

Analysis of NC Innocence Inquiry Commission Statutory Provisions

Innocence Inquiry Commission

Good Points

- 1) No time limit on when new evidence was obtained. 15A-1460(1)
- 2) Commission conducts investigation and writes report of findings. 15A-1466(2)-(5)
- 3) Claim can be referred by any "person" or "agency."

- 15A-1467(a)
- 4) Provision for appointment of counsel 15A-1467(b)
- 5) Subpoena power to compel production of documents and attendance of witnesses. 15A-1467(d)

Bad Points

- 1) Relief is based on "Factual Innocence," which is defined to mean "complete innocence." (Note: This is a new legal concept. Lack of culpability in a crime is based on the prosecution's failure to meet its burden of proving the defendant's

guilt beyond a reasonable doubt. Historically relief after a conviction is based on some form of a defendant's undermining of the reliability of the prosecution's evidence used to prove his or her guilt beyond a reasonable doubt.) 15A-1460(1)

2) Mandated vocational composition of commission members. Four members can be expected to likely have a pro-prosecution, anti-defendant tendency. Those are "a prosecuting attorney"; "a victim advocate"; "a sheriff"; and "a superior court judge." 15A-1463(a)

3) Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals make commis-

sion member appointments. 15A-1463(7)

4) The commission's superior court judge member is the Chair of the commission. 15A-1463(b)

5) Supreme Court Chief Justice can remove commission members. 15A-1464(a)

6) The commission's director "shall be an attorney licensed to practice law in North Carolina." 15A-1465(a)

7) The applicant must waive his or her constitutional protections and provide full disclosure "regarding all inquiry requirements of the Commission." 15A-1467(b)

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ed 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 ... 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 ... 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 district attorney and the senior resident superior court judge.

(d) ... 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 files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. 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.

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

(a) If the Commission concludes 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, ... to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. ...

(b) The senior resident superior court judge shall enter an order setting the case for hearing ... and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction ... shall represent the State ...

(d) The three-judge panel shall conduct an evidentiary hearing. At

the hearing, the court may compel the testimony of any witness, including the convicted person. 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. ...

(e) The senior resident superior court judge shall determine ... if appropriate, enter an order for the appointment of counsel. ...

(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.

§ 15A-1470. ...

(a) ... 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."

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

§ 15A-1411. Motion for appropriate relief.

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

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

(a) Records of ... investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1.

SECTION 11. ... No claims of actual innocence may be filed with the Commission until November 1, 2006. No claims of actual innocence where the convicted person entered and was convicted on a plea of guilty may be filed with the Commission until November 1, 2008.

SECTION 12. This act is effective when it becomes law and applies to claims of factual innocence filed on or before December 31, 2010.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Approved this 3rd day of August 2006, by Michael F. Easley, Governor

Worse Than Nothing

The North Carolina Innocence Inquiry Commission is a huge step in the wrong direction

The North Carolina Innocence Inquiry Commission (NCIIC) was signed into law by Governor Michael Easley on August 3, 2006. Its stated purpose is to provide “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.” (For details about the NCIIC, see two articles in this *JD* issue beginning on page 20.)

Sounds laudatory. As with much legislation, however, the devil concealed by a flowery title and introduction is in the details. The following is a sampling of seven NCIIC’s details that indicate the PR spin that it is for the benefit of wrongly convicted people is not accurate:

1) The NCIIC is not an independent agency, but is subject to judicial influence and oversight.

2) A judge involved in an applicant’s prosecution, direct appeal, or state habeas petition can not only be involved in the judicial review phase of the NCIIC process, but that judge can make critical decisions.

3) A case is reviewed under the heretofore-unknown legal standard that a defendant’s “complete innocence” must be established before he or she will be accorded relief from a conviction.

4) An applicant must agree to a waiver of his or her constitutional rights during the NCIIC’s investigatory process, and if approved for referral, during review of the applicant’s case by a three-judge panel.

5) Five of eight commission members must vote to refer a case for judicial review that involves an applicant convicted after a trial. However, the designated vocation or expected self-interest of four commission members suggests that they will tend to have a pro-prosecution bias.

6) All eight commission members must vote to refer a case for judicial review that involves an applicant convicted by a guilty plea. The higher standard for referring the case of an applicant who pled guilty is contrary to the fact that a person who did not commit a crime is far more likely to falsely plead guilty than to be convicted after a trial.

7) The NCIIC has a built in bias against an applicant by designating the person(s) the crime was committed against as the “victim,” and involving that person(s) (if alive) throughout the process. Yet the “victims” sole relevance to the NCIIC’s inquiry is the same as any other person: what, if any, evidence that person can provide.

The foregoing and other areas of concern about the NCIIC provide a reasonable basis to make several conclusions:

1) Relief after a conviction, historically, is based on some form of a defendant undermining the reliability of the prosecution’s evidence relied on by a judge and/or jury to prove his or her guilt beyond a reasonable doubt. Modern language such as the phrase “actual innocence” used in the federal habe-

as statutes does not change that, since it refers to whether new evidence makes it more likely than not that a reasonable juror would find the defendant not guilty. (See e.g., *House v. Bell*, 126 S.Ct. 2064 (U.S. 06/12/2006.)) Under that standard it is not necessary that new evidence establishes the defendant’s innocence in any objective way, but merely that it sufficiently undermines the government’s ability to meet its burden of proving the defendant guilty beyond a reasonable doubt. The NCIIC turns that standard on its head by reversing the burden to the defendant to prove his or her “complete innocence” by “clear and convincing” evidence in order to be granted relief.

2) The NCIIC is not modeled after the United Kingdom’s Criminal Case Review Commission (CCRC), except in the most general and non-specific ways. A few of the significant differences between the NCIIC and the CCRC are:

- The CCRC is an independent organization distinctly separate from the judiciary, the prosecution, defense attorneys, or victims rights advocates.
- The CCRC does not inquire into an applicant’s possible innocence, and it is *per se* unconcerned with an applicant’s innocence. Rather, it seeks to determine if there is credible new evidence or arguments supporting that the applicant’s conviction is a miscarriage of justice.
- The CCRC refers a case to the Court of Appeals after determining specific evidence supports that the applicant’s conviction is “unsafe,” and the same standards apply to review of the case as for any other appeal.

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8) Five of the eight members must vote to refer a case for judicial review when there was not a guilty plea.

15A-1468(c)

9) The eight members must unanimously vote to refer a case for judicial review when a defendant pled guilty.

15A-1468(c)

10) Victim is assumed throughout the statute to be the person against whom the original crime was perpetrated, when the purported purpose of the Innocence Inquiry Commission is to determine if the applicant is a wrongly convicted person, which makes him or her a

victim of the legal system.

Three-Judge Panel

Good Points

1) Any witness can be subpoenaed to testify.

15A-1469(d)

2) Public evidentiary hearing held.

15A-1469(d)

3) Provision for appointment of counsel.

15A-1469(e)

4) Charges are dismissed if the panel decides unanimously to grant relief. (The dismissal of charges is good, but see Bad Points No. 5.) 15A-1469(h)

Bad Points

1) Three-judge panel can include trial judge(s) with previous involvement in the case.

15A-1469(a)

2) Supreme Court Chief Justice appoints the three-judge panel.

15A-1469(a)

3) Panel can include superior court (trial judges), appeals court judges, and supreme court justices. (It isn’t explicitly set forth in the statute that any state judge is excluded.)

15A-1469(a)

4) The applicant can be compelled to testify and cannot claim the Fifth Amendment right against self-incrimination.

15A-1469(d)

5) Unanimous panel decision necessary for determination that applicant is “innocent of the charges” by “clear and convincing evidence.”

15A-1469(h)

6) No appeal of panel’s decision.

15A-1470(a)

Other

1) Claim of factual innocence, whether denied at the Commission level or by the three-judge panel doesn’t affect other rights to post-conviction relief.

15A-1470(b)

2) Period for filing claims sunsets on December 31, 2010. Section 12

