

§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission in a public hearing. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation. The Commission's rules of operation shall not exclude the district attorney or defense counsel from any portion of the hearing.

(a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation and necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

(a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 30 days prior to any proceedings of the full Commission. The Commission may also call a prehearing conference at any time the Commission has developed credible evidence to support a claim of factual innocence. If a Commission hearing is continued for any reason, at least 10 days before the newly scheduled hearing there shall be a subsequent prehearing conference to discuss any newly developed evidence that was not previously provided. Only the following persons shall be notified and authorized to attend a prehearing conference: the district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The district attorney, or designee, and the claimant's counsel shall be provided the ability to access, review, and inspect the Commission's entire case file at least 60 days prior to the Commission hearing. The Commission shall present and make available the information pursuant to this section in a reasonably organized manner that is not to be overly burdensome to the Commission, the district attorney, or the claimant's counsel. At least 10 days prior to a Commission hearing, the district attorney or designee is authorized to provide the Commission with a written statement, which shall be part of the record. The Commission shall have an ongoing duty to provide any newly discovered evidence to the district attorney and the claimant's counsel until the hearing begins. Evidence not provided to the district attorney and the claimant's counsel in the initial release of information shall be provided at least 10 days prior to the Commission hearing. The Commission shall keep a clear record of which materials have been previously made available for review and inspection.

(b) The Director shall use all due diligence to notify the victim at least 10 days prior to the initial prehearing conference required in subsection (a2) of this section held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of the victim's intent to attend.

Nothing in this section prevents the Director from notifying the victim at an earlier date in the proceedings.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel, if any, and the district attorney in noncapital cases or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based, the convicted person, and the convicted person's counsel, if the convicted person has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. The supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public when filed with the superior court as required in subsection (c) of this section. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

(f) At any point in the formal inquiry regarding a claim of factual innocence, the District Attorney and the convicted person or the convicted person's counsel may agree that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. The Director and the Chair of the Commission shall be notified in writing of any such agreement.

(g) Except as otherwise provided in this section, all files and records not filed with the clerk of superior court or presented at the Commission hearings are confidential and exempt from the public record. If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Commission shall make a copy of the entire file available to the

district attorney and defense counsel. Upon availability, the Commission shall provide the district attorney and defense counsel a copy of the uncertified and certified transcript of the Commission's proceedings. Absent a judicial finding of malicious conduct, the Commission and Commission staff shall not be civilly liable for acting in compliance with this subsection.

(h) With respect to the evidence presented to the three-judge panel, the district attorney and defense counsel may determine which evidence, if any, will be presented to the three-judge panel. (2006-184, s. 1; 2009-360, s. 1; 2010-171, s. 5; 2012-7, ss. 6, 7; 2016-73, s. 4; 2023-74, s. 1(a).)