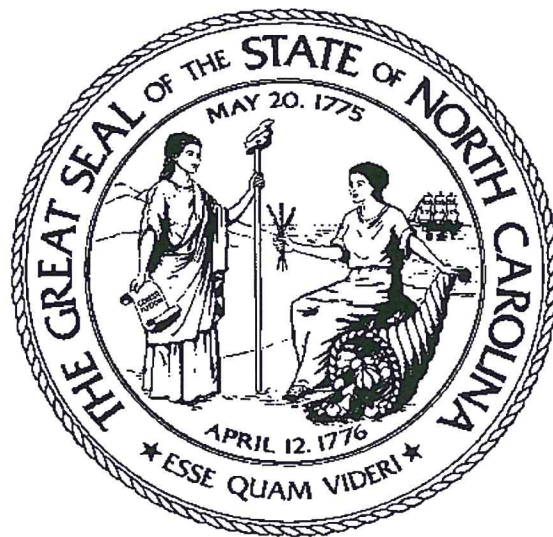


# THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



## 2016 ANNUAL REPORT

Lindsey Guice Smith  
Executive Director  
February 1, 2017

## TABLE OF CONTENTS

<b>LETTER OF TRANSMITTAL .....</b>	<b>iii</b>
<b>PREFACE.....</b>	<b>1</b>
<b>2016 ANNUAL REPORT .....</b>	<b>2</b>
<b>I. LEADERSHIP AT THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION .....</b>	<b>2</b>
<b>II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION .....</b>	<b>3</b>
A. CASE MANAGEMENT .....	3
B. 2015 POSTCONVICTION DNA TESTING PROGRAM .....	4
C. CASE STATISTICS.....	5
D. RESULTS OF INVESTIGATIONS.....	12
E. OTHER 2016 ACCOMPLISHMENTS.....	13
<b>III. AUDITS OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION .....</b>	<b>13</b>
<b>IV. 2016 INTERIM STUDY OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND SUBSEQUENT LEGISLATION .....</b>	<b>14</b>
<b>V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2017 .....</b>	<b>17</b>
A. PLANS FOR 2017.....	17
B. FUTURE NEEDS OF THE COMMISSION .....	18
<b>CONCLUSION .....</b>	<b>18</b>

## LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY OF THE 2017-2018 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 Guice Smith", written in dark ink. The signature is positioned above a horizontal line.

Lindsey Guice 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.

## **2016 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 2016 and the Commission's plans for 2017. Included are statistics for 2016 as well as cumulative case statistics detailing case data since the Commission began operating in 2007.

### **I. LEADERSHIP AT THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION**

The Commission's Executive Director is Lindsey Guice Smith. 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. Ms. Guice Smith has worked for the Commission since January 2010 and has been the Director since October 2015.

In her first fifteen months as Director of the Commission, Ms. Guice Smith has focused on increasing efficiency, streamlining processes, and updating policies and procedures in order to ensure the continued success of the Commission.

The Commission's Associate Director is Sharon Stellato. Ms. Stellato has an Associate of Science in Paralegal Studies and a Bachelor of Science in Criminal Justice. She graduated from North Carolina Central School of Law in 2006. Ms. Stellato has been with the Commission since 2008 and has been the Associate Director since 2012.



The Commission's Chair is Senior Resident Superior Court Judge Anna Mills Wagoner. 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 is the Senior Resident Superior Court Judge for Judicial District 19C, serving Rowan County. Prior to being elected to the Superior Court bench in 2010, Judge Wagoner 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 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.

Additional information on the Commission staff and Commissioners can be found on the Commission's webpage at [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

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

### **A. CASE MANAGEMENT**

When Ms. Guice Smith became the Commission's Director in October 2015, the Commission had 166 active cases. As of December 31, 2016, the Commission had completed its review/investigation and closed all but 25 of those outstanding cases. At the end of 2016, each of those remaining 25 cases was being actively reviewed and investigated. The Commission received a total of 179 new cases in 2016. During 2016, the Commission completed its

review/investigation and closed all but 35 of those new cases. At the end of 2016, the Commission had a total of 60 active cases in various stages of review and investigation.

Through a concentrated effort to increase efficiency and streamline processes at the Commission, Ms. Guice Smith and the Commission staff have significantly reduced the amount of time between when the Commission receives a questionnaire from a claimant, the case enters the initial review memo process, and when the Director or Associate Director reviews the case and makes a determination on whether the case meets the statutory case criteria and should be reviewed further or whether it should be closed. Although each case is unique and the length of time to fully review a case is not predictable, this process streamlining has allowed Commission staff to focus on cases in an effort to reduce overall review time. Going forward, the Commission anticipates that it will be able to keep up with the initial reviews in a timely manner consistent with that which it has achieved in 2016.

#### B. 2015 POSTCONVICTION DNA TESTING PROGRAM

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

The Commission has received funding from NIJ since 2010, previously receiving two other grants, totaling over \$1.2 million, through the Post-Conviction DNA Testing Assistance

Program. Since that time, eight individuals have been exonerated or had their convictions vacated through Motions for Appropriate Relief based on investigations, 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 25 cases.

Through the current and past grants, the Commission has developed strong working relationships with state and local agencies, as well as private laboratories. The Commission has been able to secure competitive rates for DNA testing at private laboratories, allowing the Commission to conduct DNA testing with the latest technology. The Commission will continue to apply for additional grant funding to offset the costs associated with investigating cases, conducting DNA testing, and evidence searches.

### C. CASE STATISTICS

In 2016, the Commission received a total of 179 new innocence cases. Since it began operating in 2007, the Commission has received 2,005 claims of actual innocence. By the end of 2016, 1,946 cases had been reviewed and closed.

Since the Commission's creation, ten cases have been heard at Commission hearings. Ten individuals have been exonerated or had their convictions vacated through the Motion for Appropriate Relief process, based on the Commission's investigation of their claim<sup>1</sup>. The public records documents for each case presented at Commission hearing or presented at a Motion for

---

<sup>1</sup> Of the ten cases that have been presented at Commission hearings, 8 were sent forward to a three-judge panel and 2 were not. Of the 8 sent forward to a three-judge panel, 6 resulted in the exonerations of 7 individuals (one co-defendant case). One case sent forward to a three-judge panel resulted in a denial of relief. One case sent forward to a three-judge panel is still pending a hearing before the panel. Three individuals have had their convictions vacated through Motions for Appropriate Relief that were based on the Commission's investigation of their innocence claim.



Appropriate Relief hearing based on a Commission investigation, are available on the Commission's website at: [www.innocencecommission-nc.gov/cases.html](http://www.innocencecommission-nc.gov/cases.html).

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 cases 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 of innocence is now available. Included on the following five pages is a compilation of statistical data for the Commission. Further statistical data is available from the Commission's Director upon request.

# CASE STATISTICS

Compiled December 30, 2016

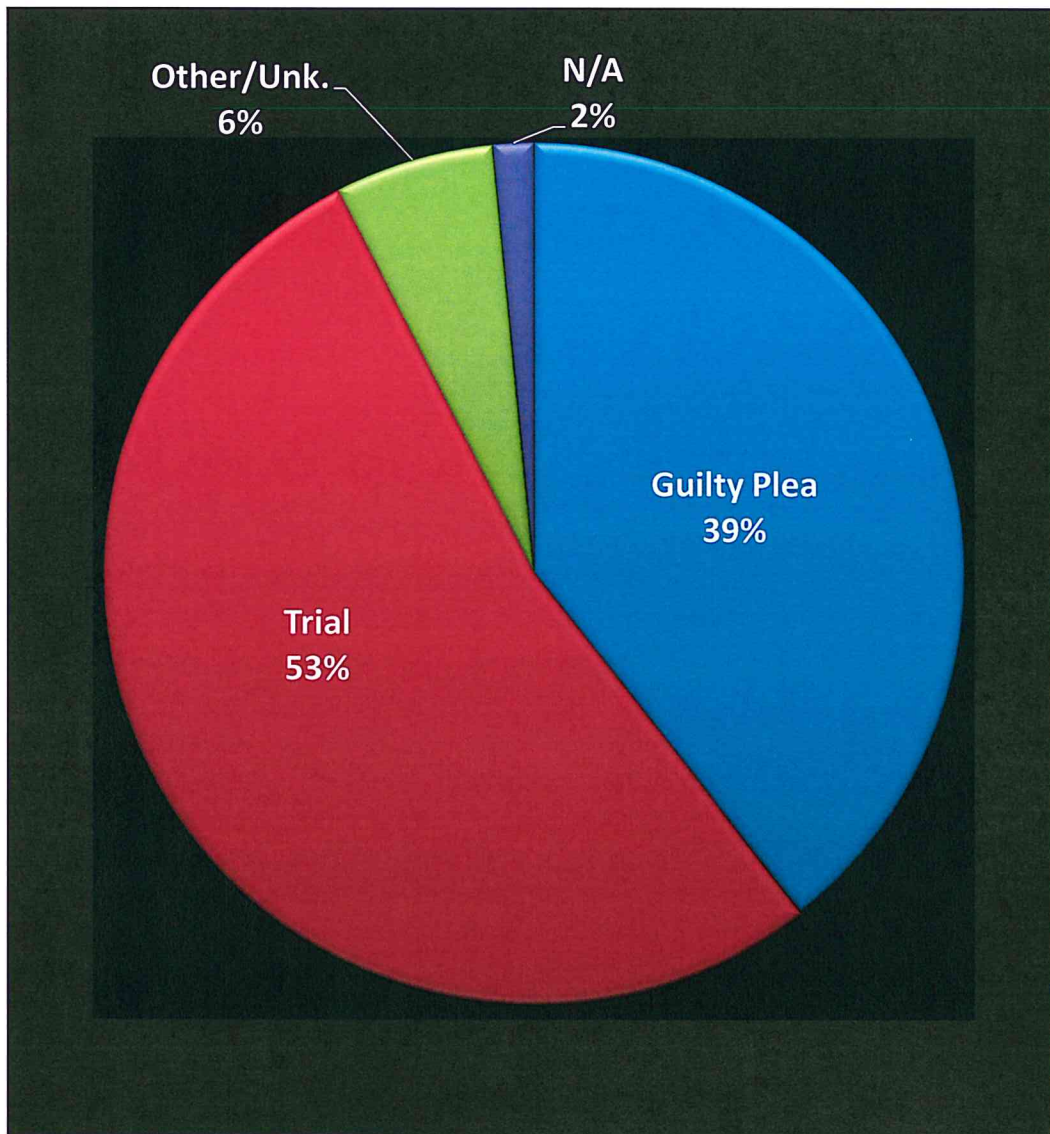
The Commission began operation in 2007

Total Number of Claims Received since Commission's Creation	2005
Total Number of Cases Closed since Commission's Creation	1946
Number of Claims Received in 2016	179
Number of Hearings Conducted since Commission's Creation*	10
Exonerations**	10

\*The hearings for Leon Brown, Henry McCollum, and Edward McInnis were conducted as a Motion for Appropriate Relief based on the Commission's investigation.

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

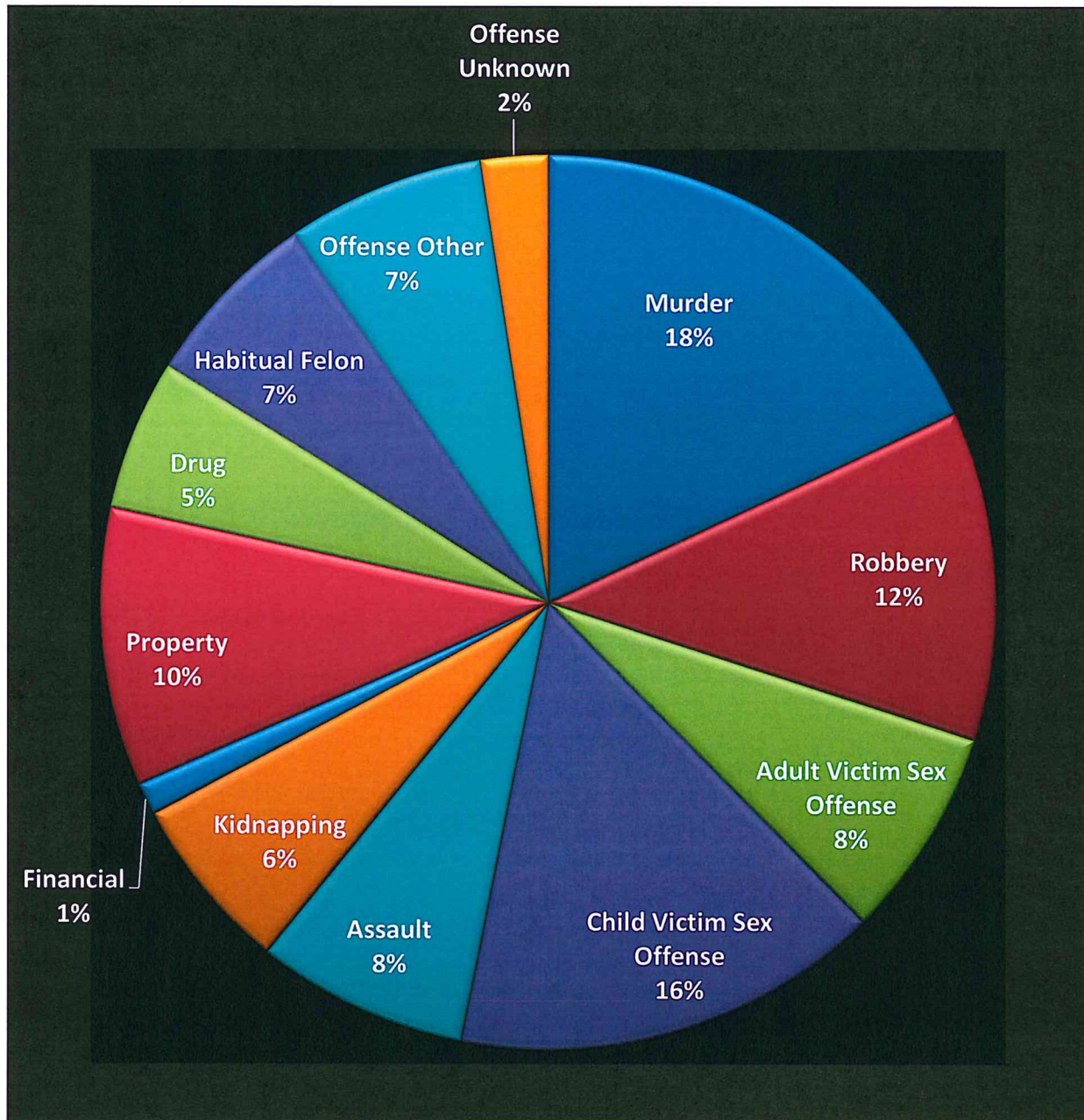
# Convictions Resulting from Trial or Guilty Plea



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



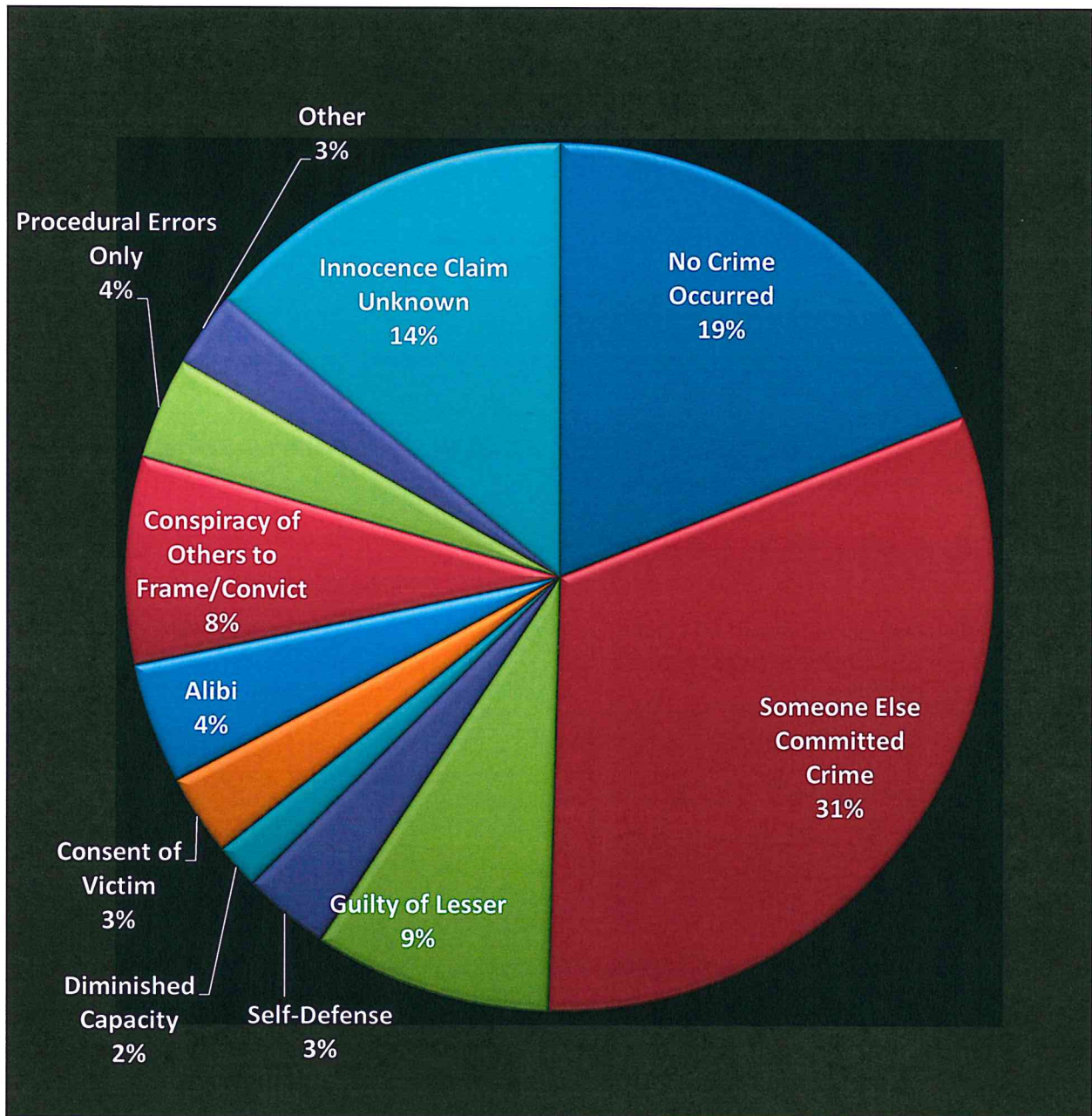
# Applicants' Convictions



- Some applicants were convicted of multiple offenses.

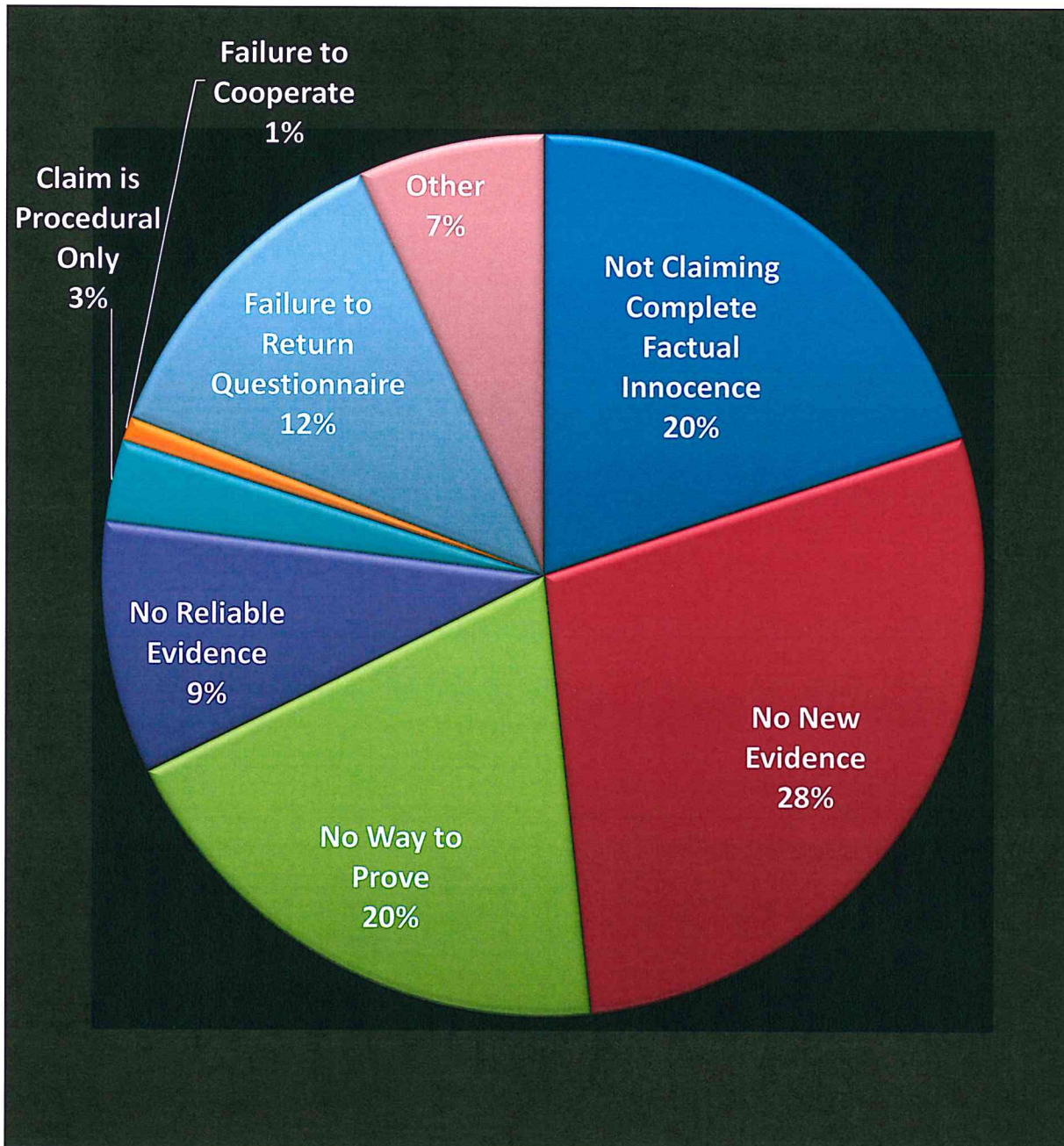


# Applicants' Innocence Claims



- 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.



#### D. RESULTS OF INVESTIGATIONS

In 2016, one individual was exonerated through the Commission process. Knolly Brown was exonerated on May 27, 2016, at the conclusion of a post commission three-judge panel. During the three-judge panel hearing, Commission staff was called to testify about the investigation and was questioned by defense counsel, the prosecution, and members of the three-judge panel. At the close of the evidence, Mr. Brown moved for a finding of innocence and a declaration of exoneration, and was joined in the motion by the Assistant District Attorney. The three-judge panel unanimously determined that Mr. Brown had proven by clear and convincing evidence that he was innocent.

Additionally, the Commission held a hearing in the case of State v. Robert Bragg from August 31-September 2, 2016. At the conclusion of all evidence, the Commissioners voted 6-2 that there was sufficient evidence of factual innocence to merit judicial review and referred the case to a three-judge panel. The three-judge panel has been appointed by Chief Justice Martin, and a three-judge panel hearing is pending.

The Commission has been granted 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 25 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 2016, the Commission continued to successfully locate missing evidence and files.

## E. OTHER 2016 ACCOMPLISHMENTS

In 2016, the Commission was able to move through the largest volume of cases to date and complete many investigations resulting in closure of the cases or presentation at a hearing.

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

The Commission's Director and Associate Director give presentations to governmental agencies, civic groups, education institutions, and the public. In 2016, presentations were given to: the General Assembly, the Harnett County Library, Elon University, Campbell University, Methodist University, The North Carolina Court Reporter's Association, New York University Law U.S.-Asia Law Institute, Johnston Community College, and Uwharrie Charter Academy. Additionally, the Commission's Director and Associate Director routinely participate in interviews and answer questions about the Commission process with media outlets, writers, legal scholars and various 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. AUDITS OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION**

In 2015, the General Assembly passed a provision requiring the Administrative Office of the Courts to conduct an annual audit of the Commission. In March 2016, the Commission's first annual audit was conducted. This was a detailed process that included several meetings between the Commission's Director, Associate Director, and AOC auditor, as well as with the AOC auditor contacting several outside agencies who have worked with the Commission.



The audit was completed on April 8, 2016. The Commission was evaluated in several risk categories, including evidence, grant compliance, relationships, accounting, confidentiality, and human resources. The Commission was given an overall rating of “Effective.” This is the highest rating of three possible ratings: Effective, Some Improvement Needed, and Major Improvement Needed. The Effective rating was given to only 35% of those audited by AOC since 2015. The Commission will undergo another audit in early 2017 and anticipates that the results will be similar.

Additionally, the Commission was randomly chosen for an audit of its 2012 NIJ Grant. This audit was conducted in early 2016 and completed on May 11, 2016. The purpose of this audit was to assess and ensure compliance with the regulations, terms and conditions for the NIJ grant, examine the programmatic progress, and validate the information that the Commission and AOC had reported. The detailed audit included the submission and review of the Commission’s organizational chart, grant performance reporting, grant data collection process, and financial records. After completion of the audit, no programmatic or administrative issues were identified during the audit and the Commission’s 2012 Grant was deemed to be in compliance with Federal, Office of Justice Programs, and NIJ guidelines.

#### **IV. 2016 INTERIM STUDY OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND SUBSEQUENT LEGISLATION**

In January 2016, the Joint Legislative Oversight Subcommittee on Justice and Public Safety (Subcommittee) conducted a study of the Commission. Several legislative changes were proposed by a member of the public and opposed by the Commission. Many of those recommendations were adopted by the Subcommittee and ultimately became law, which took

effect August 1, 2016. While the Commission is still trying to assess the impact of these changes, there have been some notable effects.

During a presentation to the Subcommittee on January 26, 2016, it was suggested that reducing the type of crimes for which the Commission could receive cases directly from claimants would reduce the Commission's caseload by approximately 50%, thereby decreasing the Commission's caseload and reducing the amount of time the Commission spent on cases. In response, the Commission estimated that at most, this change would reduce the Commission's caseload by 28%, but indicated that the percentage would likely be much smaller. After a recommendation by the Subcommittee, a provision limiting the Commission's direct applies to certain felonies was passed and became law. Rather than allow the Commission to review all felony convictions as direct applies, the statute now limits direct applies to homicides, robberies, sex offenses requiring registry in the sex offender database, and all A-E felonies.

Between August 1, 2016 and December 31, 2016, the Commission received two cases directly from claimants which the Commission had to reject as a result of this new law. The Commission received 52 cases between August 1, 2016 and December 31, 2016. This is a 3.8% reduction in the Commission's caseload. This change did not have any significant impact on the Commission's caseload, however, under new leadership and through internal changes, the Commission has significantly reduced its active cases by increasing efficiency and streamlining processes. The Commission will continue to monitor this new law to determine whether any additional impact can be noted.

An additional change made to the Commission's statute was the requirement that prior to the Commission interviewing a claimant or conducting any DNA testing in a claimant's case, the claimant must waive his or her procedural safeguards and privileges. Prior to the change, and

since the Commission's creation in 2006, the waiver of procedural safeguards and privileges was only required before a case entered Formal Inquiry. Both claimant interviews and DNA testing have historically taken place prior to Formal Inquiry.

For the process of signing the waiver the claimant is statutorily entitled to an attorney. If a claimant does not already have an attorney, he or she may choose to waive his right to an attorney, hire an attorney, or submit an affidavit of indigency. If the claimant chooses to waive his or her right to an attorney, a hearing before the Commission's Chair is required to ensure that the claimant understands the rights they are waiving. If the claimant submits an affidavit of indigency and an Order for Appointment of Counsel is granted by the Commission Chair, the claimant is then appointed counsel by IDS. The process of sending the documents to the claimant, followed by the judge, followed by IDS and then awaiting appointment of counsel, attorneys scheduling meetings with claimants, and returning the signed waivers has proven to be lengthy, thereby slowing the work of the Commission.

Between August 1, 2016, when the law went into effect, and December 31, 2016, the Commission had 4 cases that were affected by this process. One was resolved in approximately 2 weeks as the claimant already had counsel who had referred his case to the Commission. As of December 31, 2016, the other three cases affected remain outstanding. In one, the process has taken 3.5 months to date, and the other two cases have taken 1.5 months to date.

During the study, the reason cited for this change was that if the Commission expended money on these interviews and DNA testing and the claimant later refused to sign the waiver, the Commission would have wasted money and resources. Since the Commission began operating in 2007, it has never had a claimant refuse to sign the waiver. While the Commission recognizes that this is a possibility, we are challenged with balancing the goals of a reduction in caseload



and the time it takes to review a case against this provision which lengthens the time that it takes to review a case by essentially putting a case on hold while this process is undertaken.

Additionally, the Commission has a federal grant that covers the cost of DNA testing that ends at the end of 2017. The Commission's ability to use those funds for DNA testing prior to the end of 2017 is significantly affected by this change. As the process is used more often going forward, the Commission will continue to monitor this to determine whether any additional impact can be noted or whether the impact lessens over time.

Several additional changes were made to the Commission's statute, and while the Commission has felt the effects of some of the changes, such as the two described above, others have yet to be seen. The Commission will update the General Assembly about any noticeable effects and will bring recommendations forward as warranted.

## **V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2017**

### **A. PLANS FOR 2017**

In 2017, 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 will be working with others in the criminal justice system and plans to propose legislation to improve the Commission by increasing efficiency, while maintaining the intended purpose of the Commission and scope of its authority. The Commission's Director and Associate Director will be available to members of the General Assembly throughout the 2017 Session.

The Commission remains available to assist other agencies and will continue to provide education and presentations throughout the state and country. 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 2016 Certified Appropriation from the General Assembly is \$557,725. In addition to its state appropriation, the Commission has received a federal grant. This grant ensures that the Commission is able to conduct DNA testing and evidence searches in cases where DNA testing may show innocence. Between the state appropriation and the federal grant, the Commission believes that it is currently funded at an appropriate level to meet its statutory mandate to investigate and determine credible claims of factual innocence. Should the Commission no longer have funding through its federal grant or should the Commission's needs change, the Commission will make a request for additional funding from the General Assembly at that time.

## **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 Commission continues to receive almost 200 cases per year and continues to investigate cases that ultimately result in the exoneration of innocent individuals. The steady flow of cases and hearings demonstrate the need for the continued existence and funding of the Commission.

The Commission maintains a website that provides the public with general information about the Commission. The website may be viewed at: [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

The Commission's 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.