

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 216
Committee Substitute Favorable 3/28/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H216-PCS10385-TY-32

Short Title: Informant Statements/Innocence Comm'n Changes.

(Public)

Sponsors:

Referred to:

March 2, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE RELIABILITY OF IN-CUSTODY INFORMANT
3 STATEMENTS, TO MAKE CHANGES TO THE INNOCENCE INQUIRY
4 COMMISSION STATUTES, AND TO STUDY THE ROLE OF THE NORTH
5 CAROLINA INNOCENCE INQUIRY COMMISSION.

6 The General Assembly of North Carolina enacts:

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

9 "Article 54.

10 "Reliability of In-Custody Informant Statements.

11 "**§ 15A-981. In-custody informant statements.**

12 (a) Definition. – As used in this section, the term "in-custody informant" means a
13 person, other than a codefendant, accomplice, or co-conspirator, whose testimony is based on
14 statements allegedly made by the defendant while both the defendant and the informant were
15 held within a city or county jail or a State correctional institution or otherwise confined, where
16 statements relate to offenses that occurred outside of the confinement.

17 (b) Corroboration of In-Custody Informant Testimony. – A defendant shall not be
18 convicted of an offense or receive an aggravated sentence if the only supporting evidence
19 presented to a judge or jury is the uncorroborated testimony of an in-custody informant. The
20 additional evidence must include evidence other than the uncorroborated testimony of another
21 in-custody informant.

22 (c) Jury Instruction Regarding In-Custody Informant Testimony. – In any case in which
23 in-custody informant testimony is presented to the jury, the judge shall instruct the jury that the
24 in-custody informant's testimony must be scrutinized with regard to reliability and that, in
25 considering the reliability of the in-custody informant, the jury may consider any of the
26 following:

27 (1) Whether the witness may have any interest in the outcome of the trial
28 because of the witness's activities as an in-custody informant.

29 (2) Whether the witness testified under an agreement with the prosecutor for any
30 favorable treatment in exchange for the testimony.

31 (3) The circumstances under which the defendant's statements were made.

32 (d) Recording of In-Custody Informant Interview. – All interviews of in-custody
33 informants shall be recorded using a visual recording device that provides an authentic,
34 accurate, unaltered, and uninterrupted record of the interview that clearly shows both the



* H 2 1 6 - P C S 1 0 3 8 5 - T Y - 3 2 *

1 interviewer and the in-custody informant. Failure to comply with this subsection shall not limit
2 the introduction of any evidence other than the statement of the in-custody informant.

3 (e) Policies and Procedures Governing the Recording and Use of Testimony. – Each
4 district attorney shall establish policies and procedures governing the recording and use of
5 in-custody informant testimony, including maintenance of a central file preserving all records
6 relating to contacts with in-custody informants, whether they are used as witnesses or not.

7 (f) Destruction or Modification of Recording After Appeals Exhausted. – The State
8 shall not destroy or alter any electronic recording of an in-custody informant interview until
9 one year after the completion of all State and federal appeals of the conviction, including the
10 exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings.
11 Every electronic recording shall be clearly identified and catalogued by law enforcement
12 personnel."

13 **SECTION 2.** G.S. 15A-1467(a) reads as rewritten:

14 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards**
15 **and privileges; formal inquiry; notification of the crime victim.**

16 (a) A claim of factual innocence for any conviction may be referred to the Commission
17 by any court, a State or local agency, or a claimant's counsel. A claim of factual innocence for
18 convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery
19 pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration
20 pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E
21 felony may be made directly by the claimant. The Commission shall not consider a claim of
22 factual innocence if the convicted person is deceased. A claimant who received notice pursuant
23 to subsection (c1) of this section and did not make a claim of factual innocence shall be barred
24 from investigation of a claim of factual innocence by the Commission absent a showing of
25 good cause and approval of the Commission Chair. The determination of whether to grant a
26 formal inquiry regarding any other claim of factual innocence is in the discretion of the
27 Commission. The Commission may informally screen and dismiss a case summarily at its
28 discretion. If a claim was referred by counsel and the claim is closed prior to formal inquiry,
29 the Director shall provide referring counsel with its case disposition memorandum."

30 **SECTION 3.** G.S. 15A-1468(g) reads as rewritten:

31 "(g) Except as otherwise provided in this section, all files and records not filed with the
32 clerk of superior court or presented at the Commission hearings are confidential and exempt
33 from the public record.

34 ~~(g1) If the Commission concludes there is sufficient evidence of factual innocence to~~
35 ~~merit judicial review, the Commission~~ For formal inquiry cases which are not presented to the
36 Commission, the Director shall provide a copy of the full case file, in accordance with
37 G.S. 132-1.4, G.S. 15A-1415(h), and Article 48 of Chapter 15A of the General Statutes, to the
38 district attorney and defense counsel when formal inquiry is completed. For cases presented to
39 the full commission after formal inquiry, the Director shall make a copy of the entire case file
40 available to the district attorney and defense counsel. Upon availability, the Commission shall
41 provide the district attorney and defense counsel counsel, as well as a copy of the uncertified
42 and certified transcript of the Commission's proceedings. Absent a judicial finding of malicious
43 conduct, the Commission and Commission staff shall not be civilly liable for acting in
44 compliance with this subsection."

45 **SECTION 4.** The North Carolina Courts Commission, with input from the North
46 Carolina Administrative Office of the Courts, the North Carolina Conference of District
47 Attorneys, the North Carolina Sheriff's Association, and the North Carolina Office of Indigent
48 Defense Services, shall conduct a study of the Innocence Inquiry Commission and shall look at
49 the following issues:

50 (a) The role of the Director and the Commission in the following:

- 1 (1) Prioritizing claims of innocence with regard to persons currently
- 2 incarcerated solely for the crime for which the convicted person is claiming
- 3 innocence.
- 4 (2) Conducting inquiries into claims of factual innocence.
- 5 (3) Coordinating investigation of cases accepted for review.
- 6 (4) Preparing and presenting cases.
- 7 (5) Notifying the victim of the victim's rights.
- 8 (6) Notifying each codefendant of a claim.
- 9 (7) Producing a case disposition memorandum for a claim closed prior to a
- 10 formal inquiry.
- 11 (8) Providing discovery to the district attorney and defense counsel once a
- 12 formal inquiry is completed.
- 13 (b) Whether referral to the Innocence Inquiry Commission is an appropriate
- 14 remedy available when a court grants a motion for appropriate relief.
- 15 (c) Whether the Innocence Inquiry Commission should be subject to statutes
- 16 governing meetings of public bodies, including requirements pertaining to notice and
- 17 limitations on closed sessions.
- 18 (d) The attendance of victims during Commission proceedings otherwise closed
- 19 to the public.
- 20 The Commission shall report its findings and recommendations to the 2018 session
- 21 of the 2017-2018 General Assembly.
- 22 **SECTION 5.** Section 1 of this act becomes effective December 1, 2017, and
- 23 applies to offenses committed on or after that date. The remainder of this act is effective when
- 24 it becomes law, and Sections 2 and 3 apply to all cases under Article 92 of Chapter 15A of the
- 25 General Statutes.