

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1045

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

Sponsors: Senators Clodfelter; Allran, Hartsell, and Kinnaird.

Referred to: Judiciary I.

March 24, 2005

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

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.

17 **"§ 15A-1460. Definitions.**

18 The following definitions apply in this Article:

- 19 (1) "Claim of factual innocence" means a claim on behalf of a living
20 person convicted of a felony in the General Court of Justice of the
21 State of North Carolina, asserting the complete innocence of any
22 criminal responsibility for the felony for which the person was
23 convicted and for any other reduced level of criminal responsibility
24 relating to the crime, and for which there is credible, verifiable
25 evidence of innocence that has not previously been presented at trial or
26 considered at a hearing granted through postconviction relief.
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1 (2) "Commission" means the North Carolina Inquiry Commission
2 established by this Article.

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

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

7 **"§ 15A-1461. Purpose of Article.**

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

11 **"§ 15A-1462. Commission established.**

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

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

19 **"§ 15A-1463. Membership; chair; meetings; quorum.**

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

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

41 **"§ 15A-1464. Terms of members; compensation; expenses.**

42 (a) The initial appointments shall be made within 30 days of the effective date of
43 this section. Of the initial members, two appointments shall be for one-year terms, three
44 appointments shall be for two-year terms, and two appointments shall be for three-year

1 terms. Thereafter, all terms shall be for three years. Members of the Commission shall
2 serve no more than two consecutive three-year terms plus any initial term of less than
3 three years. Unless provided otherwise by this section, all terms of members shall begin
4 on January 1 and end on December 31.

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

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

12 **"§ 15A-1465. Director and other staff.**

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

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

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

29 **"§ 15A-1466. Duties.**

30 The Commission shall have the following duties and powers:

- 31 (1) To establish the criteria and screening process to be used to determine
32 which cases shall be accepted for review.
- 33 (2) To conduct inquiries into claims of factual innocence, with priority to
34 be given to those cases in which the convicted person is currently
35 incarcerated solely for the crime for which he or she claims factual
36 innocence.
- 37 (3) To coordinate the investigation of cases accepted for review.
- 38 (4) To maintain records for all case investigations.
- 39 (5) To prepare written reports outlining Commission investigations and
40 recommendations to the trial court at the completion of each inquiry.
- 41 (6) To apply for and accept any funds that may become available for the
42 Commission's work from government grants, private gifts, donations,
43 or bequests from any source.

1 **"§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards**
2 **and privileges; formal inquiry; notification of the crime victim.**

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

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

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

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

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

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

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

42 **"§ 15A-1468. Commission proceedings.**

43 (a) At the completion of a formal inquiry, all relevant evidence shall be presented
44 to the full Commission. As part of its proceedings, the Commission may conduct public

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

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

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

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

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

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

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

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

1 **"§ 15A-1469. Postcommission three-judge panel.**

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

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

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

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

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

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

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

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

34 **"§ 15A-1470. No right to further review of decision by Commission or three-judge**
35 **panel; defendant retains right to other postconviction relief.**

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

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

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

43 **"§ 15A-1401. Post-trial motions and appeal.**

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

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

4 (1a) Motion for innocence claim inquiry as provided in Article 92 of
5 Chapter 15A of the General Statutes.

6 (2) Appeal and trial de novo in misdemeanor cases, as provided in Article
7 90.

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

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

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

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

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

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

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

18 (4) Any other appropriate relief."

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

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

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

31 "(3a) The North Carolina Innocence Inquiry Commission."

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