



HOUSE BILL 790: Innocence Inquiry Commission Provisions.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 21, 2023
Introduced by:	Rep. Pyrtle	Prepared by:	Robert Ryan
Analysis of:	Fourth Edition		Anna Parsons* Staff Attorney

OVERVIEW: *House Bill 790 would make the following modifications related to the North Carolina Innocence Inquiry Commission (Commission):*

- *Allow the Commission to continue receiving private gifts and donations, and create a related reporting requirement to the General Assembly about these gifts and donations.*
- *Allow the Commission to continue reviews of any request for review of a case for factual innocence unless the person convicted is deceased with priority given to those where the convicted person is incarcerated solely for the crime for which the request is made.*
- *Require a prehearing conference to be held at least 30 days prior to an evidentiary hearing or at any time if the Commission develops evidence of factual innocence.*
- *Establish the procedure for the prehearing conference including the Commission providing its evidence and testimony to the claimant and the claimant's attorney, if any.*
- *Allow the district attorney to provide the Commission a written statement at least 10 days prior to a hearing.*
- *Require the Administrative Office of the Courts to appoint a special prosecutor for the Commission hearing when there is evidence of prosecutorial misconduct.*

House Bill 790 would also expand provisions surrounding the electronic recording of custodial interrogations in places of detention, would require the office of the district attorney be notified of any CODIS matches, and would require the recording of law enforcement interviews with certain informants who are in custody.

CURRENT LAW AND BILL ANALYSIS:

Section 1-Modify Laws Relating to the Commission

G.S. 15A-1465-DIRECTOR AND OTHER STAFF

Under current law, the Commission is allowed to accept private gifts and donations.

House Bill 790 would provide that accepting private gifts and donations does not create any obligation for the Commission.

G.S. 15A-1468-COMMISSION PROCEEDINGS

Under current law, a prehearing conference is required to be held at least 10 days prior to any Commission proceeding. Only the district attorney or the district attorney's designee is provided an opportunity to inspect and review any Commission evidence which has not been previously provided to a judicial official

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and any other information the district attorney deems relevant. The district attorney may provide the Commission a written statement which becomes a part of the record at least 72 hours prior to a Commission hearing.

House Bill 790 would require that the prehearing conference be held at least 30 days prior to a Commission hearing and when there is a continuance of the hearing that a subsequent prehearing conference be held at least 10 days prior to the new date to present any newly discovered evidence. The claimant and, if applicable, the claimant's attorney would be provided the same information as the district attorney, and the Commission would have an ongoing duty to provide any new evidence or testimony.

G.S. 15A-1469-POSTCOMMISSION THREE-JUDGE PANEL

Under current law, if prosecutorial misconduct is discovered, the Commission may ask the Attorney General's office to appoint a special prosecutor to represent the State at the Commission hearing and proceedings.

House Bill 790 would require that the Administrative Office of the Courts appoint the special prosecutor. The bill would also clarify that the North Carolina Rules of Evidence would apply at the evidentiary hearing and that the district attorney and the claimant or the claimant's attorney shall provide all parties with their respective evidence and testimony at least 10 days prior to the hearing. The bill would prohibit the admission of any evidence or testimony that is not provided absent a showing of good cause.

G.S. 15A-1475-REPORTS

Under current law, the Commission is required to file an annual report with the Joint Legislative Oversight Committee on Justice and Public Safety containing certain information. The bill would add a requirement that a record of the receipt and expenditures of all private donations be included in this report.

Section 1 is effective when it becomes law and applies to proceeding held on or after that date.

Section 2 – Modify laws regulating the recording of interrogations

CURRENT LAW: G.S. 15A-211 currently requires custodial interrogations of juveniles in criminal investigations, and custodial interrogations of any person involved in an investigation related to a Class A, B1, or B2 felony, and specific Class C felonies, be electronically recorded when the interrogation is conducted at any place of detention. The recording must include the entirety of the interrogation and both audio and visual components, when feasible.

Any statement made by a defendant during a custodial interrogation may be presented as evidence if an electronic recording was made of the interrogation in its entirety and if the statement is otherwise admissible. Any statement made by a defendant during or after a custodial interrogation that was not electronically recorded may be questioned regarding the voluntariness and reliability of the statement.

The remainder of G.S. 15A-211 discusses the remedies available for noncompliance with the electronic recording requirement; statements whose admission is not precluded by the Article; and destruction of recordings after appeals have been exhausted.

BILL ANALYSIS: Section 2 would modify G.S. 15A-211 so that the electronic recording requirements would be applicable to all law enforcement custodial interrogations of any person in a felony criminal investigation conducted at any place of detention.

Section 2 would also require recordings of non-defendant custodial interrogations be provided to a juvenile or defendant as part of discovery requirements; allow recordings of non-defendant interrogations to be destroyed at the conclusion of the State appeal process; and makes technical and conforming changes.

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Section 2 would become effective October 1, 2023, and apply to custodial interrogations occurring on or after that date.

Section 3 – State Crime Lab to adopt procedures to notify about CODIS hits

CURRENT LAW: G.S. 15A-266.7 requires the North Carolina State Crime Laboratory (Crime Laboratory) to adopt procedures related to the collection, security, submission, identification, analysis, and storage of DNA samples and to adopt quality assurance guidelines. All DNA samples are stored in the State DNA Databank and testing records kept on file at the Crime Laboratory. DNA profiles are accessible through Combined DNA Index System (CODIS), a national system of DNA profiles created and maintained by the Federal Bureau of Investigation.

BILL ANALYSIS: Section 3 would require the Crime Laboratory to notify the office of the district attorney for all CODIS matches.

Section 3 would become effective October 1, 2023.

Section 4 – In-custody informant statements

BILL ANALYSIS: Section 4 would create a new statute, G.S. 15A-981, that contains procedures that govern the taking of a statement from an in-custody informant. Specifically, this new law would require that all interviews of an in-custody informant by a law enforcement officer must be video recorded and clearly show both the interviewer and the in-custody informant. "In-custody informant" is a defined term which means a person, other than a defendant, accomplice, or co-conspirator, whose testimony is based on statements made by the defendant while the defendant and the in-custody informant are incarcerated together.

Section 4 becomes effective October 1, 2023, and applies to offense committed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.

**Debbie Griffiths, Staff Attorney with the Legislative Analysis Division, substantially contributed to this summary.*