

## 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:

- (1) 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. ...
- (2) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry. ...
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#### § 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**