

ADMINISTRATION OF JUSTICE BULLETIN

2007/03 January 2007

2006 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

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The General Assembly passed three major acts affecting criminal law and procedure in 2006. One significantly expanded the obligations of and restrictions on individuals who are required to register as sex offenders. The second created a new commission to review claims of innocence by individuals who have been convicted of felonies. The third made sweeping changes to the state's impaired driving laws. The first two acts, along with the many other acts passed in 2006 that affect criminal law and procedure, are discussed in the body of this bulletin. The impaired driving act is summarized in the attached paper by James C. Drennan.

Each ratified act discussed here is identified by its chapter number in the session laws and by the number of the original bill. When an act creates new sections in the General Statutes (G.S.), the section number is given; however, the codifier of statutes may change that number later. Copies of the bills may be viewed on the General Assembly's website, <http://www.ncga.state.nc.us/>.

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Innocence Commission

S.L. 2006-184 (H 1323) sets up a new commission, the North Carolina Innocence Inquiry Commission (“Innocence Commission” or “Commission”), to review claims of innocence by individuals who have been convicted of a felony in the North Carolina courts. New Article 92 in G.S. Ch. 15A (G.S. 15A-1460 through 15A-1475) contains the main provisions on this new commission as well as the process for review of claims of innocence. In essence, the new article authorizes the Innocence Commission to investigate claims of innocence and refer meritorious cases to a special three-judge panel with the authority to dismiss the charges if it finds that the convicted person is innocent.

The act creating the Innocence Commission takes effect August 3, 2006. Claims of innocence may be filed beginning November 1, 2006, except that claims of innocence by individuals convicted on a plea of guilty may not be filed until November 1, 2008. The Commission is to give priority to cases in which the convicted person is currently incarcerated solely for the crime for which he or she has filed a claim of innocence. *See* G.S. 15A-1466(2). Claims may be filed until December 31, 2010.

Structure of Innocence Commission. The Innocence Commission is an independent commission within the Judicial Department and receives administrative support from the Administrative Office of the Courts. It consists of eight members—a superior court judge, who serves as chair; prosecutor; victim advocate; criminal defense attorney; public member who is neither an attorney nor an employee of the Judicial Department; and two members whose vocations are within the discretion of the Chief Justice of the North Carolina Supreme Court. The Chief Justice appoints five members as specified in the act, and the Chief Judge of the North Carolina Court of Appeals appoints three members. The Commission will have a director, who must be a North Carolina attorney; and the director may hire staff with the approval of the Commission Chair. For more detail regarding the method of appointment of Commission members, their terms, and the duties of the director, *see* G.S. 15A-1463 through 15A-1465. The 2006 budget appropriates \$160,000 in recurring funds and \$50,000 in nonrecurring funds for the Innocence Commission and establishes three staff positions. *See* Section I (Judicial) of Joint Conference Committee Report on the Continuation Expansion and Capital Budgets (June 30, 2006).

Meaning of “claim of innocence.” The Innocence Commission is authorized to consider “claims of factual innocence,” as defined in G.S. 15A-1460(1). To qualify, a claim must be

- on behalf of a living person
- convicted of a felony in the North Carolina trial courts
- asserting the complete innocence for the felony for which the person was convicted and for any reduced level of criminal responsibility relating to the crime
- for which there is some credible, verifiable evidence of innocence
- that has not been presented at trial or considered at a hearing granted through postconviction relief.

The last element of the definition requires that evidence supporting the claim be “new” in a limited sense. Thus, it requires that “some” evidence be submitted in support of the claim that was not previously presented, but all of the evidence need not meet this requirement. The definition does not require the claimant to have been unaware of the evidence or to have been unable to obtain the evidence at the time of trial; it only requires that the evidence not have been presented at a trial or at a hearing granted through postconviction relief. Evidence is not considered to have been previously presented in postconviction proceedings if it was presented in support of a postconviction request for which a hearing was not granted.

Submission of claim and waiver of rights. Any person, court, or agency may submit a claim of innocence to the Commission on behalf of a convicted person. The Commission may informally screen and dismiss a case summarily or undertake a formal inquiry. *See* G.S. 15A-1467(a). Before the Commission begins a formal inquiry, the convicted person must execute an agreement waiving his or her procedural safeguards and privileges and agreeing to provide full disclosure to the Commission on matters related to his or her claim of innocence. The waiver does not apply to matters unrelated to the claim. *See* G.S. 15A-1467(b). Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed during the formal inquiry or later Commission proceedings are to be referred to the appropriate authority. Evidence favorable to the convicted person must be disclosed to the convicted person and his or her counsel, if any. *See* G.S. 15A-1468(d). If at any point during the inquiry the convicted person refuses to comply with the

Commission's requests or is otherwise deemed to be uncooperative, the Commission may discontinue the inquiry. *See* G.S. 15A-1467(g).

Right to counsel. The convicted person has the right to advice of counsel before executing a waiver of rights, and if a formal inquiry is conducted, throughout the formal inquiry. If the convicted person does not have counsel, the Commission Chair must determine whether the person is indigent and, if appropriate, enter an order for the appointment of counsel. *See* G.S. 15A-1467(b); *see also* G.S. 15A-1469(e) (indigent person has right to appointed counsel in proceedings before three-judge panel).

Notice to victim. If the Commission proceeds with a formal inquiry, the Director must use due diligence to notify the victim of the case and explain the process. The victim has the right to present his or her views and concerns throughout the Commission's investigation. *See* G.S. 15A-1467(c). The victim also has the right to notice of any proceedings before the full Commission, discussed below, and to attend Commission proceedings subject to limitations imposed by the Commission. *See* G.S. 15A-1468(b); *see also* G.S. 15A-1469(f) (victim receives notice of hearing before three-judge panel).

Access to evidence. The Commission has the power to issue process to compel the attendance of witnesses and production of evidence, administer oaths, and petition the superior court of Wake County or of the original jurisdiction for enforcement of process or other relief. *See* G.S. 15A-1467(d), (e). In addition, all state discovery and disclosure statutes in effect at the time of the inquiry are enforceable as if the convicted person were being tried for the charge being investigated by the Commission. *See* G.S. 15A-1467(f).

Commission proceedings. G.S. 15A-1468 details the procedures before the Commission once the formal inquiry is completed. All relevant evidence from the inquiry must be presented to the full Commission, which may hold a public hearing or keep the proceedings closed. *See* G.S. 15A-1468(a). After reviewing the evidence, the Commission votes on whether to refer the case for review by a three-judge panel. In cases in which the convicted person did not plead guilty, five or more Commission members must find sufficient evidence of innocence for the case to be referred for judicial review. In cases in which the convicted person pled guilty, all eight Commission members must find sufficient evidence of innocence. *See* G.S. 15A-1468(c). The Commission must issue an opinion, whether it finds sufficient or insufficient evidence of innocence. If a case is referred to a three-judge panel, all of the records in support of the

Commission's conclusion, including a transcript of the hearing before the Commission, become public; if the case is not referred for judicial review, the files remain confidential except as otherwise provided in the new article. *See* G.S. 15A-1468(e).

Review by three-judge panel. G.S. 15A-1469 details the procedures before the three-judge panel. If the Commission concludes that there is sufficient evidence of innocence to merit judicial review, the Chief Justice appoints a three-judge panel to conduct an evidentiary hearing. The panel may not include any trial judge who has had substantial previous involvement in the case. Following an order setting a date for a hearing, the State has sixty days to file a response to the Commission's opinion. The district attorney of the district of conviction represents the State at the hearing. The panel may compel the testimony of any witness, including the convicted person. The convicted person has the right to be present but may not assert any privilege or prevent any witness from testifying. If the three-judge panel unanimously finds by clear and convincing evidence that the convicted person is innocent of the charges, it enters a dismissal of the charges. If the vote is not unanimous, the panel denies relief.

Finality of proceedings and availability of other relief. The decisions of the Commission and the three-judge panel are final and are not subject to review. *See* G.S. 15A-1470(a). Submission of a claim to the Innocence Commission does not adversely affect the right to other postconviction relief. *See* G.S. 15A-1470(b); G.S. 15A-1411(d) (claim to Innocence Commission does not constitute motion for appropriate relief and does not affect right to relief under postconviction statutes). Revised G.S. 15A-1417(a) provides that a court may, in ruling on a motion for appropriate relief, refer a claim of factual innocence to the Innocence Commission; but, the revised statute does not require the court to refer such claims to the Innocence Commission if other grounds exist for relief, such as a constitutional violation.

Criminal Offenses

Restrictions on sale of pseudoephedrine. In 2005, the General Assembly enacted several restrictions on the sale of pseudoephedrine, an ingredient used in lawful cold medication and in the illegal manufacture of methamphetamine. *See* Chapter 90, Article 5D (Control of Methamphetamine Precursors), G.S. 90-113.50 through 90-113.60. Effective for offenses committed on or after August 3, 2006, S.L. 2006-186 (S 686) revises these statutes to prohibit the retail sale