



HOUSE BILL 678: Amend Innocence Commission Statutes.

**This Bill Analysis
reflects the
contents of the bill
as it was presented
in committee.**

2016-2017 General Assembly

Committee:	Senate Judiciary I	Date:	June 23, 2016
Introduced by:	Reps. Glazier, Daughtry, Stam, Reives	Prepared by:	Jennifer H. Bedford
Analysis of:	PCS to Second Edition H678-CSTT-15		Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 678 would make various changes to the laws regarding the Innocence Inquiry Commission (Commission) including recommendations from the Joint Legislative Oversight Committee on Justice and Public Safety.*

BILL ANALYSIS:

Section 1 of the PCS would define "formal inquiry" as "the stage of an investigation when the Commission has entered into a signed agreement with the original claimant and the Commission has made efforts to notify the victim."

Section 2 of the PCS would direct the Commission Director to report to the Director of the Administrative Office of the Courts (AOC), who shall consult with the Commission chair.

Section 3 of the PCS would amend the process to claim factual innocence by:

- Specifying that claims for any type of conviction may be referred by counsel but direct claims are limited to specific felonies.
- Providing that codefendants be given notice if a claim of factual innocence is being investigated.
- Specifying that a co-defendant may be barred from filing a claim if they do not file a claim when notified.
- Specifying Indigent Defense Services (IDS) will appoint counsel to advise the convicted person on the execution of the formal inquiry agreement and be advised if specific counsel has been requested by the convicted person.
- Requiring that a signed agreement from the convicted person must be obtained before forensic testing and claimant interviews be conducted.
- Requiring the Director to provide a confidential case status update including any results of any forensic testing, to the district attorney and defense counsel for each case in formal inquiry at least every 6 months.

Section 4 of the PCS would amend the Commission proceedings by:

- Requiring that the full Commission meetings at the end of the formal inquiry be public.
- Prohibiting the Commission from excluding the district attorney or defense counsel from any portion of the hearing by rule of operation.

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- Authorizing the Commission chair to order a witness to testify if the witness's testimony is likely to be material and necessary.
- Authorizing the district attorney to provide the Commission with a written statement, that will be part of the record, at least 72 hours in advance of a Commission proceeding.
- Clarifying who must be served when the Commission concludes there is sufficient evidence of factual innocence to merit judicial review.
- Adding a provision that at any time the District Attorney and convicted person may agree there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the proceedings and determination by the full Commission.
- Requiring the entire file, including an uncertified and certified transcript, to be provided to the district attorney and defense counsel.
- Clarifying that the Commission and staff are not liable for complying with disclosure pursuant to this act.
- Providing that all files not presented at the Commission hearings and filed with the clerk of court remain confidential and exempt from public records' law.
- Specifying that the district attorney and defense counsel determine what evidence is presented to the three judge panel.

Section 5 of the PCS would clarify that:

- The Commission's entire file shall be unencumbered by protective orders when transferred district attorney and defense counsel absent consent or a hearing in front of the senior judge of the three-judge panel.
- Counsel for indigent persons would be appointed by Indigent Defense Services and requests for specific attorneys should be considered.

Section 6 of the PCS would amend the laws regarding gathering evidence by authorizing the Commission, at the direction of the chair, to conduct a search of any state or local governmental agency where files or evidence are reasonably likely to be stored relating to a claim under inquiry.

EFFECTIVE DATE: The act would become effective August 1, 2016, and would apply to any claim filed on or after that date and any claim pending on that date. However, nothing in this act shall abate a claim filed prior to that date or invalidate any action taken on a claim prior to that date.