

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

3

HOUSE BILL 1323*
Committee Substitute Favorable 8/10/05
Third Edition Engrossed 8/11/05

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY
COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL
INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

§ 15A-1460. Definitions.

The following definitions apply in this Article:

- (1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

1 (2) "Commission" means the North Carolina Innocence Inquiry
2 Commission established by this Article.

3 (3) "Director" means the Director of the North Carolina Innocence Inquiry
4 Commission.

5 (4) "Victim" means the victim of the crime, or if the victim of the crime is
6 deceased, the next of kin of the victim.

7 **"§ 15A-1461. Purpose of Article.**

8 This Article establishes an extraordinary procedure to investigate and determine
9 credible claims of factual innocence that shall require an individual to voluntarily waive
10 rights and privileges as described in this Article.

11 **"§ 15A-1462. Commission established.**

12 (a) There is established the North Carolina Innocence Inquiry Commission. The
13 North Carolina Innocence Inquiry Commission shall be an independent commission
14 under the Judicial Department for administrative purposes.

15 (b) The Administrative Office of the Courts shall provide administrative support
16 to the Commission as needed. The Director of the Administrative Office of the Courts
17 shall not reduce or modify the budget of the Commission or use funds appropriated to
18 the Commission without the approval of the Commission.

19 **"§ 15A-1463. Membership; chair; meetings; quorum.**

20 (a) The Commission shall consist of eight voting members as follows:

21 (1) One shall be a superior court judge.

22 (2) One shall be a prosecuting attorney.

23 (3) One shall be a victim advocate.

24 (4) One shall be engaged in the practice of criminal defense law.

25 (5) One shall be a public member who is not an attorney and who is not an
26 officer or employee of the Judicial Department.

27 (6) One shall be a sheriff holding office at the time of his or her
28 appointment.

29 (7) The vocations of the two remaining appointed voting members shall be
30 at the discretion of the Chief Justice.

31 The Chief Justice of the North Carolina Supreme Court shall make the initial
32 appointment for members identified in subdivisions (4) through (6) of this subsection.
33 The Chief Judge of the Court of Appeals shall make the initial appointment for
34 members identified in subdivisions (1) through (3) of this subsection. After an appointee
35 has served his or her first three-year term, the subsequent appointment shall be by the
36 Chief Justice or Chief Judge who did not make the previous appointment. Thereafter,
37 the Chief Justice or Chief Judge shall rotate the appointing power, except for the two
38 discretionary appointments identified by subdivision (7) of this subsection which shall
39 be appointed by the Chief Justice.

40 (a1) The appointing authority shall also appoint alternate Commission members
41 for the Commission members he or she has appointed to serve in the event of
42 scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a
43 particular case. The alternate members shall have the same qualifications for
44 appointment as the original member. In making the appointments, the appointing

1 authority shall make a good faith effort to appoint members with different perspectives
2 of the justice system. The appointing authority shall also consider geographical location,
3 gender, and racial diversity in making the appointments.

4 (b) The superior court judge who is appointed as a member under subsection (a)
5 of this section shall serve as Chair of the Commission. The Commission shall have its
6 initial meeting no later than January 31, 2006, at the call of the Chair. The Commission
7 shall meet a minimum of once every six months and may also meet more often at the
8 call of the Chair. The Commission shall meet at such time and place as designated by
9 the Chair. Notice of the meetings shall be given at such time and manner as provided by
10 the rules of the Commission. A majority of the members shall constitute a quorum. All
11 Commission votes shall be by majority vote.

12 **"§ 15A-1464. Terms of members; compensation; expenses.**

13 (a) Of the initial members, two appointments shall be for one-year terms, three
14 appointments shall be for two-year terms, and three appointments shall be for three-year
15 terms. Thereafter, all terms shall be for three years. Members of the Commission shall
16 serve no more than two consecutive three-year terms plus any initial term of less than
17 three years. Unless provided otherwise by this act, all terms of members shall begin on
18 January 1 and end on December 31.

19 Members serving by virtue of elective or appointive office, except for the sheriff,
20 may serve only so long as the officeholders hold those respective offices. The Chief
21 Justice may remove members, with cause. Vacancies occurring before the expiration of
22 a term shall be filled in the manner provided for the members first appointed.

23 (b) The Commission members shall receive no salary for serving. All
24 Commission members shall receive necessary subsistence and travel expenses in
25 accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

26 **"§ 15A-1465. Director and other staff.**

27 (a) The Commission shall employ a Director. The Director shall be an attorney
28 licensed to practice in North Carolina at the time of appointment and at all times during
29 service as Director. The Director shall assist the Commission in developing rules and
30 standards for cases accepted for review, coordinate investigation of cases accepted for
31 review, maintain records for all case investigations, prepare reports outlining
32 Commission investigations and recommendations to the trial court, and apply for and
33 accept on behalf of the Commission any funds that may become available from
34 government grants, private gifts, donations, or bequests from any source.

35 Subject to the approval of the Chair, the Director shall employ such other staff and
36 shall contract for services as is necessary to assist the Commission in the performance
37 of its duties, and as funds permit.

38 The Commission may, with the approval of the Legislative Services Commission,
39 meet in the State Legislative Building or the Legislative Office Building, or may meet
40 in an area provided by the Director of the Administrative Office of the Courts. The
41 Director of the Administrative Office of the Courts shall provide office space for the
42 Commission and the Commission staff.

43 **"§ 15A-1466. Duties.**

44 The Commission shall have the following duties and powers:

- 1 (1) To establish the criteria and screening process to be used to determine
2 which cases shall be accepted for review.
- 3 (2) To conduct inquiries into claims of factual innocence, with priority to
4 be given to those cases in which the convicted person is currently
5 incarcerated solely for the crime for which he or she claims factual
6 innocence.
- 7 (3) To coordinate the investigation of cases accepted for review.
- 8 (4) To maintain records for all case investigations.
- 9 (5) To prepare written reports outlining Commission investigations and
10 recommendations to the trial court at the completion of each inquiry.
- 11 (6) To apply for and accept any funds that may become available for the
12 Commission's work from government grants, private gifts, donations,
13 or bequests from any source.

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

16 (a) A claim of factual innocence may be referred to the Commission by any
17 court, person, or agency. The determination of whether to grant a formal inquiry
18 regarding a claim of factual innocence is in the discretion of the Commission. The
19 Commission may informally screen and dismiss a case summarily at its discretion.

20 (b) No formal inquiry into a claim of factual innocence shall be made by the
21 Commission unless the Director or the Director's designee first obtains a signed
22 agreement from the defendant in which the defendant agrees to waive his or her
23 procedural safeguards and privileges to the extent necessary for inquiry into the
24 defendant's claim of innocence, agrees to cooperate with the Commission, and agrees to
25 provide full disclosure regarding all inquiry requirements of the Commission. The
26 defendant shall have the right to advice of counsel prior to the execution of the
27 agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel
28 represents the defendant, then the defendant's counsel must be present at the signing of
29 the agreement. If counsel does not represent the defendant, the Commission Chair shall
30 determine the defendant's indigency status and, if appropriate, enter an order for the
31 appointment of counsel for the purpose of advising on the agreement.

32 (c) If a formal inquiry regarding a claim of factual innocence is granted, the
33 Director shall use all due diligence to notify the victim in the case and explain the
34 inquiry process. The Commission shall give the victim notice that the victim has the
35 right to present his or her views and concerns throughout the Commission's
36 investigation.

37 (d) The Commission may use any measure provided in Chapter 15A of the
38 General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain
39 information necessary to its inquiry. The Commission may also do any of the following:
40 issue process to compel the attendance of witnesses and the production of evidence,
41 administer oaths, petition the Superior Court of Wake County or of the original
42 jurisdiction for enforcement of process or for other relief, and prescribe its own rules of
43 procedure. All challenges with regard to the Commission's authority or the

1 Commission's access to evidence shall be heard by the Commission Chair in the Chair's
2 judicial capacity, including any in camera review required by G.S. 15A-908.

3 (e) While performing duties for the Commission, the Director or the Director's
4 designee may serve subpoenas or other process issued by the Commission throughout
5 the State in the same manner and with the same effect as an officer authorized to serve
6 process of the General Court of Justice.

7 (f) All State discovery and disclosure statutes in effect at the time of formal
8 inquiry shall be enforceable as if the defendant were currently being tried for the charge
9 for which the defendant is claiming innocence.

10 (g) If, at any point during an inquiry, the defendant refuses to comply with
11 requests of the Commission or is otherwise deemed to be uncooperative by the
12 Commission, the Commission shall discontinue the inquiry.

13 **"§ 15A-1468. Commission proceedings.**

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

19 (b) The Director shall use all due diligence to notify the victim at least 30 days
20 prior to any proceedings of the full Commission held in regard to the victim's case. The
21 Commission shall notify the victim that the victim is permitted to attend proceedings
22 otherwise closed to the public, subject to any limitations imposed by this Article. If the
23 victim plans to attend proceedings otherwise closed to the public, the victim shall notify
24 the Commission at least 10 days in advance of the proceedings of his or her intent to
25 attend. If the Commission determines that the victim's presence may interfere with the
26 investigation, the Commission may close any portion of the proceedings to the victim.

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

30 If five or more of the eight voting members of the Commission conclude there is
31 sufficient evidence of factual innocence to merit judicial review, the case shall be
32 referred to the senior resident superior court judge in the district of original jurisdiction
33 by filing with the clerk of court the opinion of the Commission with supporting findings
34 of fact, as well as the record in support of such opinion, with service on the district
35 attorney in noncapital cases and service on both the district attorney and Attorney
36 General in capital cases.

37 If less than five of the eight voting members of the Commission conclude there is
38 sufficient evidence of factual innocence to merit judicial review, the Commission shall
39 conclude there is insufficient evidence of factual innocence to merit judicial review. The
40 Commission shall document that opinion, along with supporting findings of fact, and
41 file those documents and supporting materials with the clerk of superior court in the
42 district of original jurisdiction, with a copy to the district attorney and the senior
43 resident superior court judge.

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

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

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

18 **"§ 15A-1469. Postcommission three-judge panel.**

19 (a) If the Commission concludes there is sufficient evidence of factual innocence
20 to merit judicial review, the senior resident superior court judge in the district of
21 original jurisdiction shall request the Chief Justice to appoint a three-judge panel, not to
22 include any trial judge that has had substantial previous involvement in the case, and
23 issue commissions to the members of the three-judge panel to convene a special session
24 of the superior court of the original jurisdiction to hear evidence relevant to the
25 Commission's opinion. The Chief Justice shall then appoint the three-judge panel, and
26 the senior judge of the panel shall preside.

27 (b) The senior resident superior court judge shall enter an order setting the case
28 for hearing at the special session of superior court for which the three-judge panel is
29 commissioned and shall require the State to file a response to the Commission's opinion
30 within 60 days of the date of the order.

31 (c) The district attorney of the district of conviction, or the district attorney's
32 designee, shall represent the State at the hearing before the three-judge panel. The
33 district attorney or the district attorney's designee may request assistance from the State
34 Bureau of Investigation. The extent of assistance shall be determined by the Attorney
35 General.

36 (d) The senior resident superior court judge shall determine the defendant's
37 indigency status and, if appropriate, enter an order for the appointment of counsel. The
38 court may also enter an order relieving an indigent defendant of all or a portion of the
39 costs of the proceedings.

40 (e) The three-judge panel shall, after reviewing the Commission's opinion and
41 findings of fact and record, conduct an evidentiary hearing. At the hearing, the court
42 may compel the testimony of any witness, including the defendant. The defendant may
43 not assert any privilege or prevent a witness from testifying. The defendant has a right

1 to be present at the evidentiary hearing and to be represented by counsel. A waiver of
2 the right to be present shall be in writing.

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

5 (g) Upon the motion of either party or upon the senior judge's own motion, the
6 senior judge of the panel may direct the attorneys for the parties to appear before him or
7 her for a conference on any matter in the case.

8 (h) The three-judge panel shall determine whether the defendant has proved, by
9 clear and convincing evidence, that the defendant is factually innocent of the charges in
10 accordance with the definition in G.S. 15A-1460(1). Such a determination shall require
11 a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any
12 of the charges. If the vote is not unanimous, the panel shall deny relief, however, if two
13 of the judges have determined that the defendant is factually innocent of the charges,
14 then the decision of the panel must be reviewed by the Supreme Court according to the
15 procedures set out in subsections (i) and (j) of this section. Any decision of the
16 three-judge panel must be accompanied by findings of fact and conclusions of law.

17 (i) If only two of the judges have determined that the defendant is factually
18 innocent of the charges, the case must be reviewed by the Supreme Court. In that event,
19 the clerk of court in the district of original jurisdiction shall, within 30 days from the
20 decision of the three-judge panel, forward to the Supreme Court the decision of the
21 panel, together with the panel's findings of fact and conclusions of law and the record of
22 proceedings before the panel, which shall include the Commission's opinion, supporting
23 findings of fact, and supporting record.

24 (j) The Supreme Court shall consider the record before it and may hear oral
25 arguments on any issue it deems appropriate. The Court shall determine whether the
26 defendant has established factual innocence before the three-judge panel by clear and
27 convincing evidence and remand the case to the three-judge panel for action consistent
28 with the Court's decision.

29 **"§ 15A-1470. No right to further review of decision by Commission or three-judge**
30 **panel; defendant retains right to other postconviction relief.**

31 (a) Unless otherwise authorized by this Article, the decisions of the Commission
32 and of the three-judge panel are final and are not subject to further review by appeal,
33 certification, writ, motion, or otherwise.

34 (b) A claim of factual innocence asserted through the Innocence Inquiry
35 Commission shall not adversely affect the defendant's rights to other postconviction
36 relief."

37 **SECTION 2.** G.S. 15A-1401 reads as rewritten:

38 **"§ 15A-1401. Post-trial motions and appeal.**

39 Relief from errors committed in criminal trials and proceedings and other post-trial
40 relief may be sought by:

41 (1) Motion for appropriate relief, as provided in Article 89.

42 (1a) Motion for innocence claim inquiry as provided in Article 92 of
43 Chapter 15A of the General Statutes.

1 (2) Appeal and trial de novo in misdemeanor cases, as provided in Article
2 90.

3 (3) Appeal, as provided in Article 91."

4 **SECTION 3.** G.S. 15A-1417(a) reads as rewritten:

5 "(a) The following relief is available when the court grants a motion for
6 appropriate relief:

7 (1) New trial on all or any of the charges.

8 (2) Dismissal of all or any of the charges.

9 (3) The relief sought by the State pursuant to G.S. 15A-1416.

10 (3a) For claims of factual innocence, referral to the North Carolina
11 Innocence Inquiry Commission established by Article 92 of Chapter
12 15A of the General Statutes.

13 (4) Any other appropriate relief."

14 **SECTION 4.** G.S. 15A-1411 reads as rewritten:

15 **"§ 15A-1411. Motion for appropriate relief.**

16 (a) Relief from errors committed in the trial division, or other post-trial relief,
17 may be sought by a motion for appropriate relief. Procedure for the making of the
18 motion is as set out in G.S. 15A-1420.

19 (b) A motion for appropriate relief, whether made before or after the entry of
20 judgment, is a motion in the original cause and not a new proceeding.

21 (c) The relief formerly available by motion in arrest of judgment, motion to set
22 aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all
23 other post-trial motions is available by motion for appropriate relief. The availability of
24 relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

25 (d) A claim of factual innocence asserted through the North Carolina Innocence
26 Inquiry Commission does not constitute a motion for appropriate relief and does not
27 impact rights or relief provided for in this Article."

28 **SECTION 5.** G.S. 15A-1418(b) reads as rewritten:

29 "(b) When a motion for appropriate relief is made in the appellate division, the
30 appellate court must decide whether the motion may be determined on the basis of the
31 materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for
32 taking evidence or conducting other ~~proceedings~~ proceedings, or, for claims of factual
33 innocence, whether to refer the case for further investigation to the North Carolina
34 Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General
35 Statutes. If the appellate court does not remand the case for proceedings on the motion,
36 it may determine the motion in conjunction with the appeal and enter its ruling on the
37 motion with its determination of the case."

38 **SECTION 6.** G.S. 143-318.18 is amended by adding a new subdivision to
39 read:

40 "(3a) The North Carolina Innocence Inquiry Commission."

41 **SECTION 7.** G.S. 132-1.4 reads as rewritten:

42 **"§ 132-1.4. Criminal investigations; intelligence information ~~records~~ records;**
43 **Innocence Inquiry Commission records.**

1 (a) Records of criminal investigations conducted by public law enforcement
2 ~~agencies or agencies~~, records of criminal intelligence information compiled by public
3 law enforcement ~~agencies~~, and records of investigations conducted by the
4 North Carolina Innocence Inquiry Commission, are not public records as defined by
5 G.S. 132-1. Records of criminal investigations conducted by public law enforcement
6 agencies or records of criminal intelligence information may be released by order of a
7 court of competent jurisdiction.

8"

9 **SECTION 7.1.** In order to allow staggered terms of members of the North
10 Carolina Innocence Inquiry Commission, as required by G.S. 15A-1464(a) as enacted
11 by this act, the Commission members identified in G.S. 15A-1463(a)(1), (2) and (4)
12 shall be appointed to initial terms of two years, the Commission members identified in
13 G.S. 15A-1463(a)(3), (5) and (6) shall be appointed to initial terms of three years, and
14 the Commission members identified in G.S. 15A-1463(a)(7) shall be appointed to initial
15 terms of one year.

16 **SECTION 8.** Beginning January 1, 2007, and annually thereafter, the North
17 Carolina Innocence Inquiry Commission shall report on its activities to the Joint
18 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and
19 the State Judicial Council. The report may contain recommendations of any needed
20 legislative changes related to the activities of the Commission. The report shall
21 recommend the funding needed by the Commission, the district attorneys, and the State
22 Bureau of Investigation in order to meet their responsibilities under this act.
23 Recommendations concerning the district attorneys or the State Bureau of Investigation
24 shall only be made after consultations with the North Carolina Conference of District
25 Attorneys and the Attorney General.

26 **SECTION 9.** The State Judicial Council shall report to the General
27 Assembly and the Chief Justice no later than December 31, 2008, and no later than
28 December 31 of every third year, regarding the implementation of this act and shall
29 include in its report the statistics regarding inquiries and any recommendations for
30 changes. The House of Representatives and the Senate shall refer the report of the State
31 Judicial Council to the Joint Legislative Corrections, Crime Control, and Juvenile
32 Justice Oversight Committee and such other committees as the Speaker of the House or
33 the President Pro Tempore shall deem appropriate, for their review.

34 **SECTION 9.1.** The initial members of the North Carolina Actual Innocence
35 Commission shall be appointed not later than October 1, 2005. No claims of actual
36 innocence may be filed with the Commission until November 1, 2005.

37 **SECTION 10.** This act is effective when it becomes law.