

ASSEMBLY BILL NO. 401—ASSEMBLYMEN MUNFORD AND MOORE

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Authorizes the establishment by district courts of courts of inquiry that may be used to exonerate convicted persons. (BDR 14-101)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; authorizing the establishment by district courts of courts of inquiry that may be used to exonerate convicted persons; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Texas law authorizes the establishment of courts of inquiry, which may be
2 called by a district court judge to review any case if there is probable cause to
3 believe that an offense has been committed against the laws of the State. (Chap. 52
4 of Tex. Crim. Proc. Code) Texas judges have in recent years used this procedural
5 mechanism to investigate possible wrongful convictions, including posthumous
6 petitions for exoneration. In the case of Timothy Cole, the Travis County District
7 Court convened a Court of Inquiry which found that Mr. Cole was innocent of the
8 underlying crime for which he was convicted and imprisoned. Mr. Cole was
9 subsequently posthumously pardoned by the Governor of Texas. (*In the Matter of a*
10 *Court of Inquiry*, No. D1-DC 08-100-051 (Tex. 299th Crim. Dist. Ct. Apr. 7,
11 2009)) This bill similarly authorizes district courts in this State to establish such
12 courts of inquiry that may be used to exonerate convicted persons.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 14 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 10, inclusive, of this act.

4 **Sec. 2. 1.** *If a judge of any district court of this State,*
5 *acting in his or her capacity as magistrate, has probable cause to*



1 *believe that an offense has been committed against the laws of this*
2 *State, the judge may request that the presiding judge of the*
3 *judicial district appoint a district judge to commence a court of*
4 *inquiry. The judge:*

5 *(a) Must be appointed in accordance with the provisions of this*
6 *section; and*

7 *(b) May summon and examine any witness in relation to the*
8 *offense in accordance with the requirements of this chapter, which*
9 *proceeding must be designated as a court of inquiry.*

10 *2. Before requesting the presiding judge to appoint a district*
11 *judge to commence a court of inquiry, a judge shall enter into the*
12 *minutes of his or her court a sworn affidavit stating the*
13 *substantial facts establishing probable cause that a specific*
14 *offense has been committed against the laws of this State.*

15 *3. After the affidavit described in subsection 2 has been*
16 *entered into the minutes of the district court, and a copy filed with*
17 *the clerk of the district court, the judge shall request the presiding*
18 *judge of the judicial district in which the affidavit is filed to*
19 *appoint a judge to commence a court of inquiry. The presiding*
20 *judge shall not name the judge who requested the court of inquiry*
21 *to preside over the court of inquiry. The judge appointed to*
22 *commence the court of inquiry shall issue a written order*
23 *commencing the court of inquiry and stating its scope.*

24 *4. The district attorney of the county in which the court of*
25 *inquiry is held shall assist the district judge in conducting the*
26 *court of inquiry. The district attorney shall examine witnesses and*
27 *evidence admitted before the court to determine if an offense has*
28 *been committed against the laws of this State and shall render*
29 *other assistance to the judge as is necessary in the proceeding.*

30 *5. If the court of inquiry pertains to the activities of the*
31 *district attorney or to the office of the district attorney, its deputies*
32 *or employees, or if the district attorney is otherwise disqualified in*
33 *the proceeding, the judge shall appoint an attorney as special*
34 *counsel pursuant to NRS 41.0344 to assist in the proceeding. In*
35 *any other circumstance, the judge may appoint an attorney to*
36 *assist in the proceeding.*

37 *6. If more than one court of inquiry is commenced which*
38 *pertains to the activities of this State or a political subdivision or*
39 *public officer or employee of this State, then, upon motion made to*
40 *the presiding judge or judges of the judicial district or districts*
41 *where the courts of inquiry have been commenced, the presiding*
42 *judge or judges shall transfer the courts of inquiry to the presiding*
43 *judge of the First Judicial District Court. The presiding judge of*
44 *the First Judicial District Court shall consolidate the courts of*
45 *inquiry for further proceedings and shall assign a district judge*



1 of the First Judicial District Court to preside over the consolidated
2 courts of inquiry.

3 **Sec. 3.** *At the hearing of a court of inquiry, evidence may be*
4 *taken orally or by deposition or, in the discretion of the judge, by*
5 *affidavit. If affidavits are admitted, any witness against whom they*
6 *may bear has the right to propound written interrogatories to the*
7 *affiants or to file answering affidavits. The judge in hearing such*
8 *evidence may, in his or her discretion, conclude not to sustain*
9 *objections to all or to any portion of the evidence taken or to*
10 *exclude the evidence. Any of the witnesses or attorneys engaged in*
11 *taking the testimony may have any objections recorded with the*
12 *testimony and reserved for the action of any court in which such*
13 *evidence is thereafter sought to be admitted, but such court is not*
14 *confined to objections made at the taking of the testimony at the*
15 *court of inquiry. Without restricting the foregoing, a judge may*
16 *allow the introduction of any documentary or real evidence which*
17 *the judge deems reliable and any testimony adduced before any*
18 *grand jury.*

19 **Sec. 4.** *The judge or the clerk of the district court in which*
20 *the court of inquiry is held has the power to issue subpoenas*
21 *which may be served within the same territorial limits as*
22 *subpoenas issued in felony prosecutions or to summon witnesses*
23 *before grand juries in this State.*

24 **Sec. 5. 1.** *All witnesses testifying in a court of inquiry have*
25 *the same rights as to testifying as do defendants in felony*
26 *prosecutions in this State. Before any witness is sworn to testify in*
27 *a court of inquiry, the witness must be instructed by the judge:*

28 (a) *That he or she is entitled to counsel;*

29 (b) *That he or she cannot be forced to testify against himself or*
30 *herself; and*

31 (c) *That such testimony may be taken down and used against*
32 *him or her in a later trial or trials ensuing from the instant court*
33 *of inquiry.*

34 2. *Any witness or his or her counsel has the right to fully*
35 *cross-examine any of the witnesses whose testimony bears in any*
36 *manner against him or her.*

37 3. *If the court of inquiry pertains to the activities of this State*
38 *or a political subdivision of this State, or its officers or employees,*
39 *the officers and employees of the State or political subdivision*
40 *must be indemnified for attorney's fees incurred as a result of*
41 *exercising the officers' or employees' right to counsel under*
42 *subsection 1 if:*

43 (a) *The officer or employee is found not guilty after a trial or*
44 *appeal or the complaint, information or indictment is dismissed*
45 *without a plea of guilty or nolo contendere being entered; and*



1 ***(b) The judge commencing the court of inquiry, or the judge to***
2 ***whom the court of inquiry was transferred pursuant to subsection***
3 ***6 of section 2 of this act, determines that the complaint,***
4 ***information or indictment presented against the person was***
5 ***dismissed because:***

6 ***(1) The presentment was made on mistake, false***
7 ***information or other similar basis, indicating absence of probable***
8 ***cause to believe, at the time of dismissal, the person committed the***
9 ***offense; or***

10 ***(2) The complaint, information or indictment was void.***

11 ***4. The county in which the affidavit described in section 2 of***
12 ***this act was filed is responsible for any attorney's fees awarded***
13 ***pursuant to subsection 3.***

14 ***Sec. 6. A person may be compelled to give testimony or***
15 ***produce evidence when legally called upon to do so at any court of***
16 ***inquiry. If a person refuses or declines to testify or produce***
17 ***evidence on the ground that it may incriminate the person under***
18 ***the laws of this State, the judge may, in his or her discretion,***
19 ***compel such person to testify or produce evidence. The person***
20 ***must not be prosecuted or subjected to any penalty or forfeiture***
21 ***for, or on account of, any transaction, matter or thing concerning***
22 ***which he or she may be compelled to testify or produce evidence at***
23 ***such court of inquiry.***

24 ***Sec. 7. Contempt of court in a court of inquiry may be***
25 ***punished by a fine not exceeding \$100. Any witness refusing to***
26 ***testify may be imprisoned in the county jail until the person***
27 ***complies with any such order of the court of inquiry.***

28 ***Sec. 8. All evidence and testimony taken at a court of inquiry***
29 ***must be transcribed by a certified court reporter and all***
30 ***proceedings must be open to the public.***

31 ***Sec. 9. If it appears from a court of inquiry or any testimony***
32 ***adduced therein that an offense has been committed against the***
33 ***laws of this State, the judge shall issue a warrant for the arrest of***
34 ***the offender as if a complaint had been made and filed.***

35 ***Sec. 10. 1. Except as otherwise provided in subsection 2, all***
36 ***costs incurred in conducting a court of inquiry, including, without***
37 ***limitation, the compensation of an attorney appointed pursuant to***
38 ***subsection 5 of section 2 of this act, must be borne by the county***
39 ***in which the court of inquiry is conducted.***

40 ***2. If the Attorney General has submitted a request in writing***
41 ***to a district judge for the commencement of a court of inquiry, the***
42 ***costs must be borne by the State and paid in the same manner and***
43 ***from the same funds as other court costs.***

44 ***3. Assistance by a district attorney to a court of inquiry is a***
45 ***duty of the office of the district attorney, and the district attorney***



1 *may not receive a fee for the service. A county is not liable for*
2 *attorney's fees claimed for assistance in a court of inquiry by any*
3 *attorney other than an attorney appointed pursuant to subsection*
4 *5 of section 2 of this act.*

5 *4. An attorney appointed pursuant to subsection 5 of section*
6 *2 of this act is entitled to compensation in the same manner as an*
7 *attorney appointed pursuant to NRS 41.0344. The district judge*
8 *shall set the compensation of the attorney on the sworn testimony*
9 *of the attorney or other evidence that is given in open court.*

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