

NORTH CAROLINA GENERAL ASSEMBLY
1965 SESSION

CHAPTER 352
HOUSE BILL 305

1 AN ACT TO AMEND THE POST-CONVICTION HEARING ACT RELATING TO
2 PROCEDURE IN CERTAIN CRIMINAL CASES.

3
4 The General Assembly of North Carolina do enact:

5
6 **Section 1.** Article 22 of Chapter 15 of the General Statutes is hereby amended by
7 rewriting the Article to read as follows:

8 "ARTICLE 22

9 "Review of Criminal Trials.

10 "**§ 15-217. Institution of Proceeding.** Any person imprisoned in the penitentiary, Central
11 Prison, common jail of any county or imprisoned in the common jail of any county and
12 assigned to work under the supervision of the State Prison Department, who asserts that in the
13 proceedings which resulted in his conviction there was a substantial denial of his rights under
14 the Constitution of the United States or of the State of North Carolina or both, or that the court
15 was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum
16 authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground
17 of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or
18 other common law or statutory remedy, as to which there has been no prior adjudication by any
19 court of competent jurisdiction, may institute a proceeding under this Article.

20 "The remedy herein provided is not a substitute for nor does it affect any remedies which
21 are incident to the proceedings in the trial court, or any remedy of direct review of the sentence
22 or conviction, but, except as otherwise provided in this Article it comprehends and takes the
23 place of all other common law and statutory remedies which have heretofore been available for
24 challenging the validity of incarceration under sentence of death or imprisonment, and shall be
25 used exclusively in lieu thereof.

26 "**§ 15-217.1. Procedure for Filing; Delivery of Petition to Solicitor; Notice to Judge.** The
27 proceeding shall be commenced by filing with the Clerk of Superior Court of the county in
28 which the conviction took place a petition, with two copies thereof, verified by affidavit. One
29 copy shall be delivered by the clerk to the solicitor of the solicitorial district who prosecutes
30 the criminal docket of the Superior Court of the county in which said petition is filed, either in
31 person or by ordinary mail, and the clerk shall enter upon his docket the date and manner of
32 delivery of such copy.

33 "The clerk shall place the petition upon the criminal docket upon his receipt thereof. The
34 clerk shall promptly after delivery of copy to the solicitor bring the petition, or a copy thereof,
35 to the attention of the resident judge or any judge holding the courts of the district or any judge
36 holding court in the county. Such judge shall review the petition and make such order as he
37 deems appropriate with respect to permitting the petitioner to prosecute such action without
38 providing for the payment of costs, with respect to the appointment of counsel, and with respect
39 to the time and place of hearing upon the petition. If it appears to the judge that substantial
40 injustice may be done by any delay in hearing upon the matters alleged in the petition, he may
41 issue such order as may be appropriate to bring the petitioner before the court without delay,
42 and may direct the solicitor to answer the petition at a time specified in the order, and the court
43 shall thereupon inquire into the matters alleged as directed by the reviewing judge, as in the

1 case of a writ of habeas corpus. If upon review of the petition it does not appear to the judge
2 that an order advancing the hearing or other order is appropriate, he shall return the petition to
3 the clerk with a notation to that effect.

4 **"§ 15-218. Contents of Petition; Waiver of Claims not Alleged.** The petition shall identify
5 the proceeding or trial in which the petitioner was convicted, give the date of the rendition of
6 the final judgment complained of, and shall clearly set forth the respects in which petitioner's
7 constitutional rights were violated or in which he is illegally detained, and shall state that the
8 questions raised have not heretofore been raised or passed upon by any court of competent
9 jurisdiction. The petition shall have attached thereto affidavits, records or other evidence
10 supporting its allegations or shall state why the same are not attached. The petition shall also
11 identify any previous proceedings that the petitioner may have taken to secure relief from his
12 conviction. Argument and citations and discussion of authorities shall be omitted from the
13 petition. Any claims of substantial denial of constitutional rights or of other error remediable
14 under this Article not raised or set forth in the original or any amended petition shall be deemed
15 waived.

16 **"§ 15-219. Petitioner Unable to Pay Costs or Procure Counsel.** If the petition alleges that
17 the petitioner is without funds to pay the costs of the proceeding, and is unable to give a costs
18 bond with sureties for the payment of the costs for the proceeding and is unable to furnish
19 security for costs by means of a mortgage or lien upon property to secure the costs, the court
20 may order that the petitioner be permitted to proceed to prosecute such proceeding without
21 providing for the payment of costs. If the petitioner is without counsel and alleges in the
22 petition that he is without means of any nature sufficient to procure counsel, he shall state
23 whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is
24 so requested, the court shall appoint counsel if satisfied that the petitioner has no means
25 sufficient to procure counsel. The court shall fix the compensation to be paid such counsel in
26 accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as
27 provided in said Section.

28 **"§ 15-220. Answer of the State; Withdrawal of Petition; Amendments.** Unless the
29 reviewing judge shall have ordered an earlier date, within 30 days after the date of delivery of
30 the petition to the solicitor of the district, or within such further time as the court may fix, the
31 solicitor shall answer or move to dismiss on behalf of the State. No other or further pleadings
32 shall be filed except as the court may order on its own motion or on that of either party. The
33 court may, in its discretion, grant leave at any stage of the proceeding prior to entry of
34 judgment to withdraw the petition. Withdrawal of a petition shall constitute a waiver of any
35 claim of denial of constitutional rights or of other error remediable under this Article which has
36 been alleged in the petition. The court may, in its discretion make such orders as to amendment
37 of the petition or any other pleading, or as to pleading over, or filing further pleadings, or
38 extending the time for filing any pleading other than the original petition, as shall seem to the
39 court appropriate, just and reasonable.

40 "If it shall appear to the court that records, including a transcript of testimony, of the
41 proceedings which resulted in the conviction of petitioner are necessary for a proper
42 determination of the proceedings, the judge shall, upon finding that the petitioner is indigent or
43 upon motion of the State, order the county to pay the necessary cost of obtaining the records
44 specified by the judge.

45 **"§ 15-221. Hearing; Evidence to be Received Upon Hearing.** The court may receive proof
46 by affidavits, depositions, oral testimony, or other evidence, and the court shall pass upon all
47 issues or questions of fact arising in the proceeding without the aid of a jury. In its discretion,
48 the court may order the petitioner brought before the court for the hearing. When said hearing
49 is completed, the court shall make appropriate findings of fact, conclusions of law thereon and
50 shall enter judgment upon said hearing. If the court finds in favor of the petitioner, it shall enter
51 an appropriate order with respect to the judgment or sentence in the former proceedings under

1 which the petitioner was convicted, and such supplementary orders as to rearraignment, retrial,
2 custody, bail or discharge as may be necessary and proper. Such proceeding may be heard by
3 any resident judge of the district or by any judge holding the courts of the district, or any judge
4 holding court in the county, and such proceeding may be heard at term, in chambers or in
5 vacation, or at any regular or special session of court. Unless the judge reviewing the petition
6 has set another time, or unless a judge shall thereafter set another time, the clerk and the
7 solicitor shall calendar the matter for hearing at the next session for the trial of criminal cases in
8 the county after the time for pleading by the solicitor has expired. If said proceeding is set for
9 hearing at any time other than a session of court for the trial of criminal cases in the county,
10 then notice of the time and place of hearing shall be given to the solicitor of the district.

11 "**§ 15-222. Review by Application for Certiorari.** Any final judgment entered upon such a
12 petition and proceeding may be reviewed by the Supreme Court of North Carolina upon
13 application for a writ of certiorari brought within 60 days from the entry of the judgment in
14 such proceeding. The law of this State governing the application, granting and disposition of
15 writs of certiorari shall be applicable to any application for writ of certiorari brought under the
16 provisions of this Article for the purpose of seeking a review of such judgment or proceeding."

17 **Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

18 **Sec. 3.** This Act shall become effective July 1, 1965.

19 In the General Assembly read three times and ratified, this the 28th day of April,

20 1965.