

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.
- (1a) "Claimant" means a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime.
- (2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.
- (3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
- (3a) "Formal inquiry" means the stage of an investigation when the Commission has entered into a signed agreement with the original claimant and the Commission has made efforts to notify the victim.
- (4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim. (2006-184, s. 1; 2010-171, s. 5; 2012-7, s. 4; 2016-73, s. 1.)

**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article. (2006-184, s. 1; 2010-171, s. 5.)

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

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Administrative Office of the Courts for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission. The Administrative Office of the Courts shall conduct an annual audit of the Commission. (2006-184, s. 1; 2010-171, s. 5; 2015-241, s. 18A.16.)

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

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

- (1) One shall be a superior court judge.
- (2) One shall be a prosecuting attorney.
- (3) One shall be a victim advocate.
- (4) One shall be engaged in the practice of criminal defense law.
- (5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (6) One shall be a sheriff holding office at the time of his or her appointment.
- (7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

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

(b) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(c) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote. (2006-184, s. 1; 2010-171, s. 5.)

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

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

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

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. (2006-184, s. 1; 2010-171, s. 5.)

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

(a) The Commission shall employ a Director. The Director shall report to the Director of the Administrative Office of the Courts, who shall consult with the Commission chair. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises from any source.

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

(c) The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff. (2006-184, s. 1; 2010-171, s. 5; 2011-284, s. 11; 2016-73, s. 2.)

**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

- (1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.
- (2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.
- (3) To coordinate the investigation of cases accepted for review.
- (4) To maintain records for all case investigations.
- (5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.
- (6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or devises from any source. (2006-184, s. 1; 2010-171, s. 5; 2011-284, s. 12.)

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

(a) A claim of factual innocence for any conviction may be referred to the Commission by any court, a State or local agency, or a claimant's counsel. A claim of factual innocence for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony may be made directly by the claimant. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. A claimant who received notice pursuant to subsection (c1) of this section and did not make a claim of factual innocence shall be barred from

investigation of a claim of factual innocence by the Commission absent a showing of good cause and approval of the Commission Chair. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services for the purpose of advising on the agreement. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.

(b1) Forensic testing and claimant interviews shall not be conducted by the Commission prior to obtaining a signed agreement from the convicted person.

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

(c1) Absent a showing of good cause and approval of the Commission chair, if a formal inquiry regarding a claim of factual innocence is granted, the Commission shall use all due diligence to notify each codefendant of the claim that an investigation will be conducted and that if the codefendant wishes to also file a claim, they must do so within 60 days from receipt of the notice or their claim may be barred from future investigation by the Commission.

(c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall provide a confidential case status update for each case in formal inquiry to (i) the District Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If there is no defense counsel, the update shall be provided to the District Attorney, the convicted person, and referring counsel, if any. The case status update shall include a summary of the actions taken since the last update and the results of any forensic testing that has been conducted.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same

manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

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

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry. (2006-184, s. 1; 2010-171, s. 5; 2012-7, s. 5; 2016-73, s. 3.)

### **§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission in a public hearing. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation. The Commission's rules of operation shall not exclude the district attorney or defense counsel from any portion of the hearing.

(a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation and necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

(a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that the District Attorney, or the District Attorney's designee, deems relevant to the proceedings. At least 72 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be part of the record.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public,

subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of the victim's intent to attend.

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

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

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

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

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

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. The supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public when filed with the superior court as required in subsection (c) of this section. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

(f) At any point in the formal inquiry regarding a claim of factual innocence, the District Attorney and the convicted person or the convicted person's counsel may agree that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. The Director and the Chair of the Commission shall be notified in writing of any such agreement.

(g) Except as otherwise provided in this section, all files and records not filed with the clerk of superior court or presented at the Commission hearings are confidential and exempt from the public record. If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Commission shall make a copy of the entire file available to the district attorney and defense counsel. Upon availability, the Commission shall provide the district attorney and defense counsel a copy of the uncertified and certified transcript of the Commission's proceedings. Absent a judicial finding of malicious conduct, the Commission and Commission staff shall not be civilly liable for acting in compliance with this subsection.

(h) With respect to the evidence presented to the three-judge panel, the district attorney and defense counsel may determine which evidence, if any, will be presented to the three-judge panel. (2006-184, s. 1; 2009-360, s. 1; 2010-171, s. 5; 2012-7, ss. 6, 7; 2016-73, s. 4.)

### **§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes or the district attorney and the convicted person's counsel agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(a1) If the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission may request the Attorney General to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney General may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, to represent the State at the hearing before the three-judge panel. However, the Attorney General shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted person, or is a prosecuting attorney in the district where the convicted person was tried. The appointment shall be made no later than 20 days after the receipt of the request.

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

(b1) The Commission's entire file, including files obtained from other agencies, shall be unencumbered by protective orders when transferred to the district attorney and defense counsel pursuant to subsection (g) of this section, unless either of the following apply:

(1) The district attorney and defense counsel have consented to a protective order over a portion of the file.

- (2) The district attorney and defense counsel have been given an opportunity to be heard by the senior judge of the three-judge panel before a protective order is issued.
- (c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel, except as otherwise provided by this section.
- (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.
- (e) The senior resident superior court judge in the district of original jurisdiction shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.
- (f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.
- (g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.
- (h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.
- (i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor. (2006-184, s. 1; 2010-171, ss. 1, 5; 2012-7, s. 8; 2016-73, s. 5.)

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

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

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person's rights to other postconviction relief. (2006-184, s. 1; 2010-171, s. 5.)

**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic and DNA testing.**

(a) Upon receiving written notice from the Commission of a Commission inquiry, the State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the



Commission provides written notice to the State that the Commission's inquiry is complete, the duty to preserve under this section shall cease; however, other preservation requirements may be applicable.

(b) The Commission is entitled to a copy of all records preserved under subsection (a) of this section, including access to inspect and examine all physical evidence.

(c) Upon request of the Commission, the State shall transfer custody of physical evidence to the Commission's Director, or the Director's designee, for forensic and DNA testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, while subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission shall return all remaining evidence.

(d) The Commission shall have the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the Commission's inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance with FBI requirements and NDIS criteria. (2012-7, s. 10.)

**§ 15A-1472. Reserved for future codification purposes.**

**§ 15A-1473. Reserved for future codification purposes.**

**§ 15A-1474. Reserved for future codification purposes.**

**§ 15A-1475. Reports.**

The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General. (2006-184, s. 9; 2011-291, s. 2.4; 2014-100, ss. 17.1(p), 18B.1(f).)