

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 678
PROPOSED COMMITTEE SUBSTITUTE H678-PCS40440-ST-35

Short Title: Amend Innocence Commission Statutes.

(Public)

Sponsors:

Referred to:

April 14, 2015

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

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 15A-1475 reads as rewritten:

6 "**§ 15A-1475. Reports.**

7 (a) The North Carolina Innocence Inquiry Commission shall report annually by
8 February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice
9 and Public Safety and the State Judicial Council. The report may contain recommendations of
10 any needed legislative changes related to the activities of the Commission. The report shall
11 recommend the funding needed by the Commission, the district attorneys, and the State Bureau
12 of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations
13 concerning the district attorneys or the State Bureau of Investigation shall only be made after
14 consultations with the North Carolina Conference of District Attorneys and the Attorney
15 General.

16 (b) The Commission shall submit to the Director of the Administrative Office of the
17 Courts a semi-annual report containing detailed data on the operations, expenses, and needs of
18 the Commission and such other information as the Director of the Administrative Office of the
19 Courts may require."

20 **SECTION 2.** G.S. 15A-1467 is amended by adding a new subsection to read:

21 "(h) At least every six months, the Director shall provide a confidential case status
22 update to the district attorney and defense counsel for each case in formal inquiry. If there is no
23 defense counsel, the update shall be provided to the referring counsel."

24 **SECTION 3.** G.S. 15A-1468 reads as rewritten:

25 "**§ 15A-1468. Commission proceedings.**

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

31 (a1) The Commission may compel the testimony of any witness. If a witness asserts his
32 or her privilege against self-incrimination in a proceeding under this Article, the Commission
33 chair, in the chair's judicial capacity, may order the witness to testify or produce other
34 information if the chair first determines that the witness's testimony will likely be material to
35 the investigation necessary to reach a correct factual determination in the case at hand.
36 However, the Commission chair shall not order the witness to testify or produce other



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1 information that would incriminate the witness in the prosecution of any offense other than an
2 offense for which the witness is granted immunity under this subsection. The order shall
3 prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to
4 prosecute the witness for previous false statements made under oath by the witness in prior
5 proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair
6 issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted
7 pursuant to this Article. The limited immunity granted under this section shall not prohibit
8 prosecution of statements made under oath that are unrelated to the Commission's formal
9 inquiry, false statements made under oath during proceedings under this Article, or prosecution
10 for any other crimes.

11 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation,
12 the holding of a prehearing conference to be held at least 10 days prior to any proceedings of
13 the full Commission. Only the following persons shall be notified and authorized to attend the
14 prehearing conference: the District Attorney, or the District Attorney's designee, of the district
15 where the claimant was convicted of the felony upon which the claim of factual innocence is
16 based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of
17 the Commission; and any Commission staff designated by the Director. The District Attorney,
18 or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented
19 to the Commission that has not previously been presented to any judicial officer or body and
20 (ii) any information that he or she deems relevant to the proceedings. ~~Prior~~ At least 24 hours
21 prior to any Commission proceedings, the District Attorney or designee is authorized to provide
22 the Commission with a written statement, which shall be ~~included in the record of the~~
23 ~~Commission's proceedings. Any statement included in the record shall be part of the~~
24 ~~Commission's record of proceedings pursuant to subsection (e) of this section.~~ part of the
25 record.

26 (b) The Director shall use all due diligence to notify the victim at least 30 days prior to
27 any proceedings of the full Commission held in regard to the victim's case. The Commission
28 shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the
29 public, subject to any limitations imposed by this Article. If the victim plans to attend
30 proceedings otherwise closed to the public, the victim shall notify the Commission at least 10
31 days in advance of the proceedings of his or her intent to attend.

32 (c) After hearing the evidence, the full Commission shall vote to establish further case
33 disposition as provided by this subsection. All eight voting members of the Commission shall
34 participate in that vote.

35 Except in cases where the convicted person entered and was convicted on a plea of guilty, if
36 five or more of the eight voting members of the Commission conclude there is sufficient
37 evidence of factual innocence to merit judicial review, the case shall be referred to the senior
38 resident superior court judge in the district of original jurisdiction by filing with the clerk of
39 court the opinion of the Commission with supporting findings of fact, as well as the record in
40 support of such opinion, with service on the convicted person or the convicted person's counsel,
41 if any, and the district attorney in noncapital cases ~~and or~~ service on both the district attorney
42 and Attorney General in capital cases. In cases where the convicted person entered and was
43 convicted on a plea of guilty, if all of the eight voting members of the Commission conclude
44 there is sufficient evidence of factual innocence to merit judicial review, the case shall be
45 referred to the senior resident superior court judge in the district of original jurisdiction.

46 If less than five of the eight voting members of the Commission, or in cases where the
47 convicted person entered and was convicted on a guilty plea less than all of the eight voting
48 members of the Commission, conclude there is sufficient evidence of factual innocence to merit
49 judicial review, the Commission shall conclude there is insufficient evidence of factual
50 innocence to merit judicial review. The Commission shall document that opinion, along with
51 supporting findings of fact, and file those documents and supporting materials with the clerk of

1 superior court in the district of original jurisdiction, with a copy to the convicted person or the
2 convicted person's counsel, if any, the district attorney and the senior resident superior court
3 judge.

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

6 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed
7 through formal inquiry or Commission proceedings shall be referred to the appropriate
8 authority. Evidence favorable to the convicted person disclosed through formal inquiry or
9 Commission proceedings shall be disclosed to the convicted person and the convicted person's
10 counsel, if the convicted person has counsel.

11 (e) All proceedings of the Commission shall be recorded and transcribed as part of the
12 record. All Commission member votes shall be recorded in the record. ~~All records and~~
13 ~~proceedings of the Commission are confidential and are exempt from public record and public~~
14 ~~meeting laws except that the~~ The supporting records for the Commission's conclusion that there
15 is sufficient evidence of factual innocence to merit judicial review, including all files and
16 materials considered by the Commission and a full transcript of the hearing before the
17 Commission, shall become public at the time of referral to when filed with the superior court.
18 court as required in subsection (c) of this section. Commission records for conclusions of
19 insufficient evidence of factual innocence to merit judicial review shall remain confidential,
20 except as provided in subsection (d) of this section.

21 (f) Except as otherwise provided in this section, all files and records not filed with the
22 clerk of superior court or presented at the hearings are confidential and exempt from the public
23 record. Upon completion of the Commission hearing, the Commission shall make available to
24 the district attorney and defense counsel a copy of the entire file, including a full transcript of
25 the hearing before the Commission. That file shall remain confidential and may not be released
26 by the district attorney or defense counsel until filed with the clerk of superior court.

27 (g) With respect to the evidence presented to the three judge panel, the district attorney
28 and defense counsel may determine which evidence, if any, will be presented to the three judge
29 panel."

30 **SECTION 4.** G.S. 15A-1471 is amended by adding a new subsection to read:

31 "(e) Upon request, the Commission shall have the authority to search any location where
32 files or evidence are reasonably likely to be stored relating to a claim subject to the
33 Commission's inquiry. The Commission shall provide the head of the agency to be searched, or
34 his or her designee, with proposed search procedures in advance of the search. The
35 Commission will make reasonable efforts to accommodate the agency without compromising
36 the validity of the search. The agency shall permit the Commission to conduct its search within
37 two weeks of the search procedure being provided or at a mutually agreed upon time."

38 **SECTION 5.** This act is effective when it becomes law.