

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 144  
Judiciary II Committee Substitute Adopted 3/30/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S144-PCS55597-LH-34

Short Title: Amend Innocence Inquiry Commission.

(Public)

Sponsors:

Referred to:

February 12, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING THE  
3 INNOCENCE INQUIRY COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 15A-1469 reads as rewritten:

6 "§ 15A-1469. Postcommission three-judge panel.

7 (a) If the Commission concludes there is sufficient evidence of factual innocence to  
8 merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a  
9 three-judge panel, not to include any trial judge that has had substantial previous involvement  
10 in the case, and issue commissions to the members of the three-judge panel to convene a  
11 special session of the superior court of the original jurisdiction to hear evidence relevant to the  
12 Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice  
13 shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion  
14 finding sufficient evidence of factual innocence to merit judicial review.

15 (a1) The Attorney General shall appoint a special prosecutor to represent the State at the  
16 hearing before the three-judge panel within 20 days of the filing of the Commission's opinion  
17 finding sufficient evidence of innocence to merit judicial review. Except as otherwise provided  
18 by this subsection, the Attorney General may appoint as a special prosecutor a district attorney,  
19 assistant district attorney, or other attorney, including one from the prosecutorial district where  
20 the convicted person was tried, and may also appoint an attorney from the Department of  
21 Justice as provided by G.S. 114-11.6. However, the Attorney General shall not appoint as  
22 special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of  
23 the convicted person.

24 (b) The senior resident superior court judge shall enter an order setting the case for  
25 hearing at the special session of superior court for which the three-judge panel is commissioned  
26 and shall require the State special prosecutor to file a response to the Commission's opinion  
27 within 60-90 days of the date of the order. Such response, at the time of original filing or  
28 through amendment at any time before the hearing, may include joining the defense in a motion  
29 to dismiss the charges with prejudice on the basis of innocence.

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

32 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the ~~court~~  
33 court, and the defense and prosecution through the court, may compel the testimony of any



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1 witness, including the convicted person. All evidence relevant to the case, even if considered  
2 by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted  
3 person may not assert any privilege or prevent a witness from testifying. The convicted person  
4 has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver  
5 of the right to be present shall be in writing.

6 (e) The senior resident superior court judge shall determine the convicted person's  
7 indigency status and, if appropriate, enter an order for the appointment of counsel. The court  
8 may also enter an order relieving an indigent convicted person of all or a portion of the costs of  
9 the proceedings.

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

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

14 (h) The three-judge panel shall rule as to whether the convicted person has proved by  
15 clear and convincing evidence that the convicted person is innocent of the charges. Such a  
16 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter  
17 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief."

18 **SECTION 2.** G.S. 114-11.6 reads as rewritten:

19 "**§ 114-11.6. Division established; duties.**

20 There is hereby established in the office of the Attorney General of North Carolina, a  
21 Special Prosecution Division. The attorneys assigned to this Division shall be available to  
22 prosecute or assist in the prosecution of criminal cases when requested to do so by a district  
23 attorney and the Attorney General approves. The attorneys assigned to this Division shall also  
24 be available to serve as special prosecutors pursuant to G.S. 15A-1469. In addition, these  
25 attorneys assigned to this Division shall serve as legal advisers to the State Bureau of  
26 Investigation and the Police Information Network and perform any other duties assigned to  
27 them by the Attorney General."

28 **SECTION 3.** Section 12 of S.L. 2006-184 reads as rewritten:

29 "**SECTION 12.** This act is effective when it becomes law ~~and applies to claims of factual~~  
30 ~~innocence filed on or before December 31, 2010.~~ law."

31 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2010, and  
32 apply to all claims of factual innocence filed on or after that date. The remainder of this act is  
33 effective when it becomes law.