



# HOUSE BILL 790: Innocence Inquiry Commission Provisions.

2023-2024 General Assembly

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<b>Committee:</b>		<b>Date:</b>	December 13, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Robert Ryan
<b>Analysis of:</b>	S.L. 2023-74		Staff Attorney

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**OVERVIEW:** *S.L. 2023-74 makes the following modifications related to the North Carolina Innocence Inquiry Commission (Commission):*

- *Allows the Commission to continue receiving private gifts and donations, and create a related reporting requirement to the General Assembly about these gifts and donations.*
- *Allows 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.*
- *Requires 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.*
- *Establishes the procedure for the prehearing conference including the Commission providing its evidence and testimony to the claimant and the claimant's attorney, if any.*
- *Allows the district attorney to provide the Commission a written statement at least 10 days prior to a hearing.*
- *Requires the Administrative Office of the Courts to appoint a special prosecutor for the Commission hearing when there is evidence of prosecutorial misconduct.*

*S.L. 2023-74 also expands provisions surrounding the electronic recording of custodial interrogations in places of detention, requires the office of the district attorney be notified of any Combined DNA Index System (CODIS) matches, and requires the recording of law enforcement interviews with certain informants who are in custody.*

*Except as otherwise provided, this act became effective July 7, 2023.*

## **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.

S.L. 2023-74 provides 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

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inspect and review any Commission evidence which has not been previously provided to a judicial official and any other information the district attorney deems relevant. The district attorney can provide the Commission a written statement which becomes a part of the record at least 72 hours prior to a Commission hearing.

S.L. 2023-74 requires 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 is provided the same information as the district attorney, and the Commission has 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 can ask the Attorney General's office to appoint a special prosecutor to represent the State at the Commission hearing and proceedings.

S.L. 2023-74 requires that the Administrative Office of the Courts appoint the special prosecutor. The act also clarifies that the North Carolina Rules of Evidence applies at the evidentiary hearing and that the district attorney and the claimant or the claimant's attorney must provide all parties with their respective evidence and testimony at least 10 days prior to the hearing. The act prohibits 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 act adds a requirement that a record of the receipt and expenditures of all private donations be included in this report.

Section 1 became effective July 7, 2023, and applies to proceedings 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 can 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 can 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 modifies G.S. 15A-211 so that the electronic recording requirements are applicable to all law enforcement custodial interrogations of any person in a felony criminal investigation conducted at any place of detention.

Section 2 also requires recordings of non-defendant custodial interrogations be provided to a juvenile or defendant as part of discovery requirements; allows 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 became effective October 1, 2023, and applies 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 CODIS, a national system of DNA profiles created and maintained by the Federal Bureau of Investigation.

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

Section 3 became effective October 1, 2023.

## **Section 4 – In-custody informant statements**

**BILL ANALYSIS: Section 4** creates 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 requires 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 became effective October 1, 2023, and applies to offenses committed on or after that date.

**EFFECTIVE DATE:** Except as otherwise provided, this act became effective July 7, 2023.

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