

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



REPORT TO THE
2011-12 LONG SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA
AND
THE STATE JUDICIAL COUNCIL

Pursuant to N.C.G.S. § 15A-1475

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March 1, 2011

TO THE MEMBERS OF THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL,
AND JUVENILE JUSTICE OVERSIGHT COMMITTEE OF THE 2011 SESSION OF THE
GENERAL ASSEMBLY OF NORTH CAROLINA AND THE MEMBERS OF THE STATE
JUDICIAL COUNCIL:

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 2010-2011

Superior Court Judge / Commission Chairman

The Honorable Quentin T. Sumner, Chairman
Senior Resident Superior Court Judge, Judicial District 7

The Honorable Forrest D. Bridges, Alternate Chairman
Senior Resident Superior Court Judge, Judicial District 27B

Prosecuting Attorney

The Honorable C. Branson Vickory, III, Commissioner
District Attorney, Judicial District 8

The Honorable Garry Frank
District Attorney, Judicial District 22B

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

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

Linda Ashendorf, Alternate
Public Affairs Consultant

Sheriff

Sheriff Susan Johnson, Commissioner
Sheriff, Currituck County

Sheriff Van Duncan, Alternate
Sheriff, Buncombe County

Discretionary Member 1

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

The Honorable Loretta C. Biggs, Alternate (served through 2010)
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, J.D., Executive Director

Sharon L. Stellato, J.D., Staff Investigator

Stormy Ellis, Staff Attorney

Lindsey Guice Smith, Grant Staff Attorney

Jamie T. Lau, Grant Staff Attorney

Adam Wrenn, Administrative Officer / Case Coordinator

Aschante Pretty, Administrative Assistant

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. North Carolina General Statute §15A-1475 requires the Commission to provide an annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council.

ANNUAL REPORT

This annual report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council is provided pursuant to N.C. G.S. § 15A-1475. This report details the activities of the North Carolina Innocence Inquiry in 2010 and the Commission's plans for the future. Included are statistics for the year 2010 and since the Commission's creation.

I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2010

This past year was an exceptionally important year for the Commission. During 2010, the Commission saw its first exoneration and reviewed a record number of new innocence claims. The Commission began utilizing federal grant money for DNA related cases. The Commission staff was also able to confirm convictions and locate missing evidence in multiple cases.

A. CASES

1. Greg Taylor Exoneration

On February 17, 2010, Greg Taylor was the first person in the United States to be exonerated by a three-judge panel. Mr. Taylor served 17 years in prison for the Wake County murder of Jacquetta Thomas. The Commission staff investigated the case for two years and presented their findings to the Commission at a hearing in September of 2009. At that hearing,

the Commission unanimously voted to refer Mr. Taylor's case to a three-judge panel pursuant to the Commission's enabling statute, N.C. G.S. §15A-1469.

The three-judge panel convened on February 9, 2010, and spent a week and a half hearing evidence. At the conclusion of the hearing, they unanimously declared Mr. Taylor had proven his innocence by clear and convincing evidence and ordered his release. A copy of their order and findings is attached as Appendix A.

After the exoneration, the Raleigh Police Department reopened the homicide investigation. The Commission staff shared their findings and cooperated with the ongoing police investigation.

Since his exoneration, Mr. Taylor and the Commission's executive director have had the opportunity to give public presentations together. He has expressed his belief that the truth would not have been uncovered without the work of this unique agency.

2. Cases Statistics

This past year, the Commission received a record number of innocence claims. In 2010, the Commission received 314 new claims of actual innocence. In prior years, the Commission has averaged 225 new claims each year.¹ While an exact reason for the dramatic increase in claims is not clear, it is likely due, at least in part, to increased awareness of the Commission and its operations.

Since creation, the Commission has received and reviewed 850 innocence claims. By the end of 2010, 724 claims had been reviewed and closed. The Commission has also handled 96 requests for information that required responses or referrals to other appropriate agencies. At the end of 2010, 23 claims were in active investigation. An additional five cases were in formal

¹ The Commission received 243 claims in 2007, 207 claims in 2008, and 225 claims in 2009.

inquiry. Formal inquiry is the phase of review defined by statute, in which the claimant has a right to an attorney as he/she waives his/her procedural safeguards and privileges and the victim must receive notification of the Commission's formal inquiry.

Since the Commission's creation, three cases have moved through Commission hearing. The first case was referred to three-judge panel after a Commission hearing. The three judges ruled that the claimant had not proven his innocence by clear and convincing evidence and the claim was denied. The second case was closed after the Commission's hearing without a referral. The third case was that of Greg Taylor and resulted in exoneration on February 17, 2010. The Commission has a fourth case scheduled for hearing in April 2011.

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

3. Results of Investigations

The Commission measures its accomplishments by more than hearings. The Commission routinely turns over additional evidence of guilt that it uncovers during investigation. In 2010, the Commission staff was able to confirm two convictions through advanced DNA testing. These cases often continue to arise in court on other grounds and the results of this DNA testing may be used in the future, including at parole hearings.

The Commission was able to locate missing evidence in seven cases in 2010. In these cases, the evidence had been declared missing at prior proceedings or by prior requesting agencies. In many cases, the evidence was presumed destroyed or declared lost. As a state

agency, the Commission has the authority to request searches for evidence and to ultimately conduct its own searches when necessary. This newly located evidence has been used to confirm convictions, further investigations, and in some cases, is currently undergoing DNA testing.

In one such case, the Commission's investigation uncovered a systemic problem with a North Carolina police department routinely destroying evidence in violation of statute. The Commission determined that the errors were unintentional and worked with the police attorney to rectify the problem and update the agency's destruction policy. The Commission made a referral to the North Carolina Attorney General's office, who conducted their own investigation and now uses the situation for training purposes.

In another case, the Commission's search for evidence resulted in an entire overhaul of a Sheriff Department's evidence room. When the Commission began working with the Sheriff's Department, the evidence room was in disarray and items were not properly stored. The Commission's efforts prompted the Sheriff's Department to organize and inventory their entire evidence room. Missing evidence was located during the process and has been submitted for DNA testing.

The Commission is proud to have assisted in the above described efforts. As a state agency, the responsibility of the Commission staff is to investigate cases. Finding and working to correct flaws in the system is often a positive byproduct of these investigations.

B. FEDERAL GRANT

The National Institute of Justice awarded the Commission \$566,980 to last for 18 months. The Commission began utilizing the federal funds in January 2010. Only nine other

states were awarded funding under this grant, and the Commission is pleased to represent North Carolina. The grant award is tied to the Commission's operating procedures and the enabling statute. Grant funds only apply to convictions for homicide and sex offenses in which DNA testing can be conducted. The permanent Commission staff continues to review and investigate all types of innocence claims.

The grant funding enabled the Commission to hire two additional staff attorneys in January 2010. This brings the staff to a total of five state funded positions and two grant funded positions. The Commission has applied for and received an extension of the grant until June 2012. The National Institute of Justice has not indicated whether future extensions will be available.

In 2010, the grant staff reviewed 85 sex offense cases and 22 homicide cases. They located physical evidence in 28 cases and evidence in 16 cases was sent to various labs for DNA testing. The case scheduled for hearing in April, 2011 was handled under this federal grant.

The addition of two staff members and federal funds to pay for costly DNA testing and investigation expenses has aided the Commission significantly. The volume of cases ready for investigation and formal inquiry has outweighed the Commission's state funded resources.

Once this grant expires, the Commission staff will not be able to continue the high volume of case investigation and DNA testing afforded by this grant. Many cases require DNA testing that must be conducted at private labs. The Commission has negotiated discount rates from various labs, but will not be able to meet all the expenses for testing once the federal grant expires.

The Commission is requesting state funding of two additional staff attorneys and their investigation expenses. The Commission is seeking \$273,382 in recurring funds to cover the

costs of DNA testing, investigation expenses, and salary and benefits for two staff attorneys. This request is submitted as part of the Administrative Office of the Courts annual budget worksheets. The Commission's expansion budget request is attached as Appendix C.

C. OTHER ACCOMPLISHMENTS

The Commission is grateful to the North Carolina General Assembly for passing Session Law 2010-171 / Senate Bill 144 last year. This bill removed the Commission's original sunset clause and modified the Commission's enabling statutes. In addition, a special prosecutor provision was added. The bill also changed the compensation requirements, so that a person who is exonerated by Commission process does not need to apply for a pardon from the Governor in order to be compensated. Other parts of the enabling statute were clarified and time limits adjusted. The text of Session Law 2010-171 is attached as Appendix D.

The Commission conducted two administrative meetings in 2010. The first was held at Guilford Technical Community College on April 30, 2010. The second was held at the North Carolina Judicial Center on October 1, 2010. The Commission plans to meet in April 2011, for a hearing.

The Commission's executive director and staff continue to make information about the Commission publicly available. The director regularly provides information to legislators and agencies in other states who are considering creating a Commission modeled after North Carolina's. The director also provides public presentations to governmental agencies, civic groups, and education institutions. In 2010, the director presented to: the North Carolina Governor's Crime Commission, the North Carolina Bar Association, and the Raleigh Chamber

of Commerce. She also guest lectured at Charlotte Law School, Duke Law School, Minnesota Law School (web conference) and at the annual Duke Law Public Interest retreat.

Last year marked changes in the Commission's staff. The Commission was pleased to welcome two new grant staff attorneys who have quickly cultivated an extensive knowledge of DNA testing and biological evidence investigations. Lindsey Guice Smith is a graduate of Elon University and the University of North Carolina at Chapel Hill School of Law. Jamie Lau is a graduate of the University of California, Berkeley and Duke University School of Law.

The Commission also has three new permanent staffers. In August of 2010, Stormy Ellis, became the Commission's new staff attorney. Ms. Ellis is a graduate of Western Carolina University and North Carolina Central University School of Law. The Commission's new Case Coordinator is Adam Wrenn, a graduate of Greensboro College. The Commission's new Administrative Assistant is Aschante Pretty, who earned her paralegal certification from Wilson Community College.

The Commission's executive director, Kendra Montgomery-Blinn, has been with the staff since 2007 and is a graduate of Purdue University and Duke University School of Law. The Commission staff investigator, Sharon Stellato, has been with the Commission since 2008 and is a graduate of the Shaw University in Asheville and North Carolina Central University School of Law.

Full profiles of each of the Commissioners and the Commission staff can be located on the Commission's website at www.innocencecommission-nc.gov.

The Commission is proud of the accomplishments in 2010. The temporary federal grant has been an immeasurable help for DNA related investigations and formal inquiries. The staff

has productively handled a record number of new claims. The exoneration of Greg Taylor was an exciting moment in North Carolina legal history.

II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION PLANS FOR 2011

In 2011, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing and investigating 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 hopes that state funding will expand to cover the anticipated expiration of federal funding.

The Commission has a hearing scheduled for April 2011. The results of that hearing will be reported in next year's annual report and will also be available by contacting the Commission's executive director at its conclusion.

The Commission has initiated a contempt proceeding in the case of State v. Peter Duane Deaver. Staff attorney Stormy Ellis has been assigned as a special prosecutor. The Commission anticipates a resolution through hearing in the coming months.

In January 2011, the Commission unveiled a new website with updated information and increased access to documentation. The website was designed by the Commission's staff attorney, Stormy Ellis, and can be viewed at: www.innocencecommission-nc.gov or through www.nccourts.org.

The Commission remains available to assist other 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 part of the criminal justice system. North Carolina continues to pave the way for other states. States such as Florida and Oklahoma, have now formed Innocence Study Commissions and are considering the creation of Innocence Inquiry Commissions modeled after our own.

The dramatic rise in new innocence claims and the increase in cases ready for investigation has strained the Commissions resources. The federal grant has enabled the Commission to maintain a high efficiency of case investigation. As the sunset on the Commission's federal grant funding nears, the Commission hopes that the General Assembly will give serious consideration to the expansion requests.

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

OPINION OF THE THREE-JUDGE PANEL IN STATE V. TAYLOR

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY:

NO. 91-CRS- 71728

STATE OF NORTH CAROLINA

v.

GREGORY FLYNT TAYLOR

DECISION OF THREE-JUDGE PANEL PURSUANT TO NCGS 15A-1469

THIS MATTER came on for hearing before undersigned Judges of the Superior Court sitting as a Three-Judge Panel appointed by the Chief Justice of the North Carolina Supreme Court pursuant to NCGS 15A-1469(a) on February 9, 2010, at a special session of the Wake County Superior Court to hear evidence relevant to the North Carolina Innocence Inquiry Commission's recommendation in the case of State v. Gregory Flynt Taylor, 91 CRS 71728.

The Three-Judge Panel ("the panel") heard evidence on February 9, 10, 11, 12 and 15, 2010. The State of North Carolina was represented by C. Colon Willoughby, Jr., District Attorney for the 10th Judicial District and Tom Ford, Assistant District Attorney. Gregory F. Taylor, ("Taylor") the convicted person was present at all times and was represented by Joseph B. Cheshire, V, Maitri "Mike" Klinkosum, and Christine Mumma.

The evidence consisted of the sworn testimony of fifteen (15) persons, including Taylor, the convicted person, who appeared as witnesses at the hearing, stipulations of the State and Taylor, the transcript of the first trial, transcript of the MAR hearing, affidavits of Taylor's prior counsel, and two hearing notebooks containing more than 100 separate exhibits. The evidence was concluded on the afternoon of February 15, 2010.

The hearing was recessed on Tuesday, February 16, 2010, in order to provide the panel members with the opportunity to review and consider the evidence submitted by the State and Taylor during the five days of the hearing and other documentary evidence previously submitted including, but not limited to, the trial transcript and transcript of the MAR previously held in this matter.

On Wednesday, February 17, 2010, the hearing resumed and both the State and Taylor, through counsel, made closing statements to the panel members. Thereafter, the panel members recessed in order to consider whether Taylor, the convicted person, has proved by "clear and convincing evidence that he is innocent of the charge" of first degree murder of Jacquetta Thomas on September 26, 1991.

NCGS 15A-1460(1) provides:

"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.

NCGS 15A-1469 provides that the 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 a dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

NCGS 15A-1470 provides that there is no right to any further review of the decision of the three-judge panel but the convicted person retains the right to other post-conviction relief.

The panel members have now considered NCGS 15A – 1460 et. seq. and all of the evidence presented and the arguments of counsel for the State and Taylor, the convicted person. This matter is ripe for disposition.

Decision:

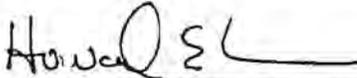
Judge Howard E. Manning, Jr. rules that Gregory F. Taylor has proved by clear and convincing evidence that Gregory F. Taylor is innocent of the charge of first degree murder of Jacquetta Thomas on September 26, 1991.

Judge Tanya T. Wallace rules that Gregory F. Taylor has proved by clear and convincing evidence that Gregory F. Taylor is innocent of the charge of first degree murder of Jacquetta Thomas on September 26, 1991.

Judge Calvin E. Murphy rules that Gregory F. Taylor has proved by clear and convincing evidence that Gregory F. Taylor is innocent of the charge of first degree murder of Jacquetta Thomas on September 26, 1991.

In view of the decision by the panel and pursuant to NCGS 15A-1469, **IT IS ORDERED** that the relief sought by Gregory F. Taylor, the convicted person, is granted and the charge of first degree murder of Jacquetta Thomas on September 26, 1991 against Gregory F. Taylor is dismissed.

This the 17th day of February, 2010.


Howard E. Manning, Jr.
Superior Court Judge


Tanya T. Wallace
Superior Court Judge


Calvin E. Murphy
Superior Court Judge

APPENDIX B

**NORTH CAROLINA INNOCENCE INQUIRY COMMISSION
2010 CASE STATISTICS**

Compiled December, 2010

The Commission began operation in 2007

Total Number of Claims Received since Commission's Creation	850
Number of General Information Requests Received since Creation ¹	96
Total Number of Cases Closed since Commission's Creation ²	724
Number of Claims Received in 2010 ³	314
Number of Cases Currently in Investigation	23
Number of Cases Currently in Formal Inquiry	5
Number of Cases sent through Hearing since Commission's Creation	3
Exonerations	1

¹ General Information requests are not considered innocence claims, but do require opening of a case file and a response on behalf of the Commission.

² Figure does not include General Information Requests

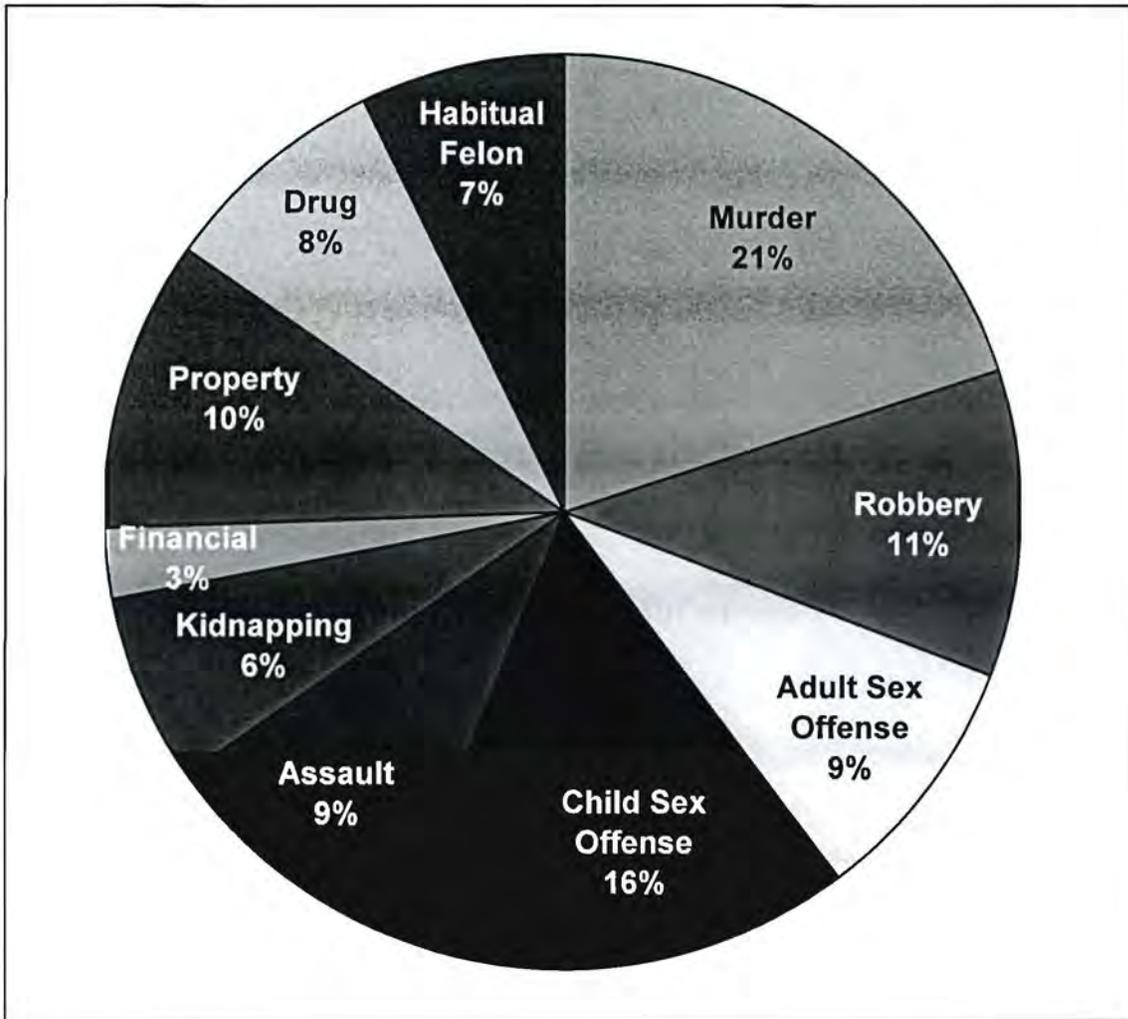
³ Figure does not include General Information Requests. This is the largest volume of new claims received in a single year since the Commission's creation.

CONVICTIONS RESULTING FROM TRIAL OR GUILTY PLEA



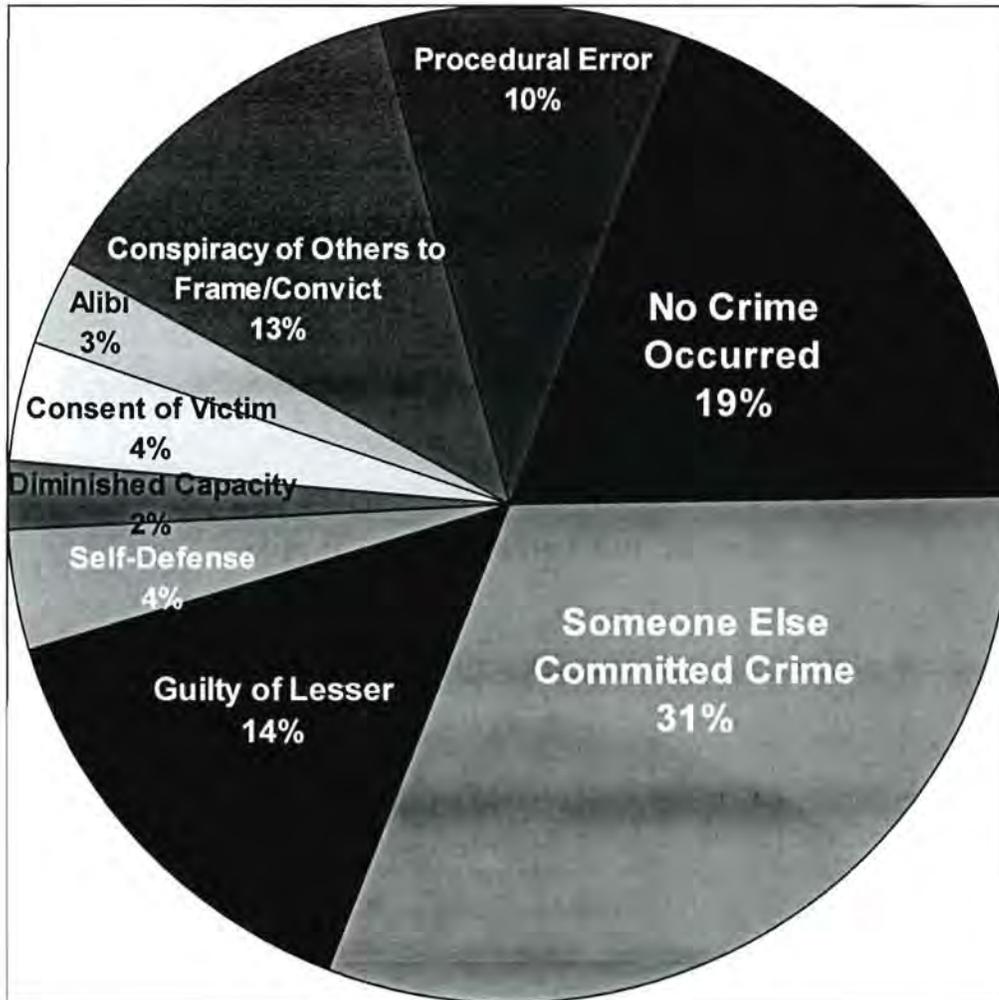
- Data compiled from the 505 cases in which information was available.
- Alford and no contest pleas are included in plea category.

APPLICANT'S CONVICTIONS



- Some applicants were convicted of multiple offenses
- Data compiled from the 589 cases in which information was available

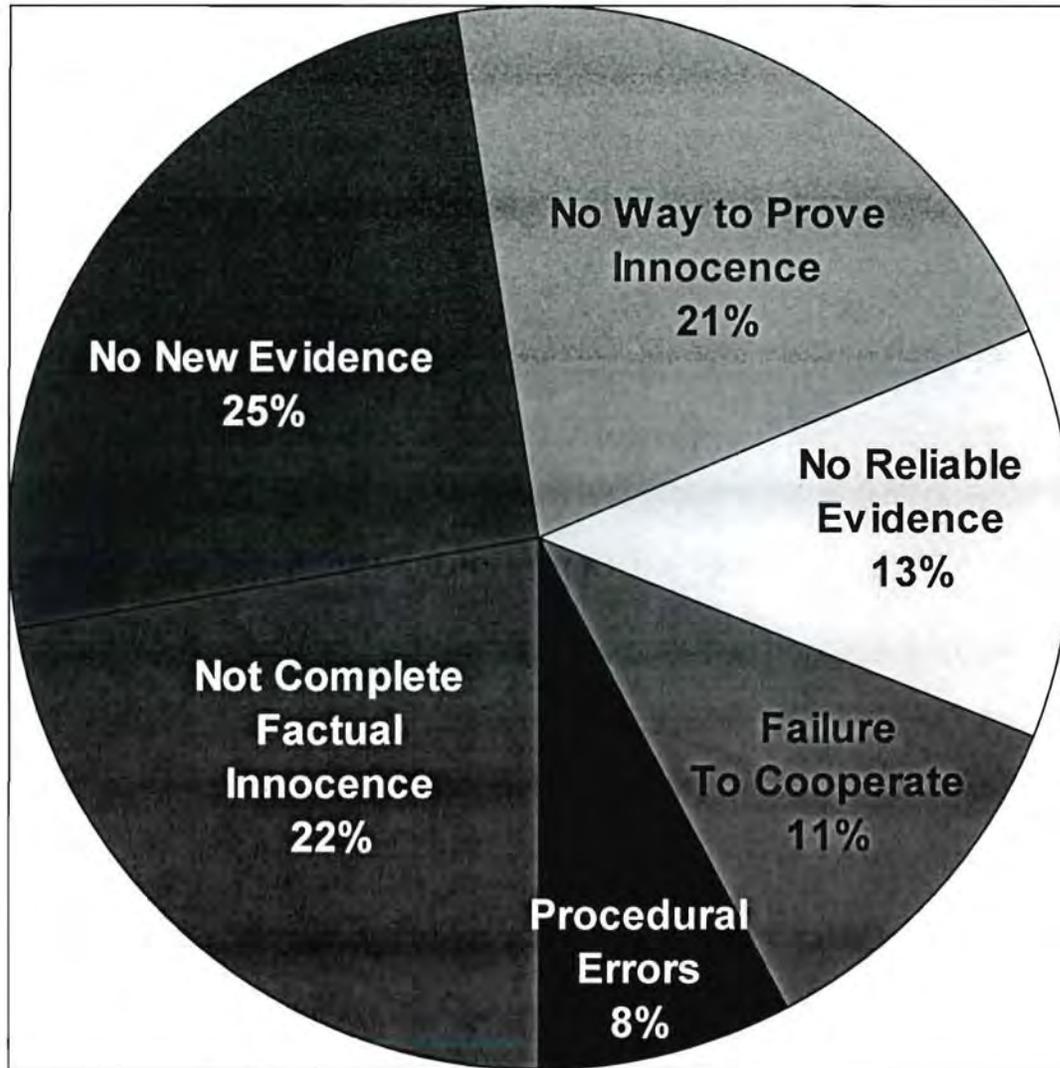
APPLICANT'S INNOCENCE CLAIMS



- Some applicants made multiple innocence claims
- Data compiled from the 623 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 compiled from all rejected cases

APPENDIX C
EXPANSION BUDGET REQUEST

Name of Estimate	Default Effective Date
Innocence Inquiry Commission Staff Attorney	07-01-2011

Note

Schema	Description of Schema	Effect.Date	FTE Qty	2011-12	2012-13
31000450	Innocence Commission Staff Attorney	07-01-2011	2.000	\$294,894	\$273,382
Total Count of Full-Time Positions:			2.000	2011-12	2012-13
Total Estimate Cost:				\$294,894	\$273,382
Total Estimate Recurring Cost:				\$273,382	\$273,382
Total Estimate Non-Recurring Cost:				\$21,512	\$0

Name of Estimate				Default Effective Date		
Innocence Inquiry Commission Staff Attorney				07-01-2011		
Note						
				N/R = Non-Recurring Cost		
Exp Code	Description of Expenditure			2011-12	2012-13	N/R
531111	EPA-Reg. Salaries - Apropr.			\$140,852	\$140,852	
531511	Social Security			\$10,776	\$10,776	
531521	Retirement			\$14,804	\$14,804	
531561	Hospital Insurance			\$9,858	\$9,858	
532132	Medical Evidence of Record			\$40,000	\$40,000	
532144	PC/Telecom/Printer Support Services			\$1,200	\$0	N/R
	1	Wiring & Installation	\$1,200	\$0		
532430	Maintenance Agreement - Equip.			\$2,664	\$2,664	
532447	Maint. Agreements - PC's & Printers			\$150	\$150	
532452	Maintenance Agreement - Mainframe Software Conn.			\$2,410	\$2,410	
532714	Transportation-Ground In-State			\$36,000	\$36,000	
532721	Lodging - In-State			\$3,956	\$3,956	
532724	Meals - In-State			\$2,110	\$2,110	
532812	Telecom. Data Charges - D.P. Lines			\$3,398	\$3,398	
532930	Training and Registration; Position Specialized			\$2,280	\$2,280	
533110	General Office Supplies, Specialized			\$2,124	\$2,124	
534511	Office Furniture			\$14,148	\$0	N/R
	1	Base Level 7 Office Cube Config.	\$12,794	\$0		
	1	File Cabinet	\$718	\$0		
	1	Portable Trial Equipment	\$636	\$0		
534534	Personal Computer Purchases			\$2,980	\$0	N/R
	1	Laptop Computer System Enhanced - L2	\$2,980	\$0		
534539	Other Equipment			\$1,600	\$0	N/R
	1	Digital Camera & Accessories	\$1,600	\$0		
534630	Reference Materials & Learning Resources Specialized			\$1,000	\$1,000	
534713	Personal Computer Software			\$1,584	\$0	N/R
	1	Laptop System Software - L2	\$1,584	\$0		
535890	Other Administrative Expense			\$1,000	\$1,000	
				2011-12	2012-13	
Total Cost:				\$294,894	\$273,382	
Total Recurring Cost:				\$273,382	\$273,382	
Total Non-Recurring Cost:				\$21,512	\$0	



APPENDIX D

SESSION LAW 2010-171 / SENATE BILL 144

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-171
SENATE BILL 144

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING THE
INNOCENCE INQUIRY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1469 reads as rewritten:

"§ 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. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(a) If there is an allegation of or evidence of prosecutorial misconduct in the case, the Chair of the Commission or the district attorney of the district of conviction may request the Director of the Administrative Office of the Courts to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the Director of the Administrative Office of the Courts may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, including one from the prosecutorial district where the convicted person was tried, to represent the State at the hearing before the three-judge panel. However, the Director of the Administrative Office of the Courts shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted person. The appointment shall be made pursuant to G.S. 7A-64 and shall be made no later than 20 days after the receipt of the request.

(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~~90 days of the date of the order. Such response, at the time of original filing or through amendment at any time before or during the proceedings, may include joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.

(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~~panel, except as otherwise provided by this section.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the ~~court~~court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. 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.

(i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor."

SECTION 2. G.S. 7A-64 reads as rewritten:

"§ 7A-64. Temporary assistance for district attorneys.

(a) A district attorney may apply to the Director of the Administrative Office of the Courts to:

- (1) Temporarily assign an assistant district attorney from another district, after consultation with the district attorney thereof, to assist in the prosecution of cases in the requesting district;
- (2) Authorize the temporary appointment, by the requesting district attorney, of a qualified attorney to assist the requesting district attorney; or
- (3) Enter into contracts with local governments for the provision of services by the State pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

(a) If there is an allegation of or evidence of prosecutorial misconduct in a case that is scheduled for a hearing of a claim of factual innocence under G.S. 15A-1469, the Chair of the North Carolina Innocence Inquiry Commission or the district attorney of the district of the conviction may apply to the Administrative Office of the Courts to authorize the temporary appointment of a district attorney, assistant district attorney, or other qualified attorney as a special prosecutor to represent the State in that hearing.

(b) The Director of the Administrative Office of the Courts may provide this assistance only upon a showing by the requesting ~~district attorney, district attorney or the Chair of the North Carolina Innocence Inquiry Commission, as appropriate,~~ supported by facts, that:

- (1) Criminal cases have accumulated on the dockets of the superior or district courts of the district beyond the capacity of the district attorney and the district attorney's full-time assistants to keep the dockets reasonably current; ~~or~~
- (2) The overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public ~~safety-safety; or~~
- (3) There is an allegation of or evidence of prosecutorial misconduct in the case that is the subject of the hearing under G.S. 15A-1469.

(c) The length of service and compensation of any temporary appointee or the terms of any contract entered into with local governments shall be fixed by Director of the Administrative Office of the Courts in each case. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section or to obligate the Administrative Office of the Courts to provide the administrative costs of establishing or maintaining the positions or services provided for under this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts to maintain positions or services initially provided for under this section."

SECTION 3. G.S. 148-82 reads as rewritten:

"§ 148-82. Provision for compensation.

(a) Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the pardon.

(b) Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who is determined to be innocent of all charges and against whom the charges are dismissed pursuant to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the date that the dismissal of the charges is entered by the three-judge panel under G.S. 15A-1469."

SECTION 4. G.S. 148-84(a) reads as rewritten:

"(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, ~~or received a pardon of innocence for the reason that the crime was not committed by the claimant, or that the claimant was determined to be innocent of all charges by a three-judge panel under G.S. 15A-1469~~ and also finds that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to fifty thousand dollars (\$50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting trial. However, (i) in no event shall the compensation, including the compensation provided in subsection (c) of this section, exceed a total amount of seven hundred fifty thousand dollars (\$750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 5. Section 12 of S.L. 2006-184 reads as rewritten:

~~"SECTION 12. This act is effective when it becomes law and applies to claims of factual innocence filed on or before December 31, 2010.law."~~

SECTION 6. Sections 1 and 2 of this act become effective October 1, 2010, and apply to all claims of factual innocence filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:21 p.m. this 2nd day of August, 2010