

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 1117

Short Title: Innocent Defendant Jailed/DA Wrongdoing. (Public)

Sponsors: Representatives Hanes and Bryan (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Judiciary IV

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REPORTING, INVESTIGATION, AND PROSECUTION OF PROSECUTORIAL MISCONDUCT WHEN THERE IS CREDIBLE EVIDENCE OF PROSECUTORIAL MISCONDUCT IN A CASE IN WHICH THE DEFENDANT WAS WRONGLY CONVICTED AND INCARCERATED BUT IS LATER DISCHARGED FROM PRISON AS THE RESULT OF A SUCCESSFUL POSTCONVICTION LEGAL ACTION AND THERE IS A FINDING THAT THE PROSECUTORIAL MISCONDUCT MAY HAVE PROXIMATELY CAUSED THE WRONGFUL CONVICTION AND TO APPROPRIATE FUNDS TO THE NORTH CAROLINA STATE BAR TO ASSIST WITH THE COSTS OF PROSECUTORIAL MISCONDUCT INVESTIGATIONS.

The General Assembly of North Carolina enacts:

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

"Article 102.

"Prosecutorial Misconduct Resulting in Unlawful Incarceration of Innocent Defendant.

**"§ 15A-2015. Definitions.**

For purposes of this Article, the term "misconduct" means the intentional or reckless disregard of an obligation or standard imposed by law, applicable rule of professional conduct, or departmental regulation or policy.

**"§ 15A-2016. Purpose.**

The purpose of this Article is to require the reporting, investigation, and prosecution of prosecutorial misconduct in any case in which all of the following criteria are met:

(1) The case is one in which a person is wrongly convicted and incarcerated, but later is discharged from prison as a result of a successful appeal, motion for appropriate relief, writ of habeas corpus, or review by the North Carolina Innocence Inquiry Commission.

(2) There is credible evidence of prosecutorial misconduct in the case that may have proximately caused the wrongful conviction.

**"§ 15A-2017. Referral of certain allegations of prosecutorial misconduct to the Attorney General for investigation and possible prosecution.**

(a) When a court reviews an appeal, motion for appropriate relief, or writ of habeas corpus filed by a person incarcerated in prison, determines that the person was wrongfully convicted, and orders that the person be discharged from prison, the court shall also include a finding as to whether there is credible evidence of prosecutorial misconduct. If the court finds that there is credible evidence of prosecutorial misconduct in the case that may have proximately caused the



1 wrongful conviction, the court shall refer its finding to the North Carolina State Bar and the  
2 Attorney General for investigation and possible prosecution of the attorney who committed the  
3 alleged misconduct.

4 (b) When a three-judge panel of the North Carolina Innocence Inquiry Commission in its  
5 review of a case concludes that there is credible evidence of prosecutorial misconduct and finds  
6 that the prosecutorial misconduct may have proximately caused the wrongful conviction and also  
7 rules in that case that the convicted person is innocent of the charges and enters a dismissal of all  
8 or any of the charges, the panel shall refer its finding of prosecutorial misconduct to the North  
9 Carolina State Bar and the Attorney General for investigation and possible prosecution of the  
10 attorney who committed the alleged misconduct.

11 **"§ 15A-2018. Duty of Attorney General to investigate and prosecute prosecutorial**  
12 **misconduct.**

13 Upon receipt of a referral from the court or the North Carolina Innocence Inquiry Commission  
14 under G.S. 15A-2017, the Attorney General shall conduct an investigation to determine whether to  
15 submit a bill of indictment charging the offense of prosecutorial misconduct to the grand jury for  
16 its consideration."

17 **SECTION 2.** G.S. 84-28 is amended by adding a new subsection to read:

18 **"§ 84-28. Discipline and disbarment.**

19 ...

20 (f1) For any attorney admitted to practice law in this State, who is the subject of a finding  
21 of prosecutorial misconduct that has been referred to the North Carolina State Bar pursuant to  
22 Article 102 of Chapter 15A of the General Statutes, the North Carolina State Bar shall initiate an  
23 investigation."

24 **SECTION 3.** There is appropriated from the General Fund to the North Carolina State  
25 Bar the sum of ten thousand dollars (\$10,000) for the 2016-2017 fiscal year to assist with the costs  
26 of investigations into alleged prosecutorial misconduct.

27 **SECTION 4.** Section 3 of this act becomes effective July 1, 2016. The remainder of  
28 this act becomes effective December 1, 2016, and applies to appeals, motions for appropriate  
29 relief, and writs of habeas corpus filed on or after that date and to claims of factual innocence  
30 referred to the North Carolina Innocence Inquiry Commission on or after that date.