

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



REPORT TO THE  
2009-2010 SHORT SESSION OF THE  
GENERAL ASSEMBLY  
OF NORTH CAROLINA

Pursuant to N.C.G.S. § 15A-1475

## TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	i
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION MEMBERS 2009-2010.....	ii
PREFACE.....	1
ANNUAL REPORT.....	2
I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2009.....	2
A. CASES.....	2
1. Case Flow Process.....	2
2. Case Statistics.....	4
B. HEARINGS.....	5
C. FEDERAL GRANT.....	6
D. OTHER ACCOMPLISHMENTS.....	7
II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION PLANS FOR 2010.....	8
CONCLUSION.....	9
APPENDICES.....	I
A. CASE PROGRESSION FLOW CHART.....	I
B. CASE STATISTICS.....	II
C. CASE STATISTICS IN PIE CHARTS.....	III
D. OPINION OF THE THREE-JUDGE PANEL IN <u>STATE V. MCNEIL</u> .....	VI
E. PRESS RELEASE FOR CASE OF <u>STATE V. MCNEIL</u> .....	XI
F. OPINION OF THE COMMISSION IN <u>STATE V. TAYLOR</u> .....	XIII
G. PRESS RELEASE AFTER RECEIPT OF FEDERAL GRANT.....	XVI
H. THE STATUTE CREATING THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION.....	XVIII

April 8, 2010

TO THE MEMBERS OF THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL,  
AND JUVENILE JUSTICE OVERSIGHT COMMITTEE OF THE 2010 SESSION OF THE  
GENERAL ASSEMBLY OF NORTH CAROLINA:

The North Carolina Innocence Inquiry Commission herewith submits to you for your  
consideration its annual report pursuant to N.C.G.S. § 15A-1475.

Respectfully submitted,

---

Kendra Montgomery-Blinn  
Executive Director  
North Carolina Innocence Inquiry Commission

## NORTH CAROLINA INNOCENCE INQUIRY COMMISSION MEMBERS 2009-2010

### Superior Court Judge / Commission Chairman

The Honorable Quentin T. Sumner, Chairman  
Senior Resident Superior Court Judge, 7<sup>th</sup> Judicial District

The Honorable James L. Baker, Alternate Chairman  
Senior Resident Superior Court Judge, 24<sup>th</sup> Judicial District

### Prosecuting Attorney

The Honorable William D. Kenerly, Commissioner  
District Attorney, 19<sup>th</sup> Judicial District

C. Branson Vickory, III, Alternate  
District Attorney, 8<sup>th</sup> Judicial District

### Victim Advocate

Mel Laura Chilton, Commissioner  
Director, NC Council for Women and Domestic Violence

Ramona Stafford, Alternate  
Board of Directors, NC Victim Assistance Network

### Criminal Defense Lawyer

Wade M. Smith, Commissioner  
Tharrington Smith, LLP

Sean Devereux, Alternate  
Devereux & Banzhoff, PLLC

### Public Member

Jacqueline Greenlee, Commissioner  
Director, Organizational Development at Guilford Technical Community College

Linda Ashendorf, Alternate  
Public Affairs Consultant

### Sheriff

Ret. Sheriff Barbara Pickens, Commissioner (served through December, 2009)  
Retired Sheriff, Lincoln County

Sheriff Susan Johnson, Commissioner (appointed for 2010)  
Sheriff, Currituck County

Sheriff Van Duncan, Alternate (appointed for 2010)  
Sheriff, Buncombe County

Discretionary Member 1

The Honorable Charles Becton, Commissioner  
Becton, Slifkin & Bell, P.A., Raleigh

The Honorable Loretta C. Biggs, Alternate  
Davis & Harwell, P.A., Winston-Salem

Discretionary Member 2

Chief Heath Jenkins, Commissioner  
Chief of Police, Stanley

Representative Richard Glazier, Alternate  
North Carolina House of Representatives

Staff

Kendra Montgomery-Blinn, Executive Director

Michael R. Epperly, Staff Attorney

Sharon L. Stellato, Investigator

Grace E. Wallace, Administrative Officer

Juanita Betts, Secretary

Jamie T. Lau, Grant Staff Attorney (began in 2010)

Lindsey Guice Smith, Grant Staff Attorney (began in 2010)

## PREFACE

The North Carolina Innocence Inquiry Commission (Commission) was established in 2006 by Article 92, Chapter 15A of the North Carolina General Statutes. The Commission is charged with evaluating post-conviction claims of actual innocence. The Commission and its staff carefully review evidence and investigate cases in a non-advocatory, fact-finding manner. N.C.G.S. §15A-1475 requires the Commission to provide an annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

## ANNUAL REPORT

This annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee is provided pursuant to N.C. G.S. § 15A-1475. This report summarizes the progress that the North Carolina Innocence Inquiry Commission has made in its third year of existence and the Commission's plans for the future. Included are statistics compiled since the Commission's creation and for the year 2009.

### I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2009

The North Carolina Innocence Inquiry Commission completed its third year in 2009. The flow of innocence claims has not slowed over the years and the Commission conducted two hearings in 2009. The Commission has been able to conduct their claim review process entirely in-house and reduced the time it took for the prior outside review by 87%. In the fall of 2009, the Commission applied for and was awarded a federal grant to assist with DNA based innocence claims.

#### A. THE CASES

##### 1. Case Flow Process

An innocence claim moves through a multi-phase process with the Commission. In 2009, the Commission reclassified the phases of review to bring the language more in line with our enabling statute. A flow chart depicting the review process is attached as Appendix A.

A new innocence claim may be initiated by anyone. Many claims are initiated by the convicted person themselves, but some are referred by other agencies, attorneys, family members, or others with knowledge of the case. Once the claim is initiated, the convicted person must provide consent for review of the case and answer a detailed questionnaire. Other publicly available documents are gathered and the claim moves into a phase known as Claim Review. The Claim Review phase consists of staff members gathering information about the innocence claim, pulling legal documents, creating a file, and writing a memo that summarizes the facts of the case with supporting documentation. Each claim is ultimately reviewed by the executive director to determine if the case meets the statutory criteria set out in N.C.G.S. § 15A-1460(1).

In 2008, the Commission assumed the entire Claim Review process in house and has now been successfully managing this task for a year and a half. The Commission staff recently audited cases to determine how much time was spent on case reviews. The Commission is pleased to note that moving the case screenings in-house has reduced the time it took to Claim Review by 87%.

After the Claim Review phase, the executive director determines whether the innocence claim still meets the statutory criteria and should be moved into the Investigation Phase. The Investigation Phase involves field work. For example, witnesses may be contacted, evidence located, and crime scenes visited.

If the case continues to meet the statutory requirement, a Formal Inquiry is initiated. At this phase, the convicted person signs the Waiver of Procedural Safeguards and Privileges which triggers the right to counsel pursuant to N.C.G.S. § 15A-1467(b). Formal Inquiry is a detailed and lengthy process that involves interviewing witnesses, obtaining affidavits, seeking court



orders for production of files and evidence, testing of physical evidence, and compiling documentation. The entire case is comprehensively investigated.

At any point during the Claim Review, Investigation, or Formal Inquiry phases, the case may be rejected if the executive director determines that the case does not meet the statutory criteria set out in N.C.G.S. § 15A-1460(1). These criteria include: a felony conviction in North Carolina, a claim of complete factual innocence, the existence of credible and verifiable evidence of innocence, and evidence that was not previously heard by a jury or judge.

If the formal inquiry is completed and evidence of actual innocence has been uncovered, the case will be moved into the final Hearing Phase. A hearing will be held before the members of the Commission and all evidence will be presented at this hearing. The evidence is presented by the Commission staff in a neutral and non-biased fashion. At this hearing, the Commissioners will determine whether to refer the case to a three-judge panel for a final hearing. The final hearing may result in a dismissal of the conviction.

## 2. Cases Statistics

In 2009, the Commission received 225 new claims of innocence. The Commission has received a total of 634 innocence claims since its creation. At the end of 2009, 97 claims were in the Case Review phase, six cases were in the detailed Investigation phase, and 3 cases were in Formal Inquiry. By the end of 2009, 463 claims had been reviewed and closed. Three cases had moved through the Hearing Phase. The first case was closed after three-judge panel and now has a pending motion for appropriate relief based on the Commission's investigation. The second case was closed after the Commission's hearing. A third case was referred to three-judge panel and the petitioner was exonerated on February 17, 2010. Case statistics are included in Appendix A in chart form.

Throughout the process, statistics are maintained for each case. These statistics reflect the types of crimes at issue, the basis of innocence claims submitted, and the reasons for rejection. These statistics have been compiled into pie charts and are included in Appendix C. Further data is available from the Commission's executive director upon request.

## B. HEARINGS

In 2009, the Commission conducted two case hearings. The first hearing was held on January 16, 2009 and was the case of State v. Terry Lee McNeil. The hearing was held in a closed session and lasted for one day. The conviction was for armed robbery and second degree kidnapping. The Commission was unanimous in their decision not to refer the case forward to a three-judge panel. The Commission's opinion is attached as Appendix D. The Commission's press release with more details about the case is attached as Appendix E.

The second hearing was held on September 3-4, 2009 and was the case of State v. Gregory Flint Taylor. The conviction was for first degree murder. The Commission was unanimous in their decision to refer the case forward to a three-judge panel. The Commission's opinion is attached as Appendix F. The hearing was opened to the public and the Commission held a press conference rather than issue a press release.

The case proceeded to a three-judge panel hearing that began on February 9, 2010. The hearing was concluded on February 17, 2010 and the judges agreed that Gregory Taylor had proven his innocence by clear and convincing evidence and exonerated him. The three judges were the Honorable Howard Manning of Wake County, the Honorable Calvin Murphy of Mecklenburg County, and the Honorable Tonya Wallace of Rockingham County. The

documents considered by the Commission and a transcript of the Commission hearing are now public record pursuant to N.C.G.S. §15A-1468(e). These documents may be obtained by contacting the Commission's executive director. Since the three-judge panel was held in 2010, the hearing will be reported in more detail in next year's annual report.

### C. FEDERAL GRANT

In 2009, the Commission staff applied for a federal grant from the National Institute of Justice for DNA testing of post-conviction innocence claims. The Commission's application was supported by the North Carolina Attorney General's Office and the North Carolina State Bureau of Investigation. The Commission was awarded \$566,980 to be used from January 2010 through June 2011.

The Commission immediately put this money to use, hired two grant staff attorneys, and has been working on applicable cases. The Commission expects to accomplish much with this funding and will report the results in the 2010 annual report.

This funding doubles the Commission's operating budget and allows for a significant increase in the volume and speed of case reviews. The grant only applies to convictions for homicide and sex offenses in which DNA testing can be conducted. The permanent Commission staff will continue to review and investigate all other types of innocence claims.

Only nine states received funding under this grant and the Commission is pleased to represent North Carolina. The funding is tied to the way the Commission operates. The Commission's enabling statute and Rules and Procedures were incorporated into the grant award. The Commission's press release about this grant award is attached as Appendix G.

#### D. OTHER ACCOMPLISHMENTS

The Commission is grateful to the North Carolina General Assembly for the creation of N.C.G.S. § 15A-1468(a)(1). This statute will allow the Commission to compel the testimony of witnesses who invoke their privilege against self incrimination. The Commission Chairperson (a Superior Court Judge), may provide limited immunity to the person against a prosecution for perjury. The Commission has not yet used the statute, but expects the need to compel testimony will arise in the future.

When the Commission was first created, the Claim Review process was primarily outsourced to the not-for-profit North Carolina Center on Actual Innocence and the law students with whom they work. In 2008, the Commission assumed this process entirely in house and has created an efficient and thorough review procedure. When the cases were outsourced, it took an average of 71 days from the time the law students received the questionnaire and consent until a case memo was generated. Now that the procedure is in house, it takes the Commission staff an average of nine days from the time the paperwork is received until the case memo is complete. This is an 87% decrease in the time it took to complete Claim Reviews when the task was outsourced.

The Commission is proud of the accomplishments in 2009. The innocence claims have continued to pour in and the Commission staff is properly equipped to handle the claims at each phase of review.

## II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

### PLANS FOR 2010

In 2010, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing innocence claims in the most detailed and efficient manner possible. The Commission was pleased with the progress made last year and is prepared to continue with the high volume of case reviews. The Commission has already begun 2010 with an exoneration in the case of State v. Taylor on February 17, 2010. The Commission has a scheduled administrative meeting on April 30, 2010.

The Commission looks forward to using the federal grant funds to increase the volume and speed of review in qualifying cases. The funds have allowed the Commission to hire two grant staff attorneys and will cover the costs of DNA testing as well as travel, equipment, and training.

The Commission remains available to assist other state agencies and will continue to provide education and presentations throughout the state. The Commission serves as a resource for other agencies and elected officials who receive innocence claims, but lack the resources to investigate and evaluate them. Members of the General Assembly are invited to refer post-conviction innocence claims from their constituents to the North Carolina Innocence Inquiry Commission.

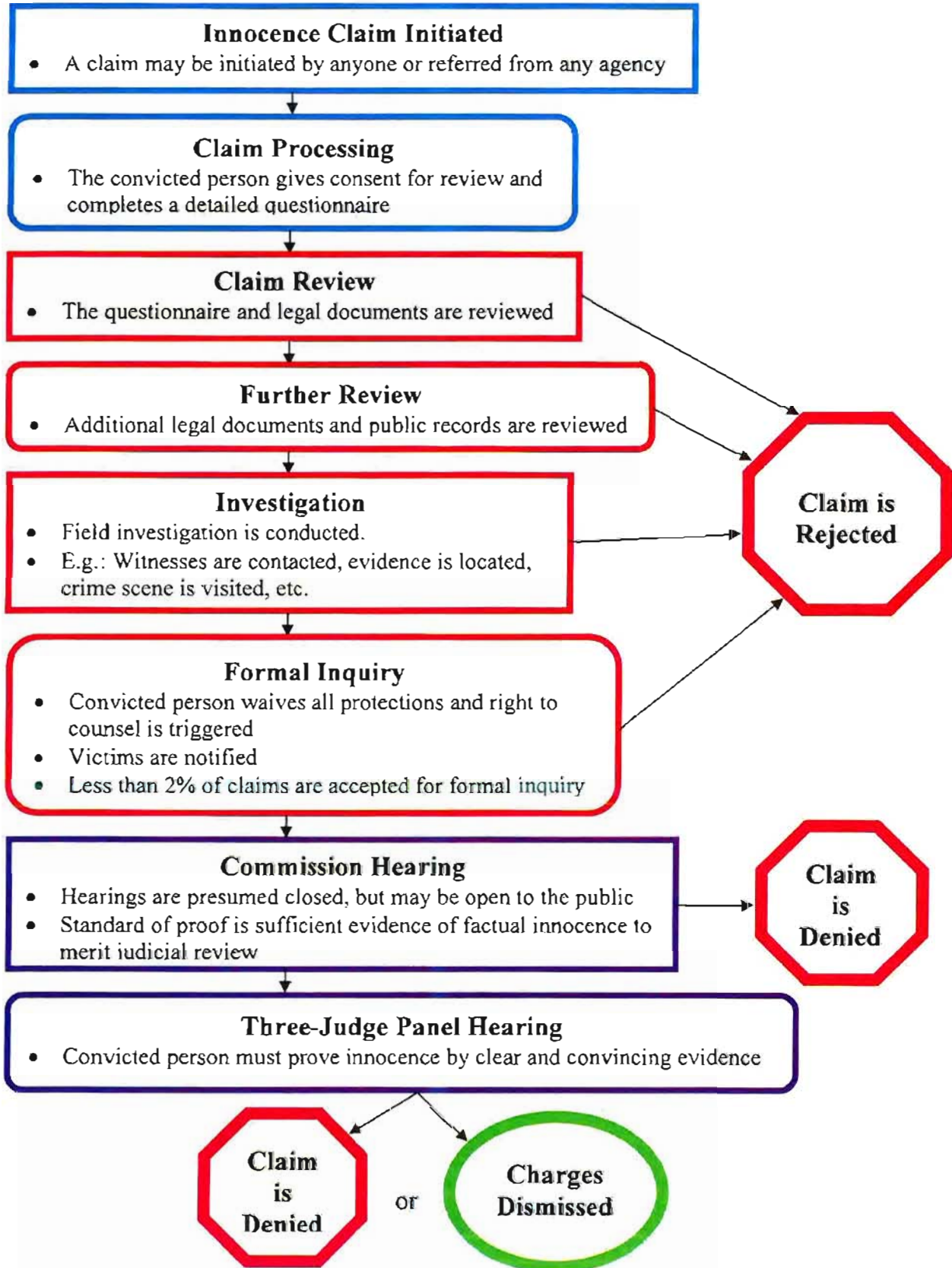
## CONCLUSION

The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the General Assembly for their creation and support of this groundbreaking new part of the criminal justice system. North Carolina continues to pave the way for other states. Florida is now considering forming an innocence inquiry commission modeled after our own.

The Commission is proud of the accomplishments made in the 2009 and the past three years. The Commission's executive director would be happy to meet with any member of the General Assembly to further discuss the work of the Commission. The Commissioners and staff are pleased to serve the people of North Carolina and look forward to continuing that service each year.

APPENDIX A

CASE PROGRESSION FLOW CHART



APPENDIX B

**NORTH CAROLINA INNOCENCE INQUIRY COMMISSION  
2009 CASE STATISTICS  
Compiled January, 2010**

Number of General Information Requests received in 2009	25
Number of Cases sent through Reviewed Phase during 2009	179*
Number of Cases sent through Investigation phase during 2009	14
Number of sent through Formal Inquiry phase during 2009	5
Number of Cases that went to hearing during 2009	2
Number of Cases Closed during 2009	206*
<b>Total Number of new Cases received in 2009</b>	<b>225*</b>

\*225 cases were received in 2009. The numbers for cases in review and rejected exceed that figure because many cases from 2008 carried over into 2009.

**NORTH CAROLINA INNOCENCE INQUIRY COMMISSION  
CUMULATIVE CASE STATISTICS  
Compiled January, 2010**

**These statistics reflect all cases received since the Commission began operation in 2007.**

Number of General Information Requests	62
Number of Cases Currently in Review	97
Number of Cases Currently in Investigation	6
Number of Cases Currently in Formal Inquiry	3
Number of Cases Closed After Hearing	3
Total Number of Cases Closed*	463
<b>Total Number of Cases</b>	<b>634</b>

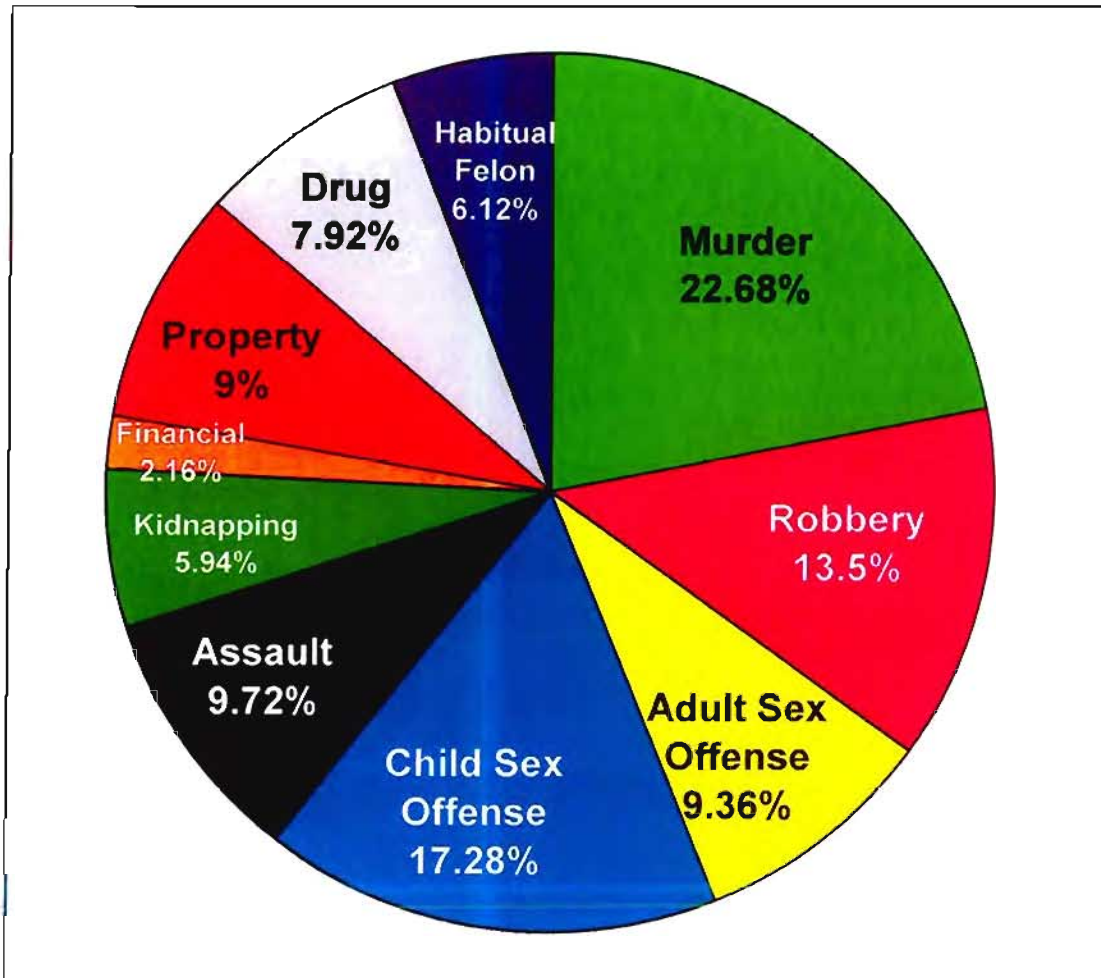
\* Includes cases closed after all phases (Review, Investigation, Formal Inquiry), except Hearing.



APPENDIX C

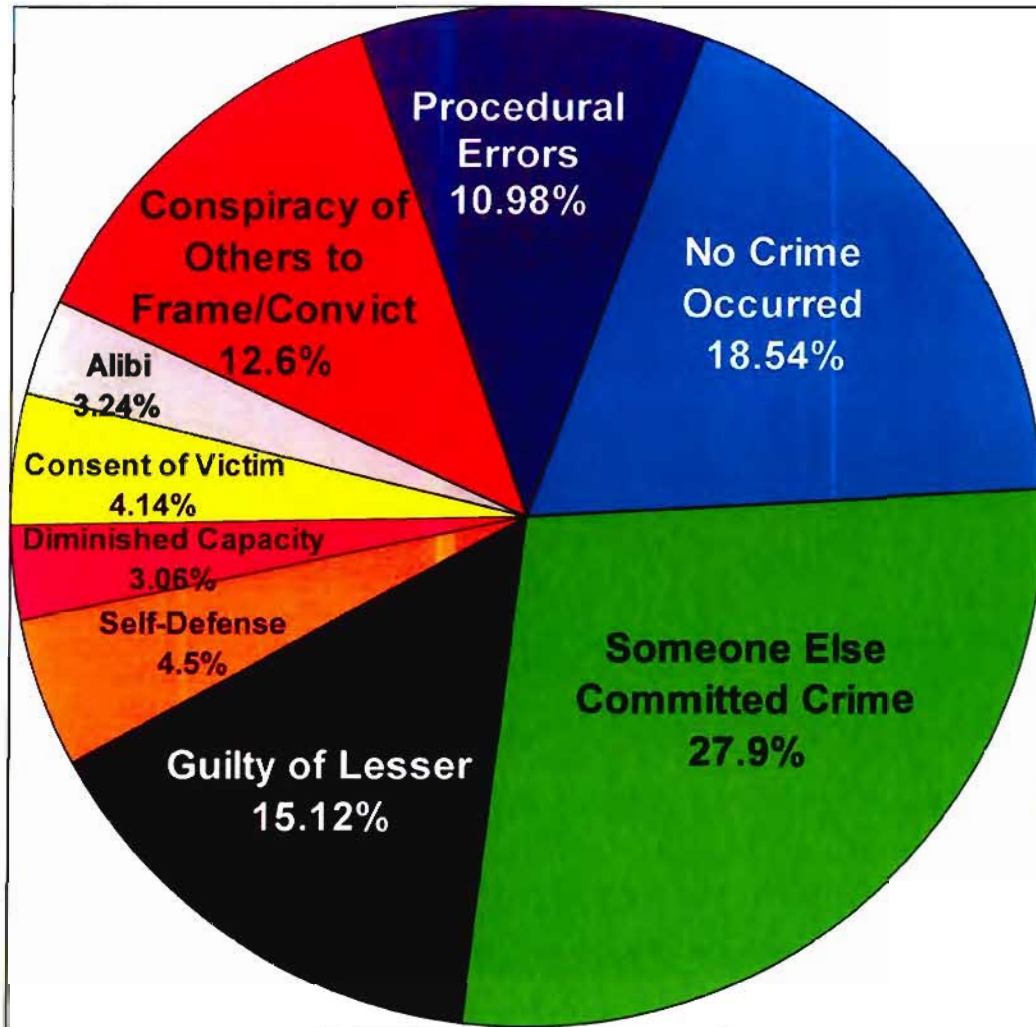
CASE STATISTICS IN PIE CHARTS

**Applicant's Convictions**



- Some applicants were convicted of multiple offenses
- Data pulled from the 576 cases in which information was available.

## Applicant's Innocence Claims



- Some applicants made multiple innocence claims
- Data pulled from the 525 cases in which information was available.

It is important to note that several of these categories do not fit the statutory requirement for actual innocence and result in an automatic rejection. A claim that a convicted person is guilty of a lesser offense, acted in self-defense, or acted with a diminished capacity is not a claim of actual innocence and will be rejected.

## Reasons for Rejection



- Some cases were rejected for multiple reasons
- Data pulled from all 465 rejected cases

APPENDIX D

OPINION OF THE COMMISSION IN STATE V. MCNEIL

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
00 CRS 57073-74

STATE OF NORTH CAROLINA     )  
  )  
          v.                            )  
  )  
TERRY LEE MCNEIL                )  
  )  
                  Convicted Person    )

OPINION OF THE NORTH  
CAROLINA INNOCENCE  
INQUIRY COMMISSION

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NOW COMES the North Carolina Innocence Inquiry Commission (Commission), pursuant to N.C. Gen. Stat. § 15A-1460-75 and hereby makes the following findings of fact in the above captioned case.

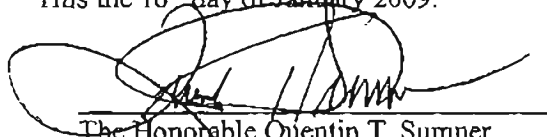
1. Terry Lee McNeil (Mr. McNeil) was convicted of Second Degree Kidnapping and Robbery with a Dangerous Weapon on June 8, 2001 in Wake County Criminal Superior Court, North Carolina.
2. Mr. McNeil's innocence claim was referred to the North Carolina Innocence Inquiry Commission on July 23, 2007 from the North Carolina Center on Actual Innocence.
3. The staff of the Commission accepted Mr. McNeil's case for formal inquiry on July 25, 2007, pursuant to N.C. G.S. § 15A-1467.
4. Mr. McNeil cooperated with the formal inquiry completed by the staff of the Commission pursuant to N.C. G.S. § 15A-1467.
5. On January 16, 2009, the Commission held an evidentiary hearing on the above captioned case pursuant to N.C. G.S. § 15A-1468.

6. At the close of the hearing the Commission was unanimous in finding that there is insufficient evidence of factual innocence to merit judicial review.
7. The Commission further makes a specific finding of fact that a toboggan in the above captioned case was recovered from the crime scene, offered and admitted as evidence at trial, and preserved by the Wake County Clerk of Superior Court.
8. The Commission further makes a specific finding of fact that the above mentioned toboggan was obtained by the Commission pursuant to N.C.G.S. § 15A-1467.
9. The Commission further makes a specific finding of fact that the above mentioned toboggan was submitted to LabCorp, Inc. on November 29, 2007 for scientific testing on behalf of the Commission and the results were returned on March 10, 2007.
10. The Commission further makes a specific finding of fact that the DNA evidence is significant, but does not provide sufficient evidence of factual innocence to merit judicial review.
11. The Commission further makes a specific finding of fact that other evidence was considered by the Commission, but does not provide sufficient evidence of factual innocence to merit judicial review.

THEREFORE, pursuant to N.C. G.S. § 15A-1468(c), the above captioned case is now closed and a copy of this opinion is filed with the Wake Clerk of

Superior Court, and service on the Wake County District Attorney and Wake  
County Senior Resident Superior Court Judge.

This the 16<sup>th</sup> day of January 2009.

A handwritten signature in black ink, appearing to read "Quentin T. Sumner", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

The Honorable Quentin T. Sumner  
Senior Resident Superior Court Judge, Nash County  
Chairman of the North Carolina Innocence Inquiry Commission

**Certificate of Service**

This shall certify that a copy of the foregoing **Opinion of the North Carolina Innocence Inquiry Commission** was this day served upon the Honorable C. Colon Willoughby Jr., Esq. and Mr. Jeffrey Cruden, Esq. of the Wake County District Attorney's Office by personal delivery to them or to a member of the office available to accept service of process.

This the 23<sup>rd</sup> day of January 2009.



Kendra A. Montgomery-Blinn, Esq.  
Executive Director  
North Carolina Innocence Inquiry Commission  
Administrative Office of the Courts  
P.O. Box 2448  
Raleigh, NC 27602  
(919) 890-1580



APPENDIX E

**PRESS RELEASE FOR STATE V. MCNEIL**

**News Release**

For release: Friday, January 16, 2009

From the North Carolina Innocence Inquiry Commission  
Kendra Montgomery-Blinn, Executive Director

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**Hearing Concludes Without Finding of Innocence**

**Innocence Inquiry Commission conducts  
closed hearing in Wake County case**

RALEIGH, NC – The North Carolina Innocence Inquiry convened on Friday to conduct a closed hearing in the case of State. v. Terry Lee McNeil. Terry McNeil was convicted in 2001 of Armed Robbery and Second Degree Kidnapping for robbing a dry-cleaners in Apex at gunpoint. Mr. McNeil has always maintained his innocence, claiming that he was misidentified by the victim in a photographic lineup.

The Commission unanimously voted against referring the case to a three-judge panel for a final exoneration hearing. At the close of the hearing, the Commission made eleven findings of fact, including findings that there was significant DNA and other evidence presented, but it did not provide sufficient evidence of factual innocence to merit judicial review.

The Innocence Inquiry Commission was established in 2006 by the General Assembly as a means to investigate post-conviction claims of actual innocence. The Commission consists of eight members, all of whom were appointed by either the Chief Justice of the North Carolina Supreme Court or the Chief Judge of the Court of Appeals. The Commission members include Judge Quentin T. Sumner (Superior Court Judge), William Kenerly (District Attorney), Wade Smith (Defense Attorney), Mel Laura Chilton (Victim's Advocate), Barbara Pickens (Retired Sheriff), Jacqueline Greenlee (Public Member), Charles Becton (Attorney), and Heath Jenkins (Police Chief).

North Carolina is the first state to create this type of Innocence Inquiry Commission, although other states have proposed similar legislation. The Commission does not represent convicted people, but evaluates new evidence of innocence. Since 2007, the Commission has received over 300 applications and has accepted five of those cases for investigation.

Wade Smith, a member of the Commission and a prominent Raleigh attorney, commented: "This was a remarkable effort by the North Carolina Innocence Inquiry Commission and especially by the Commission's staff. The work was very thorough, and the presentations were very impressive. I am proud of this Commission and its work. North Carolina is fortunate that so many people are dedicated to trying to ensure that truly innocent people are not in North Carolina's prisons. The Commission is made up of many points of view, including law

enforcement, victim's advocates, and defense counsel; all of whom ensure that every point of view is represented."

Commission member Retired Sheriff Barbara Pickens noted that the Commission, "spent a year and a half evaluating, investigating, conducting scientific tests, and interviewing numerous witnesses for this case." Commission Chairman, Senior Resident Superior Court Judge, Quentin T. Sumner praised the Commission staff for doing an "outstanding job investigating this case."

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For more information, please contact the Commission's Executive Director, Kendra Montgomery-Blinn, at (919) 890-1580. Ms. Montgomery-Blinn is unable to comment on the facts of the case, but will be happy to discuss Commission procedures and statistics. More information about the Commission is available at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

APPENDIX F

OPINION OF THE COMMISSION IN STATE V. TAYLOR

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
91 CRS 71728

STATE OF NORTH CAROLINA

v.

GREGORY FLINT TAYLOR



OPINION OF THE  
NORTH CAROLINA INNOCENCE  
INQUIRY COMMISSION

**THIS MATTER** came on for hearing before the North Carolina Innocence Inquiry Commission (Commission) on September 3 and 4, 2009, pursuant to N.C.G.S. §§ 15A-1460 – 1475. After careful review of the evidence presented, the Commission hereby makes and enters the following findings of fact:

1. On April 19, 1993, Gregory Flint Taylor was convicted of first degree murder in Wake County Criminal Superior Court.
2. On July 23, 2007, the North Carolina Center on Actual Innocence referred Gregory Flint Taylor's claim to the North Carolina Innocence Inquiry Commission.
3. On September 7, 2007, Gregory Flint Taylor's claim was accepted for formal inquiry, pursuant to N.C.G.S. § 15A-1467.
4. Throughout this inquiry, Gregory Flint Taylor has fully cooperated with Commission staff, in accordance with N.C.G.S. § 15A-1467(g).
5. On September 3 and 4, 2009, the Commission held a full evidentiary hearing in this matter, pursuant to N.C.G.S. § 15A-1468.
6. The Commission's investigation has not uncovered any intentional wrongdoing by any law enforcement agency, the district attorney's office, or defense counsel in this case.

7. During the hearing, the Commission considered testimonial and documentary evidence as well as summaries by the Commission staff. This evidence included a 438 page brief provided to the Commission by the staff before the hearing, supplemental documentation provided during the hearing, live testimony by Eva Marie Kelly, Ernest Andrews, the Commission Investigator Sharon Stellato, expert testimony from SBI Special Agent Dwayne Deaver, SBI Special Agent Kristin Hughes, SBI Special Agent Russell Holley, Forensic Biologist Meghan Clement, Crime Scene Reconstruction Expert Larry McCann, Forensic Pathologist Dr. Deborah Radisch, and Confession Reliability Expert Steven Drizin, a videotaped statement of Gregory Taylor, and victim impact statements made by the family of Jacquetta Thomas.

**WHEREFORE**, pursuant to N.C.G.S. § 15A-1468(c), the Commission unanimously concludes that there is sufficient evidence of factual innocence to merit judicial review in this case.

This the 4th day of September, 2009.



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The Honorable Quentin T. Sumner  
Senior Resident Superior Court Judge, Nash County  
Chairman, North Carolina Innocence Inquiry Commission

## APPENDIX G

### PRESS RELEASE AFTER RECEIPT OF FEDERAL GRANT

## News Release

For release: Wednesday September 30, 2009

From the North Carolina Innocence Inquiry Commission  
Kendra Montgomery-Blinn, Executive Director

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### Innocence Inquiry Commission Receives Federal Grant

The North Carolina Innocence Inquiry Commission (Commission) is proud to announce that they have been awarded a federal grant from the National Institute of Justice (NIJ) in the amount of \$566,980 for DNA testing of post-conviction innocence claims. The Commission applied for the grant with the support of the North Carolina Attorney General's Office and the North Carolina State Bureau of Investigation. The money will be used from January 2010 through June 2011.

Under the NIJ grant, the Commission will be able to dramatically expand their capacity to review DNA cases and conduct forensic testing. The grant includes: funding for two staff attorney positions, training, supplies, expert witness fees, and DNA testing.

The Commission is a state agency that currently operates with a staff of five and is allotted a budget of \$372,879 per year. The Commission reviews and evaluates post-conviction claims of actual innocence. Since the Commission's creation, they have reviewed 557 innocence claims and conducted three hearings. A public hearing in the case of State v. Gregory Flynt Taylor was conducted on September 3<sup>rd</sup> and 4<sup>th</sup> and is now pending for final hearing before a three-judge panel.

The Commission's Executive Director, Kendra Montgomery-Blinn, explained that the Commission reviews cases that involve DNA testing and cases where there is no physical evidence to test. The grant may only be used for cases involving DNA testing, but the Commission will continue to use their regular funds to review both types of cases.

The Commission's Chairman, Judge Quentin T. Sumner, said, "This grant is recognition of the important work the Commission does. I am proud of how much we have accomplished in the past three years and ready to see how much more we can do with this extra funding." Executive Director, Kendra Montgomery-Blinn, said, "This funding comes at a time when it is desperately needed and will almost double our budget."

Cases may be referred to the Commission by any person or agency. If you have an innocence claim to refer, please send information about the claim to the Commission at:

North Carolina Innocence Inquiry Commission  
Administrative Office of the Courts  
P.O. Box 2448  
Raleigh, NC 27602

More information about referring an innocence claim can be found on the Commission's website at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov)

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For more information, please contact the Commission's Executive Director, Kendra Montgomery-Blinn, at (919) 890-1580 or [Kendra.A.Montgomery@nccourts.org](mailto:Kendra.A.Montgomery@nccourts.org)

More information, including photographs and case statistics can be found on the Commission's website at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov)

APPENDIX H

**THE STATUTE CREATING THE NORTH CAROLINA  
INNOCENCE INQUIRY COMMISSION**

Article 92.

North Carolina Innocence Inquiry Commission.

**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

- (1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.
- (2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.
- (3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
- (4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim. (2006-184, s. 1.)

**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article. (2006-184, s. 1.)

**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission. (2006-184, s. 1.)

**§ 15A-1463. Membership; chair; meetings; quorum.**

- (a) The Commission shall consist of eight voting members as follows:
  - (1) One shall be a superior court judge.
  - (2) One shall be a prosecuting attorney.



- (3) One shall be a victim advocate.
- (4) One shall be engaged in the practice of criminal defense law.
- (5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (6) One shall be a sheriff holding office at the time of his or her appointment.
- (7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3) of this subsection. After an appointee has served his or her first three-year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) of this subsection which shall be appointed by the Chief Justice.

(b) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(c) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote. (2006-184, s. 1.)

**§ 15A-1464. Terms of members; compensation; expenses.**

(a) Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and three appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this act, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as the officeholders hold those respective offices. The Chief Justice

may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. (2006-184, s. 1.)

**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

(b) Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

(c) The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff. (2006-184, s. 1.)

**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

- (1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.
- (2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.
- (3) To coordinate the investigation of cases accepted for review.
- (4) To maintain records for all case investigations.
- (5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.
- (6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source. (2006-184, s. 1.)

**§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry. (2006-184, s. 1.)

#### **§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission 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 his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(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 district attorney in noncapital cases and 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 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 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. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that 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 at the time of referral to the superior court. 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. (2006-184, s. 1.)

**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the convicted person. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel

shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief. (2006-184, s. 1.)

**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; convicted person retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person's rights to other postconviction relief. (2006-184, s. 1.)

**§ 15A-1471. Reserved for future codification purposes.**

**§ 15A-1472. Reserved for future codification purposes.**

**§ 15A-1473. Reserved for future codification purposes.**

**§ 15A-1474. Reserved for future codification purposes.**

**§ 15A-1475. Reports.**

Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General. (2006-184, s. 9.)