

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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SENATE BILL 667

Short Title: Amend Various Innocence Commission Statutes. (Public)

Sponsors: Senators Britt, McKissick, Blue (Primary Sponsors); Smith-Ingram, Van Duyn, and Waddell.

Referred to: Rules and Operations of the Senate

April 5, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DUTIES OF THE DIRECTOR OF THE INNOCENCE COMMISSION AND TO ENSURE ALL LANGUAGE AND TERMINOLOGY IS CONSISTENT WITHIN THE ARTICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1417 reads as rewritten:

"§ 15A-1417. **Relief available.**

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

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

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

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

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

(4) Any other appropriate relief.

(b) When relief is granted in the trial court and the offense is divided into degrees or necessarily includes lesser offenses, and the court is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser offense necessarily included in the one charged, the court may, with consent of the State, accept a plea of guilty to the lesser degree or lesser offense.

(c) If resentencing is required, the trial division may enter an appropriate sentence. If a motion is granted in the appellate division and resentencing is required, the case must be remanded to the trial division for entry of a new sentence."

SECTION 2. G.S. 15A-1418 reads as rewritten:

"§ 15A-1418. **Motion for appropriate relief in the appellate division.**

(a) When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate division. For the purpose of this section a case is in the appellate division when the jurisdiction of the trial court has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has been granted. When a petition for a writ of certiorari has been filed but not granted, a copy or written statement of any motion made in the trial court, and of any disposition of the motion, must be filed in the appellate division.

(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before



1 ~~it, it or~~ whether it is necessary to remand the case to the trial division for taking evidence or
2 conducting other ~~proceedings, or, for claims of factual innocence, whether to refer the case for~~
3 ~~further investigation to the North Carolina Innocence Inquiry Commission established by~~
4 ~~Article 92 of Chapter 15A of the General Statutes.~~ proceedings. If the appellate court does not
5 remand the case for proceedings on the motion, it may determine the motion in conjunction
6 with the appeal and enter its ruling on the motion with its determination of the case.

7 (c) The order of remand must provide that the time periods for perfecting or proceeding
8 with the appeal are tolled, and direct that the order of the trial division with regard to the
9 motion be transmitted to the appellate division so that it may proceed with the appeal or enter
10 an appropriate order terminating it."

11 **SECTION 3.** G.S. 15A-1460 reads as rewritten:

12 **"§ 15A-1460. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) "Claim of factual innocence" means a claim on behalf of a living person
15 convicted of a felony in the General Court of Justice of the State of North
16 Carolina, asserting the complete innocence of any criminal responsibility for
17 the felony for which the person was convicted and for any other reduced
18 level of criminal responsibility relating to the crime, and for which there is
19 some credible, verifiable evidence of innocence that has not previously been
20 presented at trial or considered at a hearing granted through postconviction
21 relief.
- 22 (1a) "Claimant" means a person asserting that he or she is completely innocent of
23 any criminal responsibility for a felony crime upon which the person was
24 convicted and for any other reduced level of criminal responsibility relating
25 to the crime.
- 26 (2) "Commission" means the North Carolina Innocence Inquiry Commission
27 established by this Article.
- 28 (3) "Director" means the Director of the North Carolina Innocence Inquiry
29 ~~Commission.~~ Commission or the Director's designee.
- 30 (3a) "Formal inquiry" means the stage of an investigation when the Commission
31 has entered into a signed agreement with the original claimant and the
32 Commission has made efforts to notify the victim.
- 33 (4) "Victim" means the victim of the crime, or if the victim of the crime is
34 deceased, the next of kin of the victim."

35 **SECTION 4.** G.S. 15A-1463 reads as rewritten:

36 **"§ 15A-1463. Membership; chair; meetings; quorum.**

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

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

48 The Chief Justice of the North Carolina Supreme Court shall make the initial appointment
49 for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of
50 the Court of Appeals shall make the initial appointment for members identified in subdivisions
51 (1) through (3) of this subsection. After an appointee has served his or her first three-year term,

1 the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the
2 previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing
3 power, except for the two discretionary appointments identified by subdivision (7) of this
4 subsection which shall be appointed by the Chief Justice.

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

12 (c) The superior court judge who is appointed as a member under subsection (a) of this
13 section shall serve as Chair of the Commission. ~~The Commission shall have its initial meeting~~
14 ~~no later than January 31, 2007, at the call of the Chair.~~ The Commission shall meet a minimum
15 of once every six months and may also meet more often at the call of the Chair. The
16 Commission shall meet at such time and place as designated by the Chair. ~~Notice~~ Public notice
17 of the meetings shall be given at such time and manner as provided by the rules of the
18 ~~Commission.~~ Commission and an opportunity for public comment regarding Commission
19 operations and rules shall be scheduled for each meeting. A majority of the members shall
20 constitute a quorum. All Commission votes shall be by majority vote."

21 **SECTION 5.** G.S. 15A-1465 reads as rewritten:

22 "**§ 15A-1465. Director and other staff.**

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

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

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

41 **SECTION 6.** G.S. 15A-1466 reads as rewritten:

42 "**§ 15A-1466. Duties.**

43 The ~~Commission~~ Director shall have the following duties and powers:

- 44 (1) To establish the criteria and screening process to be used to determine which
45 cases shall be accepted for review.
- 46 (2) ~~To conduct inquiries into claims of factual innocence, with priority to be~~
47 ~~given to those cases in which the convicted person is currently incarcerated~~
48 ~~solely for the crime for which he or she claims factual innocence.~~
- 49 (3) To coordinate the investigation of cases accepted for ~~review.~~ review, with
50 priority to be given to those cases in which the convicted person is currently

1 incarcerated solely for the crime for which the convicted person claims
2 factual innocence.

3 (4) To maintain records for all case investigations.

4 (5) ~~To prepare written reports outlining Commission investigations and~~
5 ~~recommendations to the trial court at the completion of each inquiry.~~To
6 prepare and present cases to the Commission for consideration pursuant to
7 G.S. 15A-1468.

8 (6) To apply for and accept any funds that may become available for the
9 Commission's work from government grants, private gifts, donations, or
10 devises from any source."

11 **SECTION 7.** G.S. 15A-1467 reads as rewritten:

12 **"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards**
13 **and privileges; formal inquiry; notification of the crime victim.**

14 (a) A claim of factual innocence for any conviction may be referred to the Commission
15 by any court, a State or local agency, or a claimant's counsel. A claim of factual innocence for
16 convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery
17 pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration
18 pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E
19 felony may be made directly by the claimant. The Commission shall not consider a claim of
20 factual innocence if the convicted person is deceased. A claimant who received notice pursuant
21 to subsection (c1) of this section and did not make a claim of factual innocence shall be barred
22 from investigation of a claim of factual innocence ~~by the Commission~~ absent a showing of
23 good cause and approval of the Commission Chair. The determination of whether to grant a
24 formal inquiry regarding any other claim of factual innocence is in the discretion of the
25 Commission. ~~The Commission Director~~ may informally screen and dismiss a case summarily at
26 its discretion. If a claim was referred by counsel and the claim is closed prior to formal inquiry,
27 the Director shall provide referring counsel with its case disposition memorandum.

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

42 (b1) Forensic testing and claimant interviews shall not be conducted ~~by the Commission~~
43 ~~prior to obtaining~~before a signed agreement from the convicted ~~person.~~person is obtained
44 pursuant to section (b) of this section.

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

49 (c1) Absent a showing of good cause and approval of the Commission ~~chair,~~Chair, if a
50 formal inquiry regarding a claim of factual innocence is granted, the ~~Commission Director~~ shall
51 use all due diligence to notify each codefendant of the claim that an investigation will be

1 conducted and that if the codefendant wishes to also file a claim, they must do so within 60
2 days from receipt of the notice or their claim may be barred from future ~~investigation by the~~
3 ~~Commission investigation.~~

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

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

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

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

27 (g) If, at any point during an inquiry, the convicted person refuses to comply with
28 requests of the ~~Commission~~Director or is otherwise deemed to be uncooperative by the
29 ~~Commission~~Director, the ~~Commission~~Director shall have the discretion to discontinue the
30 inquiry."

31 **SECTION 8.** G.S. 15A-1468 reads as rewritten:

32 **"§ 15A-1468. Commission proceedings.**

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

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

1 formal inquiry, false statements made under oath during proceedings under this Article, or
2 prosecution for any other crimes.

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

17 (b) The Director shall use all due diligence to notify the victim at least 30 days prior to
18 any proceedings of the full Commission held in regard to the victim's case. ~~The Commission~~
19 ~~shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the~~
20 ~~public, subject to any limitations imposed by this Article. If the victim plans to attend~~
21 ~~proceedings otherwise closed to the public, the victim shall notify the Commission at least 10~~
22 ~~days in advance of the proceedings of the victim's intent to attend.~~

23 (c) After hearing the evidence, the full Commission shall ~~vote~~ deliberate in a closed
24 meeting to establish further case disposition as provided by this subsection. All eight voting
25 members of the Commission shall participate in ~~that a public~~ public vote.

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

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

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

48 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed
49 through formal inquiry or Commission proceedings shall be referred to the appropriate
50 authority. Evidence favorable to the convicted person disclosed through formal inquiry or

1 Commission proceedings shall be disclosed to the convicted person and the convicted person's
2 counsel, if the convicted person has counsel.

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

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

16 (g) Except as otherwise provided in this section, all files and records not filed with the
17 clerk of superior court or presented at the Commission hearings are ~~confidential and exempt
18 from the public record.~~

19 (h) ~~If the Commission concludes there is sufficient evidence of factual innocence to
20 merit judicial review, For formal inquiry cases which are not presented to the Commission, the
21 Director shall provide a copy of the full case file, in accordance with G.S.132-1.4,
22 G.S. 15A-1415(h), and Article 48 of Chapter 15A of the General Statutes, to the district
23 attorney and defense counsel when formal inquiry is completed. For cases presented to the full
24 commission after formal inquiry, the Commission the Director shall make a copy of theits entire
25 case file available to the district attorney and defense counsel. Upon availability, the
26 Commission shall provide the district attorney and defense counselcounsel, as well as a copy of
27 the uncertified and certified transcript of the Commission's proceedings. Absent a judicial
28 finding of malicious conduct, the Commission and Commission staff shall not be civilly liable
29 for acting in compliance with this subsection.~~

30 (h) ~~With respect to the evidence presented to the three judge panel, the district attorney
31 and defense counsel may determine which evidence, if any, will be presented to the three judge
32 panel."~~

33 **SECTION 9.** G.S. 15A-1469 reads as rewritten:

34 **"§ 15A-1469. Postcommission three-judge panel.**

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

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

50 Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney
51 General may temporarily assign a district attorney, assistant district attorney, or other qualified

1 attorney, to represent the State at the hearing before the three-judge panel. However, the
2 Attorney General shall not appoint as special prosecutor any attorney who prosecuted or
3 assisted with the prosecution in the trial of the convicted person, or is a prosecuting attorney in
4 the district where the convicted person was tried. The appointment shall be made no later than
5 20 days after the receipt of the request.

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

12 (b1) The Commission's entire file, including files obtained from other agencies, shall be
13 unencumbered by protective orders when transferred to the district attorney and defense
14 counsel pursuant to ~~subsection (g) of this section~~, G.S. 15A-1468(h) unless either of the
15 following apply:

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

18 (2) ~~The district attorney and defense counsel have been given an opportunity to~~
19 ~~be heard by the senior judge of the three-judge panel before a protective~~
20 ~~order is issued.~~ The senior judge of the three-judge panel, after the district
21 attorney and defense counsel have been given an opportunity to be heard,
22 finds good cause shown pursuant to G.S. 15A-908.

23 (c) The district attorney of the district of conviction, or the district attorney's designee,
24 shall represent the State at the hearing before the three-judge panel, except as otherwise
25 provided by this section.

26 (d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the
27 court, and the defense and prosecution through the court, may compel the testimony of any
28 witness, including the convicted person. All credible, verifiable evidence relevant to the case,
29 even if considered by a jury or judge in a prior proceeding, may be presented during the
30 hearing. The convicted person may not assert any privilege or prevent a witness from testifying.
31 The convicted person has a right to be present at the evidentiary hearing and to be represented
32 by counsel. A waiver of the right to be present shall be in writing.

33 (e) The senior resident superior court judge in the district of original jurisdiction shall
34 determine the convicted person's indigency status and, if appropriate, enter an order for the
35 appointment of counsel by Indigent Defense Services. If the convicted person has requested a
36 specific attorney with knowledge of the case, the Director shall inform Indigent Defense
37 Services of that request for their consideration. The court may also enter an order relieving an
38 indigent convicted person of all or a portion of the costs of the proceedings.

39 (f) The clerk of court shall provide written notification to the victim 30 days prior to
40 any case-related ~~hearings~~ hearings, with the exception of consent hearings, which shall require
41 reasonable notice.

42 (g) Upon the motion of either party, the senior judge of the panel may direct the
43 attorneys for the parties to appear before him or her for a conference on any matter in the case.

44 (g1) With respect to the evidence presented to the three-judge panel, the district attorney
45 and defense counsel may determine which evidence, if any, will be presented to the three-judge
46 panel.

47 (h) The three-judge panel shall rule as to whether the convicted person has proved by
48 clear and convincing evidence that the convicted person is innocent of the charges. Such a
49 determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter
50 dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

1 (i) A person who is determined by the three-judge panel to be innocent of all charges
2 and against whom the charges are dismissed pursuant to this section is eligible for
3 compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a
4 pardon of innocence from the Governor."

5 **SECTION 10.** G.S. 15A-1471 reads as rewritten:

6 "**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic
7 and DNA testing.**

8 (a) Upon receiving written notice from the ~~Commission of a Commission inquiry,~~
9 Commission, the State shall preserve all files and evidence subject to disclosure under
10 G.S. 15A-903. Once the Commission provides written notice to the State that the Commission's
11 inquiry is complete, the duty to preserve under this section shall cease; however, other
12 preservation requirements may be applicable.

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

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

23 (d) The Commission shall have the right to subject physical evidence to forensic and
24 DNA testing, including consumption of biological ~~material,~~ material with written consent of the
25 claimant, as necessary for the Commission's inquiry. If testing complies with FBI requirements
26 and the data meets NDIS criteria, profiles obtained from the testing shall be searched and
27 uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance
28 with FBI requirements and NDIS criteria."

29 **SECTION 11.** G.S. 143-318.18 reads as rewritten:

30 "**§ 143-318.18. Exceptions.**

31 This Article does not apply to:

- 32 (1) Grand and petit juries.
- 33 (2) Any public body that is specifically authorized or directed by law to meet in
34 executive or confidential session, to the extent of the authorization or
35 direction.
- 36 (3) The Judicial Standards Commission.
- 37 ~~(3a) The North Carolina Innocence Inquiry Commission.~~
- 38 (4) Repealed by Session Laws 1991, c. 694, s. 9.
- 39 (4a) The Legislative Ethics Committee.
- 40 (4b) A conference committee of the General Assembly.
- 41 (4c) A caucus by members of the General Assembly; however, no member of the
42 General Assembly shall participate in a caucus which is called for the
43 purpose of evading or subverting this Article.
- 44 (5) Law enforcement agencies.
- 45 (6) A public body authorized to investigate, examine, or determine the character
46 and other qualifications of applicants for professional or occupational
47 licenses or certificates or to take disciplinary actions against persons holding
48 such licenses or certificates, (i) while preparing, approving, administering, or
49 grading examinations or (ii) while meeting with respect to an individual
50 applicant for or holder of such a license or certificate. This exception does
51 not amend, repeal, or supersede any other statute that requires a public

- 1 hearing or other practice and procedure in a proceeding before such a public
2 body.
- 3 (7) Any public body subject to the State Budget Act, Chapter 143C of the
4 General Statutes and exercising quasi-judicial functions, during a meeting or
5 session held solely for the purpose of making a decision in an adjudicatory
6 action or proceeding.
- 7 (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or
8 G.S. 116-238.
- 9 (9) Repealed by Session Laws 1991, c. 694, s. 9.
- 10 (10) Repealed by Session Laws 2013-234, s. 10, effective July 3, 2013.
- 11 (11) The General Court of Justice."
- 12 **SECTION 12.** This act is effective when it becomes law and applies to all cases
13 under Article 92 of Chapter 15A of the General Statutes.