

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 790  
Committee Substitute Favorable 5/2/23  
Third Edition Engrossed 5/3/23

Short Title: Innocence Inquiry Commission Provisions.

(Public)

Sponsors:

Referred to:

April 19, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY LAWS RELATING TO THE NORTH CAROLINA INNOCENCE  
3 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 ...

9 **"§ 15A-1465. Director and other staff.**

10 (a) The Commission shall employ a Director. The Director shall report to the Director of  
11 the Administrative Office of the Courts, who shall consult with the Commission chair. The  
12 Director shall be an attorney licensed to practice in North Carolina at the time of appointment  
13 and at all times during service as Director. The Director shall assist the Commission in  
14 developing rules and standards for cases accepted for review, coordinate investigation of cases  
15 accepted for review, maintain records for all case investigations, prepare reports outlining  
16 Commission investigations and recommendations to the trial court, and apply for and accept on  
17 behalf of the Commission any funds that may become available from government grants, private  
18 gifts, donations, or devises from any source. The acceptance of private gifts, donations, and  
19 devises shall not create any obligation for the Commission. The Director shall report to the chairs  
20 of the Joint Legislative Oversight Committee on Justice and Public Safety no later than February  
21 1 of each year; all funds received through private gifts, donations, or devises from any source  
22 other than the State of North Carolina, including detailed information on the source, amount  
23 received, stated purpose of the funds, how the funds were expended, and any balance on hand in  
24 the previous calendar year.

25 ...

26 **"§ 15A-1468. Commission proceedings.**

27 ...

28 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the  
29 holding of a prehearing conference to be held at least ~~40~~30 days prior to any proceedings of the  
30 full Commission. The Commission may also call a prehearing conference at any time the  
31 Commission has developed credible evidence to support a claim of factual innocence. If a  
32 Commission hearing is continued for any reason, at least 10 days before the newly scheduled  
33 hearing there shall be a subsequent prehearing conference to discuss any newly developed  
34 evidence that was not previously provided. Only the following persons shall be notified and  
35 authorized to attend ~~the~~a prehearing conference: the ~~District Attorney, or the District Attorney's~~



1 district attorney, or the district attorney's designee, of the district where the claimant was  
2 convicted of the felony upon which the claim of factual innocence is based; the claimant's  
3 counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and  
4 any Commission staff designated by the Director. ~~The District Attorney, or designee, shall be~~  
5 provided (i) an opportunity to inspect any evidence that may be presented to the Commission  
6 that has not previously been presented to any judicial officer or body and (ii) any information  
7 that the District Attorney, or the District Attorney's designee, deems relevant to the proceedings.  
8 The district attorney, or designee, and the claimant's counsel shall be provided the ability to  
9 access, review, and inspect the Commission's entire case file at least 60 days prior to the  
10 Commission hearing. The Commission shall present and make available the information pursuant  
11 to this section in a reasonably organized manner that is not to be overly burdensome to the  
12 Commission, the district attorney, or the claimant's counsel. At least ~~72 hours~~ 10 days prior to  
13 any a Commission proceedings, hearing, the ~~District Attorney~~ district attorney or designee is  
14 authorized to provide the Commission with a written statement, which shall be part of the record.  
15 The Commission shall have an ongoing duty to provide any newly discovered evidence to the  
16 district attorney and the claimant's counsel until the hearing begins. Evidence not provided to the  
17 district attorney and the claimant's counsel in the initial release of information shall be provided  
18 at least 10 days prior to the Commission hearing. The Commission shall keep a clear record of  
19 which materials have been previously made available for review and inspection.

20 (b) The Director shall use all due diligence to notify the victim at least ~~30~~ 10 days prior  
21 to any proceedings of the full Commission the initial prehearing conference required in  
22 subsection (a2) of this section held in regard to the victim's case. The Commission shall notify  
23 the victim that the victim is permitted to attend proceedings otherwise closed to the public,  
24 subject to any limitations imposed by this Article. If the victim plans to attend proceedings  
25 otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance  
26 of the proceedings of the victim's intent to attend. Nothing in this section prevents the Director  
27 from notifying the victim at an earlier date in the proceedings.

28 ...

29 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed  
30 through formal inquiry or Commission proceedings shall be referred to the appropriate authority.  
31 Evidence favorable to the convicted person disclosed through formal inquiry or Commission  
32 proceedings shall be disclosed to the district attorney, or the district attorney's designee, of the  
33 district where the claimant was convicted of the felony upon which the claim of factual innocence  
34 is based, the convicted ~~person~~ person, and the convicted person's counsel, if the convicted person  
35 has counsel.

36 ...

37 **"§ 15A-1469. Postcommission three-judge panel.**

38 ...

39 (a1) If the Commission concludes that there is credible evidence of prosecutorial  
40 misconduct ~~in the case, by the current district attorney of the district where the claimant was~~  
41 convicted of the felony upon which the claim of factual innocence is based, the Chair of the  
42 Commission may request pursuant to G.S. 7A-64 ~~the Attorney General~~ Director of the  
43 Administrative Office of the Courts to appoint a special prosecutor to represent the State in lieu  
44 of the district attorney of the district of conviction or the district attorney's designee. The request  
45 for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion  
46 finding sufficient evidence of innocence to merit judicial review.

47 Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney  
48 General may temporarily assign a district attorney, assistant district attorney, or other qualified  
49 attorney, to represent the State at the hearing before the three-judge panel. However, the Attorney  
50 General ~~Director of the Administrative Office of the Courts~~ shall not appoint as special  
51 prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the

1 convicted person, or is a prosecuting attorney in the district where the convicted person was tried.  
2 person. The appointment shall be made no later than 20 days after the receipt of the request.

3 ...

4 (d) The three-judge panel shall conduct an evidentiary ~~hearing.~~ hearing in accordance  
5 with the North Carolina Rules of Evidence. At the hearing, the court, and the defense and  
6 prosecution through the court, may compel the testimony of any witness, including the convicted  
7 person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge  
8 in a prior proceeding, may be presented during the hearing. The convicted person may not assert  
9 any privilege or prevent a witness from testifying. The convicted person has a right to be present  
10 at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present  
11 shall be in writing. At least 10 days prior to the evidentiary hearing, the district attorney and the  
12 claimant's counsel must provide to the other parties any evidence each intends to introduce at the  
13 evidentiary hearing. Any evidence not timely provided to the other parties shall not be admissible  
14 at the hearing, absent good cause shown as determined by the three-judge panel.

15 ...."

16 **SECTION 2.** This act is effective when it becomes law and applies to proceedings  
17 held on or after that date.