

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**HOUSE BILL 778
RATIFIED BILL**

**AN ACT TO AMEND LAWS RELATING TO THE NORTH CAROLINA INNOCENCE
INQUIRY COMMISSION AND THE PRESERVATION OF BIOLOGICAL EVIDENCE.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-268(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a custodial agency shall preserve any physical ~~evidence~~ evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence."

SECTION 2. G.S. 15A-268(a7) reads as rewritten:

"(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that ~~has been preserved pursuant to this section~~ is in the custodial agency's custody. If the evidence was destroyed through court order or other written directive, the custodial agency shall provide the defendant with a copy of the court order or written directive."

SECTION 3. G.S. 15A-268(b) reads as rewritten:

"(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of this section may dispose of the evidence prior to the expiration of the period of time described in subsection (a6) of this section if all of the following conditions are met:

- (1) The custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.
- (1a) The custodial agency has determined that it has no duty to preserve the evidence under G.S. 15A-1471.
- (2) The district attorney gave to each of the following persons written notification of the intent of the custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.
- (3) The written notification from the district attorney specified the following:
 - a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.
 - b. The address of the custodial agency where the written request was to be sent.



- c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.
 - d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:
 - 1. The case is currently on appeal.
 - 2. The case is currently in postconviction proceedings.
 - 3. The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.
 - 4. The case has been referred to the North Carolina Innocence Inquiry Commission pursuant to Article 92 of Chapter 15A of the General Statutes.
- (4) The custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification."

SECTION 4. G.S. 15A-1460 reads as rewritten:

"§ 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.
- (4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim."

SECTION 5. G.S. 15A-1467(a) reads as rewritten:

"(a) A claim of factual innocence may be referred to the Commission by any court, ~~person, or agency, a State or local agency, a claimant, or a claimant's counsel.~~ The Commission shall not consider a claim of factual innocence if the convicted person is deceased. 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."

SECTION 6. G.S. 15A-1468(b) reads as rewritten:

"(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 his or her intent to attend. ~~If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.~~"

SECTION 7. 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 he or she deems relevant to the proceedings. Prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to G.S. 15A-1468(e).

SECTION 8. G.S. 15A-1469 reads as rewritten:

"§ 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, 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 there is an allegation of or evidence the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission or the district attorney of the district of conviction may request the Director of the Administrative Office of the Courts 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 ~~Director of the Administrative Office of the Courts Attorney General~~ may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, ~~including one from the prosecutorial district where the convicted person was tried,~~ to represent the State at the hearing before the three-judge panel. However, the ~~Director of the Administrative Office of the Courts Attorney General~~ shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted ~~person-person, or is a prosecuting attorney in the district where the convicted person was tried.~~ The appointment shall be made ~~pursuant to G.S. 7A-64 and shall be made no later than 20 days after the receipt of the request.~~

(b) The senior resident superior court judge 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.

(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 shall determine the convicted person's indigence status and, if appropriate, enter an order for the appointment of counsel. 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."

SECTION 9. G.S. 7A-64(a1) is repealed.

SECTION 10. Article 92 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 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."

SECTION 11. G.S. 148-82(b) reads as rewritten:

"(b) Any person who, having been convicted of a felony after pleading not guilty or nolo contendere and having been imprisoned therefor in a State prison of this State, and who is determined to be innocent of all charges and against whom the charges are dismissed pursuant to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the date that the dismissal of the charges is entered by the three-judge panel under G.S. 15A-1469."

SECTION 12. This act is effective when it becomes law and applies to any pending claims on the effective date or claims filed on or after the effective date.
In the General Assembly read three times and ratified this the 30th day of May, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2012