's
17 designee, shall represent the State at the hearing before the three-judge panel.

18 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing,
19 the court may compel the testimony of any witness, including the defendant. The
20 defendant may not assert any privilege or prevent a witness from testifying. The
21 defendant has a right to be present at the evidentiary hearing and to be represented by
22 counsel. A waiver of the right to be present shall be in writing.

23 (e) The senior resident superior court judge shall determine the defendant's
24 indigency status and, if appropriate, enter an order for the appointment of counsel. The
25 court may also enter an order relieving an indigent defendant of all or a portion of the
26 costs of the proceedings.

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

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

32 (h) The three-judge panel shall rule as to whether the defendant has proved by
33 clear and convincing evidence that the defendant is innocent of the charges. Such a
34 determination shall require a unanimous vote. If the vote is unanimous, the panel shall
35 enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall
36 deny relief.

37 **"§ 15A-1470. No right to further review of decision by Commission or three-judge**
38 **panel; defendant retains right to other postconviction relief.**

39 (a) Unless otherwise authorized by this Article, the decisions of the Commission
40 and of the three-judge panel are final and are not subject to further review by appeal,
41 certification, writ, motion or otherwise.

42 (b) A claim of factual innocence asserted through the Innocence Inquiry
43 Commission shall not adversely affect the defendant's rights to other postconviction
44 relief."

1 **SECTION 2.** G.S. 15A-1401 reads as rewritten:

2 "**§ 15A-1401. Post-trial motions and appeal.**

3 Relief from errors committed in criminal trials and proceedings and other post-trial
4 relief may be sought by:

5 (1) Motion for appropriate relief, as provided in Article 89.

6 (1a) Motion for innocence claim inquiry as provided in Article 92 of
7 Chapter 15A of the General Statutes.

8 (2) Appeal and trial de novo in misdemeanor cases, as provided in Article
9 90.

10 (3) Appeal, as provided in Article 91."

11 **SECTION 3.** G.S. 15A-1417(a) reads as rewritten:

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

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

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

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

17 (3a) For claims of factual innocence, referral to the North Carolina
18 Innocence Inquiry Commission established by Article 92 of Chapter
19 15A of the General Statutes.

20 (4) Any other appropriate relief."

21 **SECTION 4.** G.S. 15A-1418(b) reads as rewritten:

22 "(b) When a motion for appropriate relief is made in the appellate division, the
23 appellate court must decide whether the motion may be determined on the basis of the
24 materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for
25 taking evidence or conducting other ~~proceedings~~ proceedings, or , for claims of factual
26 innocence, whether to refer the case for further investigation to the North Carolina
27 Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General
28 Statutes. If the appellate court does not remand the case for proceedings on the motion,
29 it may determine the motion in conjunction with the appeal and enter its ruling on the
30 motion with its determination of the case."

31 **SECTION 5.** G.S. 143-318.18 is amended by adding a new subdivision to
32 read:

33 "(3a) The North Carolina Innocence Inquiry Commission."

34 **SECTION 6.** This act is effective when it becomes law.