

## North Carolina Innocence Inquiry Commission Created

After several high-profile exonerations the North Carolina Actual Innocence Commission was created in 2002 to investigate how they had occurred and what could be done to make future miscarriages of justice less likely. Although the NCAIC suggested reforms in police practices, such as eyewitness identification and evidence storage, they also recognized that the direct and post-conviction appeal process failed to correct known cases of wrongful conviction. The NCAIC proposed creation of a new organization to analyze claims of innocence by prisoners based on evidence not previously considered at trial or during that person's post-conviction relief process.

North Carolina Governor Michael Easley signed legislation on August 3, 2006, creating the North Carolina Innocence Inquiry

Commission. The Commission is an alternate legal process that exclusively considers a claim of "factual innocence" by a convicted person for possible referral to a three-judge panel empowered to dismiss all or any of the charges.

Accompanying this are three articles about the North Carolina Innocence Inquiry Commission:

- A condensed version of the legislation's highlights
- An analysis of NC Innocence Inquiry Commission Statutory Provisions
- *Justice:Denied's* editorial about the NC Innocence Inquiry Commission

### GENERAL ASSEMBLY OF NORTH CAROLINA

#### HOUSE BILL 1323

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

North Carolina Innocence Inquiry Commission.

§ 15A-1460. Definitions.

(1) "Claim of factual innocence" means ... complete innocence of any criminal responsibility for the felony for which the person was convicted ... 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.

§ 15A-1462. Commission established.

(a) The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

§ 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. ...

(b) 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. ...

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

(a) ... The Chief Justice may remove members, with cause. ...

(b) The Commission members shall receive no salary for serving. ...

§ 15A-1465. Director and other staff.

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina ... 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. ...

§ 15A-1466. Duties.

The Commission shall have the following duties and powers:

...

(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. ...

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry. ...

§ 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 may be referred to the Commission by any court, person, or agency. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. ...

(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. ...

(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. ...

(d) ... The Commission may ... issue process to compel the attendance of witnesses and the production of evidence ...

(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. ...

§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. ... The determination as to whether to conduct public hearings is solely in the discretion of the Commission. ...

(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 victim is permitted to attend proceedings otherwise closed to the public ...

(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

**Highlights cont. on p. 21**

# 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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### Highlights cont. from p. 20

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

