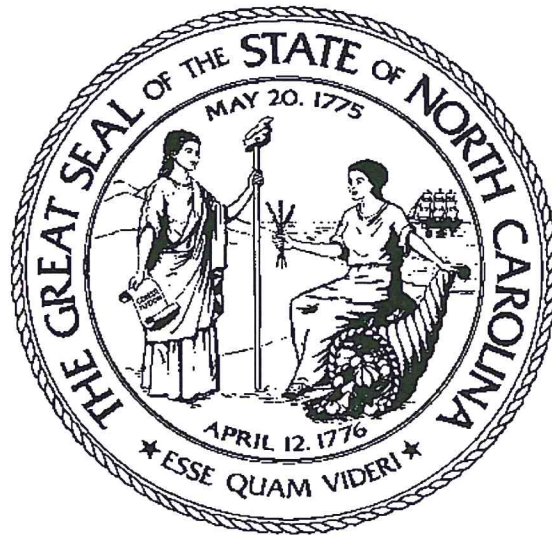


# THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



## 2015 ANNUAL REPORT

Lindsey Guice Smith  
Executive Director  
February 2016

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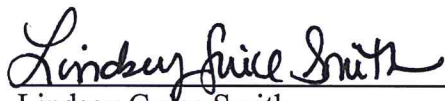
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## LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY OF THE 2015-2016 REGULAR 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,

A handwritten signature in cursive script, reading "Lindsey Gulce Smith", is written over a horizontal line.

Lindsey Gulce Smith

Executive Director

North Carolina Innocence Inquiry Commission

## **PREFACE**

The North Carolina Innocence Inquiry Commission (Commission) was established in 2006 by Article 92 of the North Carolina General Statutes. The Commission is an independent Commission that is charged with investigating and evaluating post-conviction claims of factual innocence. The Commission staff carefully reviews new evidence and investigates cases in a neutral and impartial manner. North Carolina General Statute §15A-1475 requires the Commission to provide an annual report to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council.

## **2015 ANNUAL REPORT**

This annual report to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council is provided pursuant to G.S. § 15A-1475. This report details the activities of the North Carolina Innocence Inquiry Commission in 2015 and the Commission's plans for 2016. Included are statistics for 2015 as well as cumulative case statistics detailing case data since the Commission began operating in 2007.

### **I. CHANGES AT THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2015**

In October 2015, the Commission hired Lindsey Guice Smith as its Executive Director. Ms. Guice Smith succeeds Kendra Montgomery-Blinn as the Commission's second Executive Director. Ms. Guice Smith graduated *summa cum laude* from Elon University in 2005 with a Bachelor of Arts in Political Science. She graduated with Honors from the University of North Carolina School of Law in May 2008 and is admitted to practice law in North Carolina. Ms. Guice Smith serves as the Vice President of the North Carolina Association for Property and Evidence and teaches a continuing education course on the use of forensic DNA in private investigations to Private Investigators.

Ms. Guice Smith has worked for the Commission since January 2010, first as a staff attorney under the Commission's federal DNA grant, and then as the Commission's Associate Counsel. Ms. Guice Smith brings institutional knowledge and stability to the Commission as its Executive Director, as well as vision and direction for the Commission's future. Since becoming Executive Director in October 2015, Ms. Guice Smith has been working to increase efficiency, streamline processes, and update policies and procedures in order to ensure the continued success



of the Commission. As of the date of this report, Ms. Guice Smith has hired three new staff members and the Commission is currently fully staffed.

In November 2015, Senior Resident Superior Court Judge Anna Mills Wagoner, became the Commission's Chair. Judge Wagoner will serve as the Commission's Chair through December 2017 when she will be eligible for reappointment as Commission Chair. Judge Wagoner is the Senior Resident Superior Court Judge for Judicial District 19C, serving Rowan County. Judge Wagoner was elected to the Superior Court bench in November 2010 and assumed office in January of 2011. Judge Wagoner previously served 11 years as a District Court Judge and nine years as the United States Attorney for the Middle District of N.C. Judge Wagoner graduated from Agnes Scott College and is a cum laude graduate of Wake Forest University School of Law. Judge Wagoner is admitted to the North Carolina State Bar and the District of Columbia Bar.

Judge Wagoner serves on the North Carolina Commission on the Administration of Law and Justice, the State Crime Lab Working Group, the Legislative Committee of the Conference of Superior Court Judges, the Pattern Jury Instruction Committee, and is a member of the Board of Governors of the Conference of Superior Court Judges. She has previously served as the North Carolina Bar Association First Vice President and the President of the Rowan County and District 19A Bar Associations.

## **II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2015**

### **A. 2015 POSTCONVICTION DNA TESTING PROGRAM**

In May 2015, the Commission applied for a grant through the National Institute of Justice's (NIJ) FY 15 Postconviction Testing of DNA Evidence to Exonerate the Innocent Program. The Commission is pleased to report that in September 2015, the Commission was awarded a two-year grant in the amount of \$565,639. This funding began on January 1, 2016 and runs through December 31, 2017. The funding covers two full-time staff members, case reviews, evidence searches, travel, training, supplies, DNA experts, and DNA testing for violent felony convictions where the person is claiming innocence and DNA testing might show innocence.

In 2015, the Commission was the only state agency to be awarded an NIJ Grant under this program. All other recipients were public universities or units of local government. Prior to 2015, only state agencies could apply for a grant under this program. In 2015, the program was opened up to include public universities and units of local government.

In 2009, the Commission applied for and received an NIJ grant (2009 grant) that ran from January 1, 2010 through June 30, 2013. In 2012, the Commission applied for and received an NIJ grant (2012 grant) that ran from January 1, 2013 through December 31, 2015. The Commission spends approximately \$115,000 per year on DNA testing, forensic testing, and experts. The 2015 grant will cover the cost of DNA and forensic testing and experts that is necessary for the Commission's investigations going forward, as the Commission's 2012 Postconviction DNA Testing Program funding expired on December 31, 2015. The Commission has expended all grant funds under the 2012 Grant and will not revert any funds to NIJ.

Since 2010, when the Commission began receiving funding from NIJ, seven individuals have been exonerated or had their convictions vacated through Motions for Appropriate Relief, based on investigation, evidence searches and/or DNA testing conducted by the Commission under these grants. Furthermore, the Commission has also confirmed guilt through DNA testing in six cases, and located files and/or evidence which had previously been declared missing, lost or destroyed in 22 cases.

## B. CASE STATISTICS

In 2015, the Commission received 198 new claims of actual innocence, which is consistent with the average number of claims received by the Commission each year. Since its creation, the Commission has received 1,837 claims of actual innocence. By the end of 2015, 1,724 claims had been reviewed and closed.

Since the Commission's creation, nine cases have moved through Commission hearing and nine people have been exonerated or had their convictions vacated through the Motion for Appropriate Relief process, based on the Commission's investigation of their claim. The public records documents for each case presented at Commission hearing or presented at a Motion for Appropriate Relief hearing based on a Commission investigation, are available on the Commission's website at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

Throughout the Commission process, statistics are maintained for each case. These statistics reflect the types of crime at issue, the basis of the innocence claims submitted, and the reasons for rejection. The statistics show that the types of convictions reviewed by the Commission vary, with murder and sex offenses being the most common. Twenty-eight percent of claims are rejected by the Commission because the evidence was already heard by the jury or



available at the time of plea. The Commission can only consider cases in which new evidence is now available. Below is a compilation of statistical data for the Commission. Further statistical data is available from the Commission's Executive Director upon request.

# CASE STATISTICS

**Compiled in January 2016**  
(Data current through December 31, 2015)

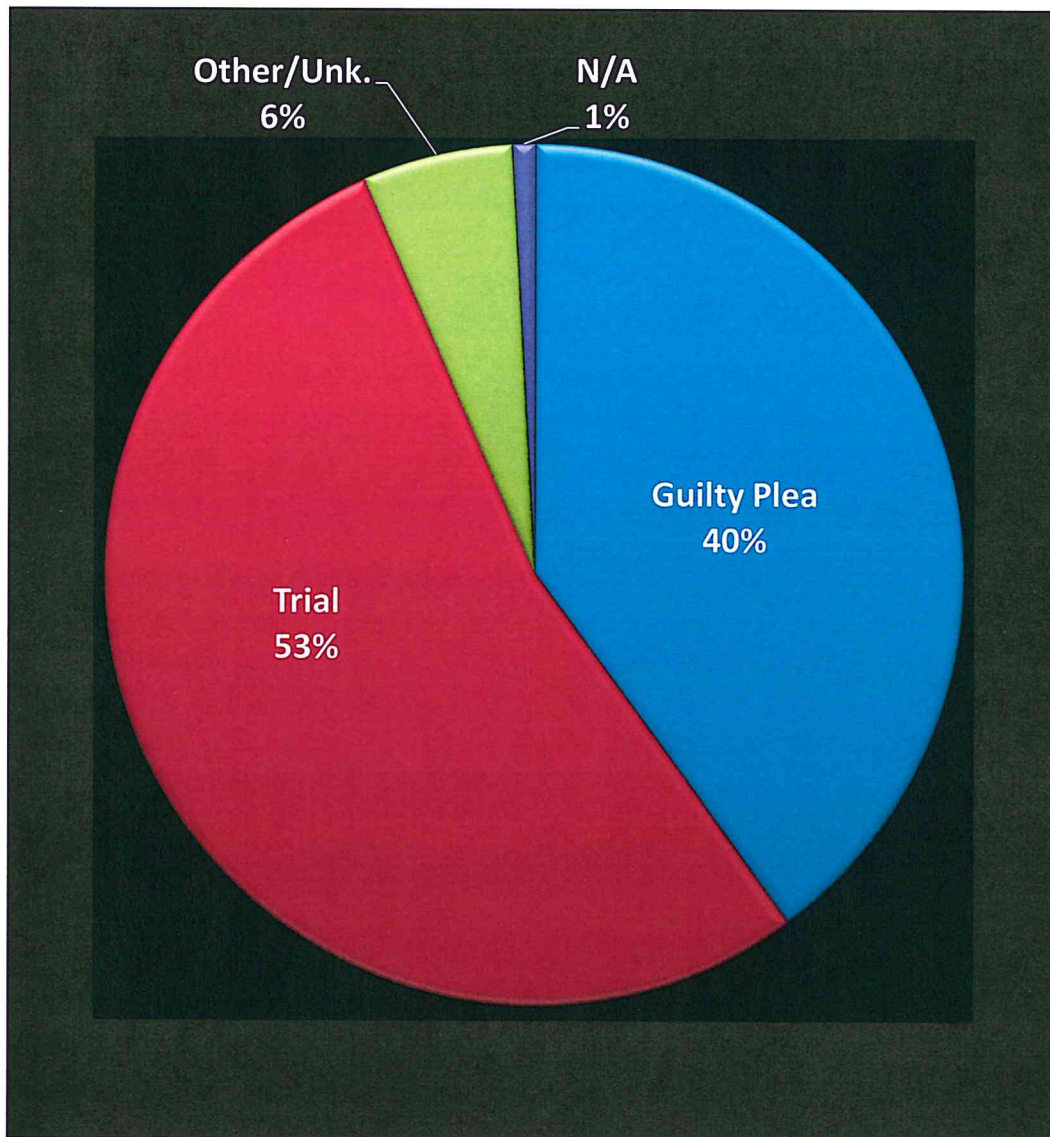
**The Commission began operation in 2007**

Total Number of Claims Received since Commission's Creation	1837
Total Number of Cases Closed since Commission's Creation	1724
Number of Claims Received in 2015	198
Number of Hearings Conducted since Commission's Creation*	9
Exonerations**	9

\*The hearings for Leon Brown, Henry McCollum, and Edward McInnis were conducted as a Motion for Appropriate Relief based on the Commission's investigation and are not included in this number.

\*\*Nine individuals have been exonerated as a result of the Commission's investigations.

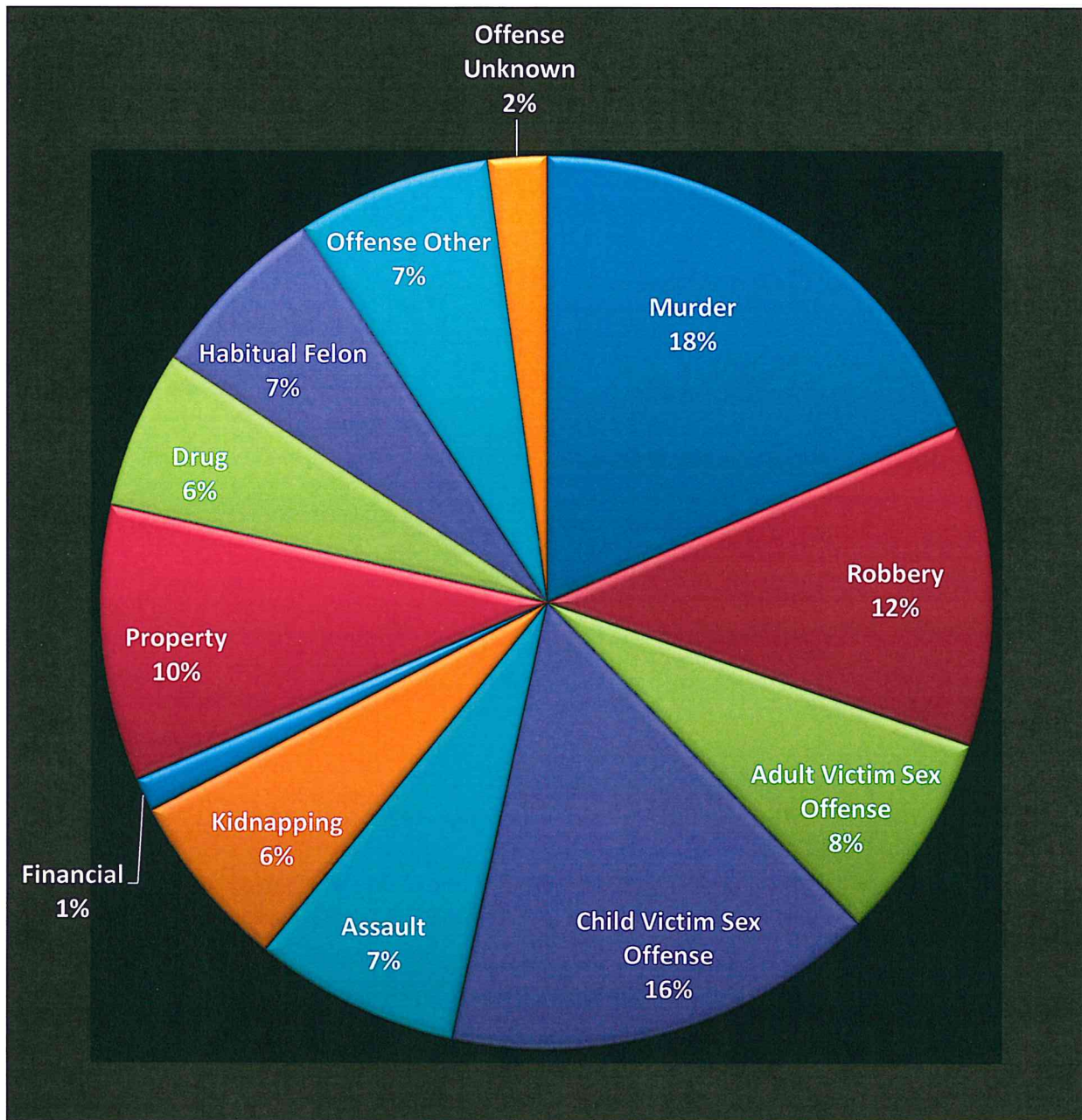
# Convictions Resulting from Trial or Guilty Plea



- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.



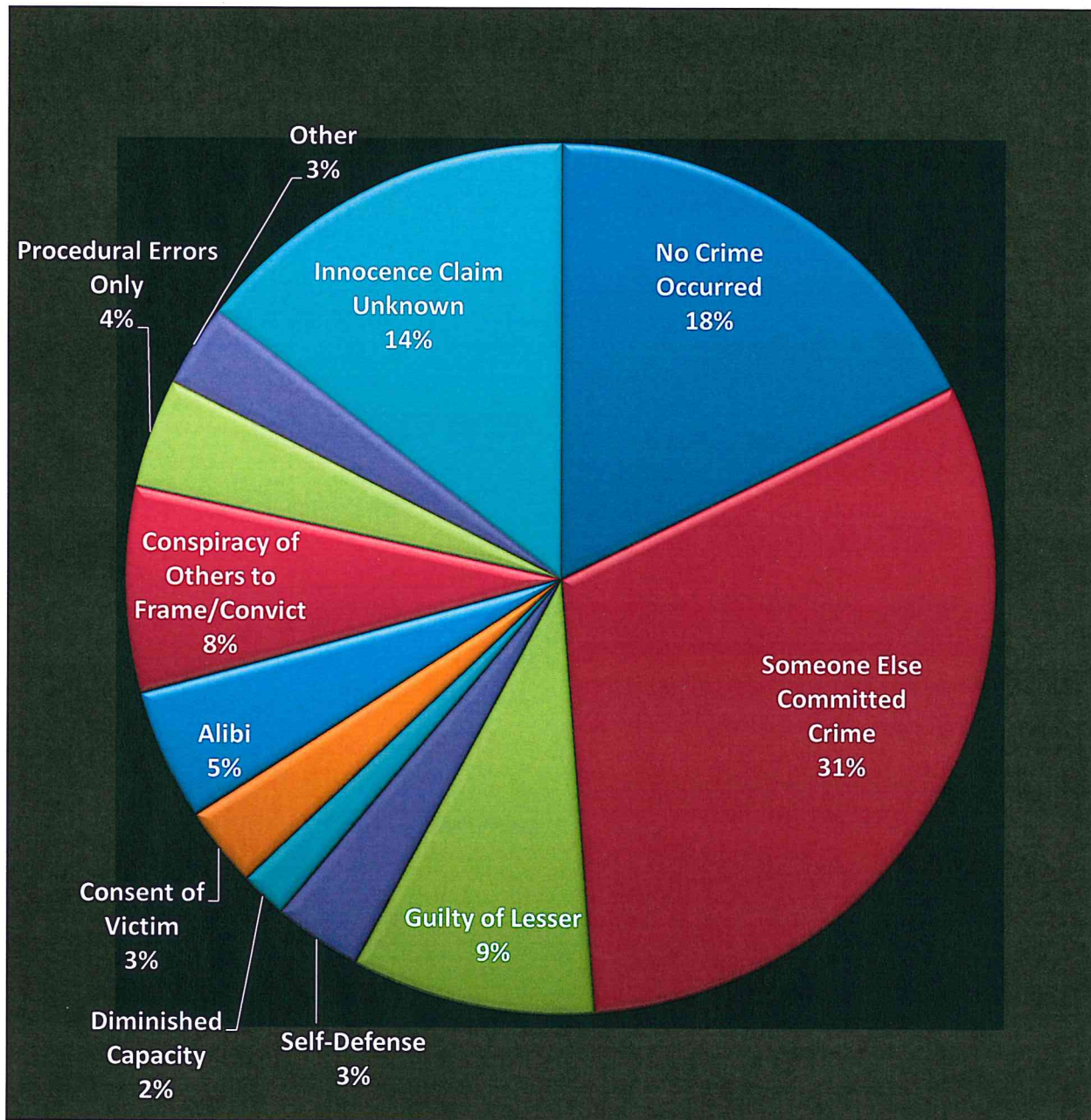
# Applicants' Convictions



- Some applicants were convicted of multiple offenses.

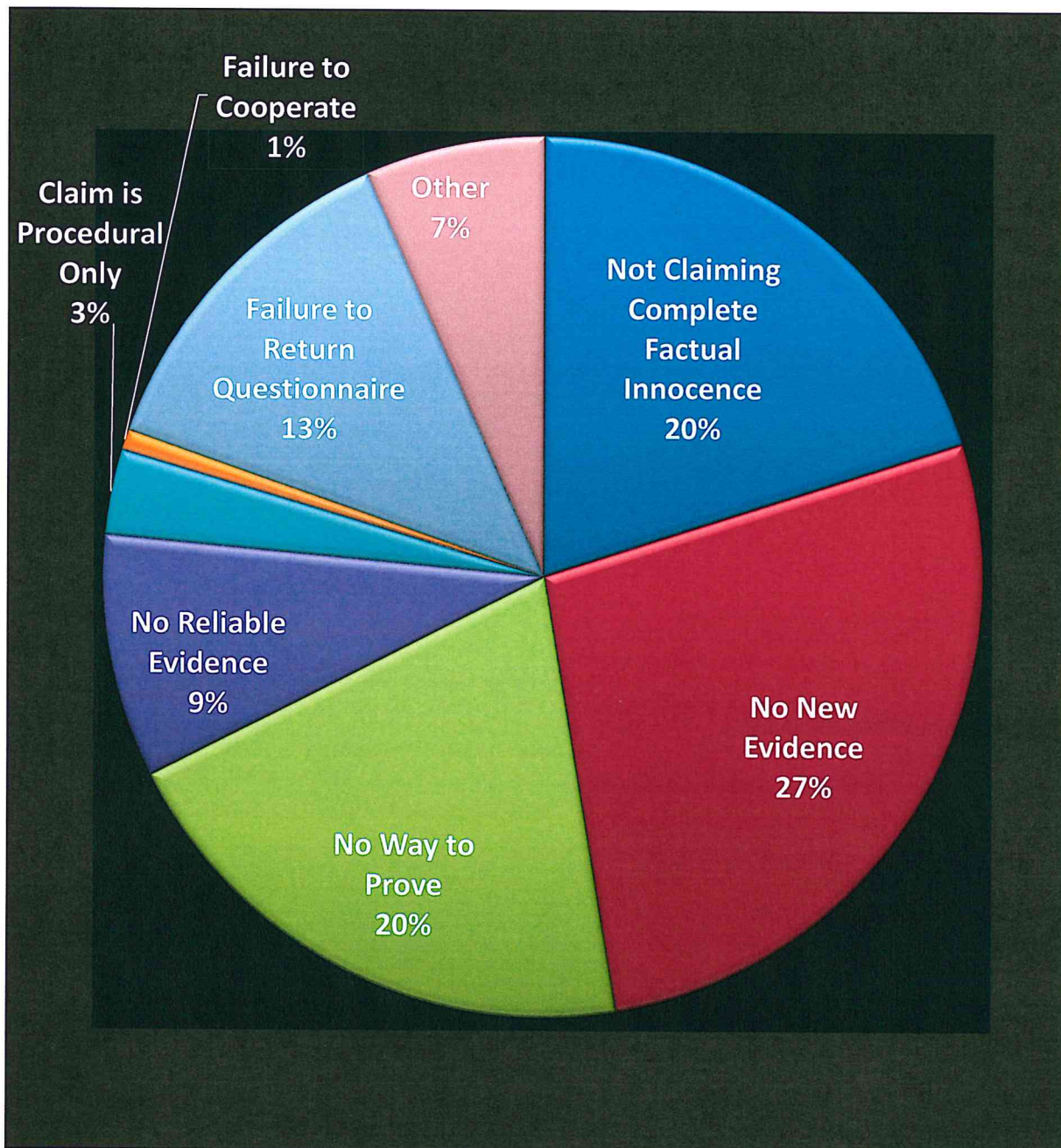


# Applicants' Innocence Claims



- Some applicants made multiple innocence claims.
- 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.

# Reasons for Rejection



- Some cases were rejected for more than one reason.



### C. RESULTS OF INVESTIGATIONS

In 2015, two individuals were exonerated, or had their convictions vacated through a Motion for Appropriate Relief, based on Commission investigations. The first was exonerated on January 23, 2015, at the conclusion of a post commission three-judge panel. The second had his convictions vacated after the District Attorney filed a Motion for Appropriate Relief based on the results of DNA testing conducted by the Commission. The District Attorney cited on the dismissal form that “Defendant has been exonerated by DNA.”

Additionally, the Commission held a hearing on December 9-10, 2015. At the conclusion of the hearing, the Commissioners unanimously voted to refer the case to a three-judge panel for judicial review. As of the date of this report, the three-judge panel has been appointed by Chief Justice Martin, however, a date for the hearing has not yet been set.

The Commission has been granted with the authority to request that agencies search for physical evidence and the Commission staff may request to conduct their own searches when necessary. By working with law enforcement, district attorneys, and clerk’s offices throughout the state, the Commission has located evidence in dozens of cases. Moreover, the Commission has successfully located physical evidence and/or files in 22 cases when previous efforts by other agencies had resulted in conclusions that the evidence or files had been destroyed or lost. In some of those cases, the prior searches had been court ordered with findings of fact made regarding the missing evidence. In 2015, the Commission successfully located missing evidence in four cases. Of those cases, one resulted in an exoneration through a Motion for Appropriate Relief filed by the District Attorney and one was referred to a three-judge panel by the Commission in December 2015.

#### D. OTHER 2015 ACCOMPLISHMENTS

In 2015, the Commission was able to move through a large volume of cases and complete many investigations resulting in closure of the case or presentation at a hearing.

The Commission maintains a website that provides the public with general information about the Commission. The website also fulfills public records requests and makes case statistics readily available. The website may be viewed at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

The Commission's Executive Director and staff continue to make information about the Commission publicly available. The Executive Director provides information to legislators and agencies in other states who are considering creating a commission modeled after North Carolina's.

The Commission's Executive Director and Associate Director give presentations to governmental agencies, civic groups, and education institutions. In 2015, presentations were given to: the Forsyth County Bar, the North Carolina Association for Property and Evidence, Elon University, Campbell University, Campbell University School of Law, North Carolina Central University School of Law, and Johnston Community College. Additionally, the Commission's Executive Director and Associate Director routinely participate in interviews and answer questions about the Commission process with media outlets, writers, legal scholars and agencies. Given the Commission's training and experience, various law enforcement agencies reach out to the Commission for assistance with their evidence storage rooms and evidence questions.



### **III. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2016**

#### **A. PLANS FOR 2016**

In 2016, 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 has recently hired three new staff members to fill vacancies. These staff members are in the process of being trained and have already begun reviewing cases.

Additionally, the Commission's Executive Director, Ms. Guice Smith, and Associate Director, Sharon Stellato, will be available to members of the General Assembly as the Joint Legislative Oversight Committee on Justice and Public Safety studies the future of the Commission, as well as throughout the 2016 Short Session.

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 may refer post-conviction innocence claims from their constituents to the North Carolina Innocence Inquiry Commission.

#### **B. FUTURE NEEDS OF THE COMMISSION**

Pursuant to N.C.G.S. § 15A-1475, the Commission's Annual Report shall recommend the funding needed by the Commission. Although the Commission is an independent agency, the Commission is housed under the Administrative Office of the Courts for administrative purposes. The Commission's FY 2015 Certified Appropriation from the General Assembly is \$536,877. In FY 2014, the Commission spent all but \$25.89 of its AOC appropriated funds. 89.5% of the Commission's certified budget cover 6 full-time staff members and the remaining

10.5% of the budget is used for operating expenses. This includes, but is not limited to, building maintenance, janitorial services, lawns and grounds services, and utilities that are split among the agencies within AOC, as well as expert witnesses, transcription services, DNA and forensic testing, investigative travel/meals/lodging, training, membership dues, general office supplies and equipment, computers/internet/phone/data/software, reference books, and postage/shipping.

As outlined above, the Commission has spent approximately \$115,000 per year on DNA testing, forensic testing, and experts in recent years. The Commission has spent an average of \$100,000 on DNA and forensic testing each year and an additional \$15,000 on experts. The Commission's state funded budget only provides approximately \$16,400 per year DNA testing, forensic testing, and experts.

Since 2010, the Commission has been fortunate to receive a federal grant to cover the bulk of these expenses. Although the Commission has secured federal grant funding through 2017, and intends to continue to seek federal grant funding in future years, the Commission needs additional funding from the North Carolina General Assembly for these purposes. The Commission spent approximately \$106,000 on DNA testing and \$10,500 on other forensic testing/experts in 2015. This increase is justified by the demand for sophisticated DNA and forensic testing in the cases the Commission is investigating. Furthermore, in light of NIJ's move to allow local governments and public universities to apply for the grant the Commission has received in the past, and the entities that were recipients in 2015, it appears that NIJ is moving in a different direction with respect to entities that will receive funding in the future.

Pursuant to N.C.G.S. § 15A-1475, the Commission's Annual Report may contain recommendations of any needed legislative changes related to the Commission. At this time the Commission is being studied by the Joint Legislative Oversight Committee on Justice and Public

Safety. The Commission's Executive Director and Associate Director will be available to meet with members of the General Assembly throughout this process. Although the Commission does not have any current recommendations for legislative changes related to the Commission, the Commission will be working with others in the criminal justice system and may propose changes in the future.

## **CONCLUSION**

The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the Joint Legislative Committee on Justice and Public Safety and the entire General Assembly for their creation and support of this groundbreaking part of the criminal justice system. The criminal justice system in North Carolina is strong and the Commission is proud to serve the important role of uncovering evidence while strengthening the public confidence in the justice system.

The steady flow of cases and hearings continues and the Commission needs state funding to continue the high quality DNA testing unique to these cases.

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.