



HOUSE BILL 678: Amend Innocence Commission Statutes.

2015-2016 General Assembly

Committee:		Date:	August 1, 2016
Introduced by:		Prepared by:	Jennifer H. Bedford
Analysis of:	S.L. 2016-73		Legislative Analyst

OVERVIEW: *S.L. 2016-73 amends the process to claim factual innocence and makes changes to the Innocence Inquiry Commission (Commission) proceedings in the following ways:*

- *Directs the Commission Director to report to the Director of the Administrative Office of the Courts (AOC), who must consult with the Commission Chair.*
- *Limits the types of direct claims made by prisoners to specific felonies while any other claims must be referred by counsel.*
- *Creates a process to address co-defendants in a pending claim of factual innocence.*
- *Requires a confidential case status update by the Commission Director at least every six months.*
- *Specifies the parties that should be served with notice at various points in the Commission investigation.*
- *Requires that the final, full Commission meetings be public.*
- *Authorizes the District Attorney and defense counsel to bypass the Commission by consenting to judicial review.*
- *Makes the Commission's entire file available to both the district attorney and defense counsel if the case goes forward to judicial review.*
- *Clarifies counsel for indigent people would be appointed by the Indigent Defense Services and requests for specific legal counsel would be taken into consideration.*

This act became effective August 1, 2016, and applies to any claim filed on or after that date and any claim pending on that date. However, nothing in this act abates a claim filed prior to that date or invalidates any action taken on a claim prior to that date.

BILL ANALYSIS:

Section 1 of S.L. 2016-73 defines "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 S.L. 2016-73 directs 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 S.L. 2016-73 amends the process to claim factual innocence in the following ways:

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- Specifies that claims for any type of conviction may be referred by counsel but direct claims are limited to specific felonies.
- Provides that codefendants be given notice if a claim of factual innocence is being investigated.
- Specifies that a co-defendant may be barred from filing a claim if they do not file a claim when notified.
- Specifies 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.
- Requires that a signed agreement from the convicted person must be obtained before forensic testing and claimant interviews be conducted.
- Requires 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 S.L. 2016-73 amends the Commission proceedings in the following ways:

- Requires that the full Commission meetings at the end of the formal inquiry be public.
- Prohibits the Commission from excluding the district attorney or defense counsel from any portion of the hearing by rule of operation.
- Authorizes the Commission chair to order a witness to testify if the witness's testimony is likely to be material and necessary.
- Authorizes 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.
- Clarifies who must be served when the Commission concludes there is sufficient evidence of factual innocence to merit judicial review.
- Adds 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.
- Requires the entire file, including an uncertified and certified transcript, to be provided to the district attorney and defense counsel.
- Clarifies that the Commission and staff are not liable for complying with disclosure pursuant to this act.
- Provides that all files not presented at the Commission hearings and filed with the clerk of court remain confidential and exempt from public records' law.
- Specifies that the district attorney and defense counsel determine what evidence is presented to the three judge panel.

Section 5 of S.L. 2016-73 clarifies that:

- The Commission's entire file is 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.

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- Counsel for indigent persons will be appointed by Indigent Defense Services and requests for specific attorneys should be considered.

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