

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



REPORT TO THE 2008 SESSION OF THE GENERAL ASSEMBLY OF NORTH CAROLINA

Pursuant to N.C.G.S. § 15A-1475

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February 4, 2008

TO THE MEMBERS OF THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL,
AND JUVENILE JUSTICE OVERSIGHT COMMITTEE OF THE 2008 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 2007-2008

Superior Court Judge / Commission Chairman

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

The Hon. James L. Baker, Alternate Chairman
Senior Resident Superior Court Judge, 24th Judicial District

Prosecuting Attorney

The Hon. William D. Kenerly, Commissioner
District Attorney, 19th Judicial District

C. Branson Vickory, III, Alternate
District Attorney, 8th 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
Retired Sheriff, Lincoln County

Sheriff Sidney A. Causey, Alternate
Sheriff, New Hanover County

Discretionary Member 1

The Hon. 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, Investigator

Grace E. Wallace, 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 neutral 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.

After the initial phase of establishing its office and operations in early 2007, the Commission was able to dedicate the lion's share of its efforts to its primary mission – case investigations. In 2007, the Commission drafted and passed a set of rules and procedures, hired an experienced staff, considered and assessed numerous innocence claims, and conducted its first hearing. In all, the Commission received 243 claims during 2007. The staff has worked steadily on reviewing and investigating these cases, but has been forced to defer investigation on seven cases because of staff limitations. The Commission currently has three full-time staff members and is requesting legislative approval and funding for two additional staff members: an investigator and an administrative secretary. If this request is granted, the Commission will be in a position to investigate and resolve cases more efficiently.

CREATION OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

In November 2002, the North Carolina Chief Justice's Criminal Justice Study Commission (Chief Justice's Commission)¹ was established by then Chief Justice I. Beverly Lake, Jr. The Chief Justice's Commission was created to provide a forum for education and dialog between representatives from the different perspectives of the criminal justice system regarding prevention and rectification of wrongful convictions.

One of the first priorities of the Chief Justice's Commission was to evaluate North Carolina's post-conviction review of innocence claims. Each of North Carolina's previous exonerations can be characterized as delayed, lengthy, costly, and damaging to the public's confidence in its justice system. In addition, judges, prosecutors, and defense attorneys on the Chief Justice's Commission expressed concern regarding the volume of post-conviction motions, the difficulty in identifying credible claims of innocence, and the procedural and political challenges involved with resolution of claims.

After a year and a half of studying and reviewing post-conviction processes both within and outside the United States, the Chief Justice's Commission drafted and presented to the North Carolina General Assembly a bill establishing the North Carolina Innocence Inquiry Commission. The bill was signed into law in August 2006 and charges the Innocence Inquiry Commission with providing an independent and balanced truth-seeking forum for credible claims of innocence in North Carolina. The North Carolina Innocence Inquiry Commission is a diverse group with representation from the judiciary, law enforcement, defense bar, prosecutors, victim's advocates, and the public.

¹ This commission was originally named the North Carolina Actual Innocence Commission.

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 first year and the plans for the future. Included are statistics about the cases received in 2007 and requests for additional staff.

I. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2007

The members of the North Carolina Innocence Inquiry Commission were appointed by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Court of Appeals to begin their terms on January 1, 2007. During the year, the Commission conducted a number of meetings to set up procedures and begin operation. The Commissioners subdivided into two committees to take charge of interviewing candidates for the executive director position and to draft a set of rules and procedures.

Early in the year, innocence claims began steadily pouring in, but the Commission had not yet hired staff and was unable to process these claims. The North Carolina Center for Actual Innocence, a 501(c)(3) nonprofit agency that serves as an umbrella organization for the Innocence Projects in North Carolina, agreed to voluntarily manage the incoming letters and set up files on the cases.

In April of 2007, the Innocence Inquiry Commission hired Kendra Montgomery-Blinn to serve as its executive director. Ms. Montgomery-Blinn is a licensed attorney and a former

assistant district attorney. Ms. Montgomery-Blinn hired the remaining two staff members over the next few months. Grace Wallace was hired in May of 2007, to serve as the Commission's administrative assistant. Ms. Wallace has a bachelor's degree and is a certified paralegal, allowing her to participate in case investigations as well as administrative duties. Michael Epperly was hired in November of 2007, as the Commission's investigator. Mr. Epperly is a licensed attorney who has six years previous experience as a police officer. The Commission is proud to have such a qualified and dedicated staff.

On May 25, 2007, the Commission approved a detailed set of bylaws called The North Carolina Innocence Inquiry Commission Rules and Procedures. The rules and procedures outline the standard procedure by which cases will move through the review process and the format for hearings. The rules and procedures serve two main functions: they are available to the public to allow transparency in the way in which the Commission operates and they ensure that cases will be handled in consistent fashion. A copy of the rules and procedures is attached in Appendix B.

Executive Director Kendra Montgomery-Blinn has been invited by other state agencies and universities to give presentations about the Innocence Inquiry Commission. In 2007, she presented to: the Public Defenders Conference, NC State University, Duke Law School, NC Central Law School, and the Judicial Council. In 2008, she plans to present to: the District Attorney's Conference, the NC Police Executives, UNC Law School, and again to Duke Law School. These presentations are a part of the transparency of the Commission and show its eagerness to work and communicate with other agencies. The executive director also speaks with out-of-state organizations that are considering creating innocence commissions in their own states.

A. THE CASES

An innocence claim moves through a three-phase process with the Innocence Inquiry Commission. When a new claim is initiated, it is entered into a database and an initial evaluation is made by the executive director to determine if the case meets the statutory criteria set out in N.C.G.S. § 15A-1460(1).

If the claim appears to meet the statutory criteria then it goes into the first phase known as the review phase. The review phase consists of gathering information about the innocence claim, pulling legal documents, creating a file, and summarizing the claim with supporting documentation. This process is currently conducted with the volunteer assistance of the North Carolina Center for Actual Innocence. The Commission is grateful for the assistance of this not-for-profit group because it would not be possible for the Commission to complete reviews for a high volume of claims without extensive staff resources. The Innocence Commission plans to eventually assume this entire process when budget and staff resources permit.

After the review phase, the executive director determines whether to reject the case or send it into the second phase known as the investigation phase. If the case moves into investigation, the work is done by the staff of the Innocence Inquiry Commission. At this phase, the convicted person signs a waiver of procedural safeguards and privileges and the right to counsel is triggered pursuant to N.C.G.S. § 15A-1467(b). Investigation is a detailed and lengthy process that involves interviewing witnesses, obtaining affidavits, seeking court orders for evidence, testing of physical evidence, and compiling of documentation. The entire case is investigated from start to finish with every lead followed and every fact rechecked. At any point during the investigation, the case may be rejected if the executive director determines that the

case no longer meets the statutory criteria set out in N.C.G.S. § 15A-1460(1) (criteria include: the conviction was for a felony, in North Carolina, the applicant is claiming complete factual innocence, credible and verifiable evidence of innocence exists, and evidence was not previously heard by a jury or judge).

If the investigation 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 Innocence Inquiry Commission, where all of the new evidence will be presented through documentation and through witness testimony. The evidence is presented by the Commission staff in a neutral and non-biased fashion. At this hearing, the Commission will determine whether to send the case on to a three-judge panel for a final hearing. The final hearing may result in a dismissal of the conviction.

In 2007, the Innocence Inquiry Commission received 243 new claims of innocence. Of these, 149 cases are currently in the initial review phase, 90 cases have been rejected, three cases are in investigation phase, and one case is awaiting final hearing. Seven additional cases are ready to move from the review phase to the investigation phase, but are delayed because the Commission staff lacks the resources to conduct so many in-depth investigations at one time. Case statistics are included in Appendix C in chart form.

As each case moves through the process, the Commission staff maintains statistics on the cases. The types of crimes at issue, the basis of innocence claims submitted, and the reasons the cases were rejected have been compiled into pie charts and are included in Appendix D. Further data is available from the executive director upon request.

B. FIRST HEARING

On December 14, 2007, the Innocence Inquiry Commission conducted its first hearing. This was the first hearing of its type in the entire nation and legal history was made in North Carolina. The case was State v. Henry Archie Reeves III, 99CRS65056. Mr. Reeves had been convicted of committing indecent liberties with a child in Pitt County. After the hearing, the Commission voted by majority to refer the case to a three-judge panel in Pitt County, North Carolina. That final hearing is expected to be conducted in the summer of 2008.

The Commission staff will not comment publicly on a pending case, but pursuant to N.C.G.S. § 15A-1468(e), all of the materials considered by the Commission and a transcript of the hearing are available by contacting the executive director. The press release issued after the Commission hearing is included in Appendix E.

The cases accepted by the Innocence Inquiry Commission for investigation undergo a detailed and lengthy independent investigation. Each case is investigated with a focus on following the evidence in a neutral and unbiased manner. This type of investigation is extremely time intensive and requires a great deal of travel. For example, the Reeves case involved a total of 733 hours of investigation time divided between the three Commission staff members. A chart that shows the investigation time is included as Appendix F. Preparing for the three-judge panel hearing is an ongoing duty for the executive director as she has become a liaison to the judges and provides assistance to the parties in the case.

II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION PLANS FOR 2008

In 2008, the North Carolina Innocence Inquiry Commission plans to bring additional cases into the investigation phase while maintaining the high level of attention to detail already being devoted to the current case investigations. At present, the Commission staff has three cases in active investigation with seven more ready to be investigated.

The Commission staff has just completed the design and hosting of a website. This will assist the public with finding information and contacts for the Innocence Inquiry Commission. As a state agency, it is important that information about the Commission be easily available to the public. The website address is: www.innocencecommission-nc.gov. The contact information and a link are also available at www.nccourts.org.

The Innocence Inquiry Commission serves as a resource for legislators who receive requests in regards to innocence claims. If a legislator forwards a case to the Commission and asks for updates, the executive director will send letters to him or her informing them of the progress with the case.

A. STAFF RECOMMENDATIONS

The Innocence Inquiry Commission expected a large caseload the first year of operation, but 243 cases can be described as a flood. The cases have steadily poured in throughout the last year and have shown no signs of decreasing in the past few months. In November of 2008, the Commission staff will begin accepting cases when the conviction was the result of a plea bargain and the caseload is expected to increase significantly. At this time, the Commission staff has one

case in hearing phase, three cases in investigation phase, and seven more cases ready for investigation. The seven cases that are ready for investigation are delayed because the Commission lacks the staff resources to adequately maintain so many intensive investigations at one time.

The Commission recognizes that its duties as a state agency and neutral fact-finder require lengthy and rigorous case investigations. The cases are complex and the investigations multi-faceted. This requires a well-trained and experienced staff. The Commission is fortunate to have such a staff. Additional staff members would allow the Commission to accept more cases for investigation and to move cases through the process more swiftly.

The work of the Innocence Inquiry Commission also affects other state agencies. The Commission staff works with District Attorneys, the Attorney General's Office, the State Bureau of Investigation, and Indigent Defense Services. Moving the cases as efficiently as possible will allow these agencies to close files more quickly and to return their focus to their other duties.

The Innocence Inquiry Commission is requesting the North Carolina General Assembly to fund the addition of an investigator and an administrative secretary to the staff team. The Commission anticipates that these two staff members will not meet all of the staffing needs, but understands that this is a short legislative session and that the Innocence Inquiry Commission is a new agency. These two additional staff members will allow the Commission to move more waiting cases into the investigative phase and proceed more efficiently on the cases already in investigation.

The Commission was created because the prior exoneration process had proven to be lengthy, costly, and inefficient. The Commission has been able to make significant progress on the cases that have been accepted into investigation. With additional staff resources, the

Commission could duplicate that work on more cases. An additional investigator would focus exclusively on case investigations and an administrative secretary would free the other Commission staffers from administrative duties, thereby allowing them to devote more time to investigations.

The budget needs for these two staff positions are submitted as part of the AOC expansion budget. The expected total cost for an investigator is \$68,439 in recurring costs and \$10,196 in nonrecurring costs. The expected total recurring costs for a secretary is \$53,098 and \$8,504 in nonrecurring costs. The AOC budget request forms are included as Appendix G.

B. BUDGET RECOMMENDATIONS

The Innocence Inquiry Commission is pleased to have been provided with an adequate budget for daily operations. The executive director meets frequently with the Financial Division of AOC to be sure that the budget is used in the most effective and efficient manner. The executive director is currently in the process of restructuring the existing budget to make sure that monies are appropriated correctly to different categories and that no parts of the budget are wasted.

The executive director anticipates that as the staff moves more cases into investigation, the Commission will fall short of budgetary needs in two major categories: the costs of DNA testing and transcripts. These expenditures have exceeded the Innocence Inquiry Commission's expectations and, if they continue to grow, may necessitate additional budgetary requests at future legislative sessions.

N.C.G.S. § 15A-1475 states that this report may also recommend funding needs for the District Attorneys and the State Bureau of Investigation. At this time, there are no requests for those agencies, but both agencies are aware of this provision and are keeping track of the expenses associated with our work. The Commission anticipates future recommendations for their expenses.

CONCLUSION

The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the members of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the General Assembly for their support and creation of this groundbreaking new piece of the criminal justice system. The Commission is proud to be the first of its type in the United States and pleased to have made legal history with the first hearing on December 14, 2007.

The number of cases submitted for inquiry has exceeded the expectations of both the General Assembly and the Commission. The work needed to resolve these is beyond the staff resources currently allotted. The addition of another investigator and a legal secretary to the staff will provide much needed assistance for case investigations. The Commission remains confident that the General Assembly will maintain its commitment to the Commission by supporting this recommendation and granting these two new staff positions. The Commission's executive director would like to be added to the agenda for a Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee meeting to answer questions and provide further information. As the first year of operation has come to a close for the Innocence Inquiry Commission, it is clear that much has already been accomplished and that additional resources will allow for an even more successful second year.

APPENDIX A

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.)

*This document (also available in PDF and RTF formats) is not an official document.
Please read the caveats on the main NC Statutes page for more information.*

APPENDIX B

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION RULES AND PROCEDURES

The North Carolina Innocence Inquiry Commission Rules and Procedures

Adopted May 25, 2007
Revised August 24, 2007

These Rules and Procedures (Rules) were adopted by the members of the North Carolina Innocence Inquiry Commission (Commission) pursuant to N.C. G.S. § 15A-1460-1475 to serve as a guideline for all functions of the Commission and the Commission staff. These Rules may be altered, amended, and updated as needed by a majority vote of the Commission. These Rules will be reviewed annually for any necessary updates and changes.

An appendix of tables and forms and annotations prepared by the drafting sub-committee may be attached to the Rules. These references are not an authoritative source on parity with the Rules and are published to aid in understanding and utilizing the Rules.

The Commission contemplates that exceptions to the Rules may arise. Any action taken by the Commission or the Commission staff that is not in compliance with the Rules shall be approved by the Commission Chair and in no way conflict with the provisions of N.C. G.S. § 15A-1460-1475.

In the event that a rule presents two meanings, the appendix may be referred to as a reference to the intent behind the rule. A conflicting rule shall be brought to the attention of the Commission for possible modification.

Article 5

Investigation of an Innocence Claim

- (A) Counsel.**
 - 1. Court Appointed Counsel.**
- (B) Signed Agreement.**
 - 1. Right to Counsel.**
 - 2. Procedure for Signing the Agreement.**
 - 3. Refusal to Cooperate.**
- (C) Victim Notification.**
 - 1. Victim's Rights.**
- (D) Priority.**
- (E) Investigation Procedures.**
- (F) Investigation Updates.**
- (G) Investigative Power.**
- (H) Discovery and Disclosure.**
- (I) Challenges to Authority.**
- (J) Service of Process.**
- (K) Formal Requests.**
- (L) Rejection.**

Article 6

Presentation to the North Carolina Innocence Inquiry Commission

- (A) Hearing Requirements.**
- (B) Commissioner Recuses.**
 - 1. Formal Recusal.**
 - 2. Prior Information.**
 - 3. Independent Investigation.**
- (C) Alternate Commissioners.**
- (D) Open and Closed Proceedings.**
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 - 2. Notification of Result.**
- (F) Recording.**
 - 1. Confidential Records.**
 - 2. Judicial Review.**
 - 3. No Further Review.**
- (G) Presentation.**
 - 1. Hearing of Evidence.**
 - 2. Evidence.**
 - a. Testimony.**
 - 3. Written Report.**
- (H) Vote.**
 - 1. Closed Deliberation.**
 - 2. The Standard of Review.**
 - 3. Five Votes Required.**
 - 4. Eight Votes Required.**

5. All Members Vote.

- (I) Continuation of the Hearing.**
- (J) Further Judicial Review.**
- (K) No Review.**
- (L) Findings of Fact.**
- (M) Service on Prosecution.**

Article 7

Post-Commission Three Judge Panel

- (A) Referral.**
 - 1. Previous Involvement in the Case.**
- (B) Setting the Hearing.**
 - 1. Response from the State.**
- (C) Victim Notification.**
- (D) Counsel.**
 - 1. Relief of Costs.**
- (E) The State.**
- (F) Role of the Commission Staff.**
- (G) Right to be Present.**
- (H) The Hearing.**
- (I) Conference.**
- (J) Judicial Standard.**
- (K) Vote.**
 - 1. Relief Granted.**
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- (L) Finality of Decision.**

Article 8

Other Proceedings

- (A) Effect on other post-conviction motions.**

Article 9

Disclosure

- (A) Evidence of Guilt.**
 - 1. Other Crimes.**
 - 2. Evidence of Greater Crimes.**
 - 3. Evidence of Other Persons Involvement.**
- (B) Evidence Favorable to the Convicted Person.**
- (C) Evidence of Wrongdoing.**

Article 10

Other Duties of the Commission

- (A) Report to Legislature.**
- (B) Website.**
- (C) Additional Funds.**

Appendixes

Appendix A: Annotated list of Criteria for Review of an Innocence Claim

Appendix B: Case Progression through Commission Process Flow Chart

The North Carolina Innocence Inquiry Commission Rules and Procedures

Preamble History of the Commission

In November 2002, in response to concern about decreased public confidence in the justice system after several highly publicized exoneration cases, the North Carolina Chief Justice's Criminal Justice Study Commission¹; was established by Chief Justice I. Beverly Lake, Jr. The Commission was established to provide a forum for education and dialog between representatives from the different perspectives of the criminal justice system regarding causation issues in wrongful convictions.

One of the first priorities of the Chief Justice's Commission was an evaluation of North Carolina's post-conviction review of innocence claims. Although the reasons for the original conviction of North Carolina's exonerated vary, each exoneration can be characterized as delayed, lengthy, costly, and damaging to the public's confidence in its justice system. In addition, judges, prosecutors, and defense attorneys on the Chief Justice's Commission expressed concern regarding the volume of post-conviction motions, the difficulty in identifying credible claims of innocence, and the procedural and political challenges involved with resolution of claims.

After a year and a half of study and review of post-conviction processes both within and outside of the United States, the Chief Justice's Commission drafted and presented to the North Carolina General Assembly a bill establishing the North Carolina Innocence Inquiry Commission. Signed into law in August 2006, the Innocence Inquiry Commission is charged with providing an independent and balanced truth-seeking forum for credible claims of innocence in North Carolina. The Commission is a diverse group with representation from the judiciary, law enforcement, the defense bar, prosecutors, victim's advocates, and the public.

The volume of claims which need to be screened for credibility makes it necessary to "outsource" initial claim screening and processing. The Commission staff members have established a working relationship with the North Carolina Center on Actual Innocence to utilize the Center's student resources at Duke, UNC, NCCU, Elon, Charlotte, and Campbell law schools. This relationship provides developmental experience for students and a cost-efficient and enthusiastic resource for the Innocence Inquiry Commission.

Article 1 Applicability of the Statute

(A) **The Statute.** The Statute designated by the North Carolina General Statutes (N.C. G.S.) as Article 92 § 15A-1460-1475 (the Statute) creates the Commission and sets forth the duties of the Commission and the Commission staff.

¹ This Commission was originally named the North Carolina Actual Innocence Commission.

- (B) **Definitions.** The definitions cited in the Statute shall apply to all terms set forth in these Rules.
- (C) **Statute Prevails.** The rules set forth in this document shall never conflict with the Statute. In the event that a conflict appears, the Statute shall prevail. Any conflict shall be brought to the attention of the Commission and modified to bring the Rules into compliance with the Statute.

Article 2

Criteria for Review of an Innocence Claim

- (A) **Criteria.** The following criteria shall be met before an innocence claim may move into the investigation stage. Any criteria that require some level of discretion shall be referred directly to the Executive Director or her/his designee.
 - 1. Conviction must have been in North Carolina state court. N.C. G.S. § 15A-1460(1).
 - 2. Conviction must be for a felony. N.C. G.S. § 15A-1460(1).
 - 3. Applicant must be a living person. N.C. G.S. § 15A-1460(1).
 - 4. Applicant must be claiming complete factual innocence for any criminal responsibility for the crime. N.C. G.S. § 15A-1460(1).
 - 5. Credible evidence of innocence must exist. N.C. G.S. § 15A-1460(1).
 - 6. Verifiable evidence of innocence must exist. N.C. G.S. § 15A-1460(1).
 - 7. Claim must not have been previously heard at trial or in a post-conviction hearing. N.C. G.S. § 15A-1460(1).
 - 8. Applicant must sign agreement pursuant to N.C. G.S. § 15A-1467.
- (B) **Rejection of a Claim.** If at any point during the review or investigation of an innocence claim, the case is determined to no longer meet the criteria, the claim shall be rejected. N.C. G.S. § 15A-1467(a)

Article 3

Initiation of an Innocence Claim

- (A) **Contact Information.**
 - 1. The Commission staff shall keep North Carolina Prisoner Legal Services informed of the Commission's current contact information.
 - 2. The Commission staff shall create and maintain a webpage with information on how to initiate an innocence claim and a statement of the Commission's mission.
- (B) **Initiation of a Claim.** An innocence claim may be initiated in any reasonable manner from any person or party.
- (C) **Forwarded Claims.** If a claim is made to a different governmental body, it may forward the claim to the Commission.
- (D) **Referral from another Organization.** Another organization may refer a case it has been reviewing to the Commission by written referral. The case will only be reviewed by the Commission if the referring organization allows full and complete access to their entire file on the case.

- (E) **Judge, Victim, Law Enforcement, Correction Official, and Prosecutorial Initiation.** Any innocence claim initiated by a judge, victim, current or former law enforcement officer, correction official, or prosecutor shall be removed from the typical review process and forwarded directly to the Executive Director and he/she shall personally decide how to proceed on the case.
- (F) **Guilty Pleas.** In cases where the convicted person pleaded guilty, the case shall be rejected before November, 2008 and referred to the North Carolina Center on Actual Innocence.

Article 4

Innocence Claim Review

- (A) **Tracking of Claims.** The Executive Director or his/her designee shall create and maintain a tracking system that will, at a minimum, record the name of the convicted person and the ultimate outcome of their claim. N.C. G.S. § 15A-1465(a).
- (B) **Filing System.** The Executive Director or his/her designee shall create and maintain a filing system for the innocence claim physical files pursuant to N.C. G.S. § 15A-1465(a). When a file is moved for investigation or review purposes, the tracking system shall track the location of the physical file.
 - 1. **Maintaining Files.** Complete files will be maintained for a minimum of three years after the claim is rejected. After three years, a basic claim summary shall be maintained that includes the name of the convicted person, the date of application, the persons involved in the review, and the reason for rejection.
- (C) **Review of a Claim.** The Executive Director or his/her designee shall create a procedure for reviewing and gathering information on an innocence claim. N.C. G.S. § 15A-1465(a).
- (D) **Rejection of a Claim.** If at any point during the review of an innocence claim, the case is determined to not meet the criteria set out in Article 3, the claim shall be rejected. N.C. G.S. § 15A-1467(a).
- (E) **Students.** The Commission staff may utilize student resources for all levels of case work. In no case, will decision-making authority rest with students.
- (F) **Decision-Making Authority.** The Executive Director or his/her designee will have authority to make the decision whether to reject a case, call for further review, or move a case into investigation.
- (G) **Transition to Investigation Phase.** After a through review has been completed and the innocence claim meets the criteria set out in Article 3, the case may move into the investigation phase. N.C. G.S. § 15A-1467(a)
- (H) **Reapplication.** If an innocence claim is initiated based on a case that has already been rejected by the Commission, there must be new evidence of innocence to consider.

Article 5

Investigation of an Innocence Claim

- (A) **Counsel.** The convicted person has the right to representation before signing the agreement waiver and throughout any formal inquiry process. The convicted person may retain counsel, apply for court appointed counsel, or represent himself/herself by signing a waiver. N.C. G.S. § 15A-1467(b).
1. **Court Appointed Counsel.** If the convicted person chooses to apply for court appointed counsel, the Commission Chair shall determine indigency status and Indigent Defense Services shall assign counsel if necessary. N.C. G.S. § 15A-1467(b).
- (B) **Signed Agreement.** The convicted person shall sign an agreement waiving his/her procedural safeguards and privileges, agreeing to cooperate with the Commission, and agreeing to provide full disclosure regarding all inquiry requirements to the Commission. N.C. G.S. § 15A-1467(b).
1. **Right to Counsel.** If the convicted person elected to retain or was assigned court appointed counsel, the convicted person's counsel shall be present at the signing of the agreement. N.C. G.S. § 15A-1467(b).
 2. **Procedure for Signing the Agreement.** The convicted person's signature shall be verified by counsel or in the event that the convicted person is representing himself/herself, the signature shall be notarized. The original copy of the agreement shall be delivered to the Commission staff.
 3. **Refusal to Cooperate.** If the convicted person refuses to comply with the terms of the agreement or is uncooperative with the Commission staff in any way, the inquiry will be discontinued pursuant to N.C. G.S. § 15A-1467(g).
- (C) **Victim Notification.** The Commission staff shall use due diligence to notify any victims of the underlying crime about the investigation and explain the inquiry process. N.C. G.S. § 15A-1467(c). If any victim is no longer living, efforts shall be made to notify the victim's next of kin. The victim's family will designate one member as the contact person for all victim notifications and rights.
1. **Victim's Rights.** The Commission staff shall inform the victim of his/her right to present his/her views throughout the investigation. The Commission staff shall assist the victim or the victim's family to understand the Commission's procedures and the victim's rights. N.C. G.S. § 15A-1467(c).
- (D) **Priority.** The Commission staff will give priority to investigation of cases where the convicted person is currently incarcerated solely for the crime in which he or she claims factual innocence. N.C. G.S. § 15A-1466(2).
- (E) **Investigation Procedures.** The Executive Director and staff shall create an investigation procedure unique to each case and keep detailed records throughout the investigation.
- (F) **Investigation Updates.** Regular reports of investigation will be made to the Executive Director, and he/she will coordinate investigations. N.C. G.S. § 15A-1465.

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- (G) **Investigative Power.** The Commission staff may employ the Rules of Civil Procedure set out in N.C. G.S. § 1A-1 to obtain information and may use any measure set forth in G.S. § 15A. “The Commission may issue process to compel the attendance of witnesses and 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.” N.C. G.S. § 15A-1467(d).
- (H) **Discovery and Disclosure.** All North Carolina discovery and disclosure statutes apply retroactively to any case under investigation or review by the Commission staff. N.C. G.S. § 15A-1467(f).
- (I) **Challenges to Authority.** In the event that there are challenges to the authority of the Commission staff or the Commission’s access to evidence, the Chairman of the Commission will conduct such inquiries as may be necessary. N.C. G.S. § 15A-1467(d).
- (J) **Service of Process.** The Commission’s Director or his/her designee has the authority to serve subpoenas or other process issued by the Commission. N.C. G.S. § 15A-1468(e).
- (K) **Formal Requests.** Formal requests for evidence shall be approved by the Commission Chair. Formal request include, but are not limited to, subpoenas, court orders, and requests for DNA testing.
- (L) **Rejection.** If at any point during the investigation, it is determined that the case no longer meets the criteria set out in Article 3, it will be rejected. N.C. G.S. § 15A-1467(a). Rejection during investigation may only be done by with the consent of the Executive Director.

Article 6

Presentation to the North Carolina Innocence Inquiry Commission

- (A) **Hearing Requirements.** A hearing before the Commission shall include all eight members of the Commission including the Commission Chair. N.C. G.S. § 15A-1468.
- (B) **Commissioner Recuses.** A Commissioner shall recuse himself/herself if he/she had any involvement in the case during the original trial or any post-conviction motions. A Commissioner shall recuse himself/herself if some event has caused him/her to become biased about a case and unable to participate in the hearing in a fair and impartial manner.
 - 1. **Formal Recusal.** At the beginning of the hearing, the Commission Chair shall make a formal inquiry as to whether any Commissioner needs to recuse himself/herself.
 - 2. **Prior Information.** It is contemplated that information about investigations may be made known to Commissioners before the hearing without requiring them to recuse themselves.
 - 3. **Independent Investigation.** In no event will a Commissioner conduct his/her own independent investigation or review of a case.
- (C) **Alternate Commissioners.** In the event that a Commissioner is unable to attend a hearing or has recused himself/herself, the Commissioner’s Alternate shall

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fulfill the duties of the Commissioner. N.C. G.S. § 15A-1463(b). If an Alternate Commissioner is not fulfilling full Commission duties, he/she may attend hearings of the Commission, but may not participate in discussion and may not vote.

- (D) **Open and Closed Proceedings.** The functions of the Commission are exempt from public meetings laws and the hearing before the Commission will be presumed to be closed. The Commission Chair, in his/her sole discretion, may open part or all of a hearing. N.C. G.S. § 15A-1468(a).
- (E) **Victim Notification.** The Executive Director or his/her designee will use all due diligence to notify the victim or the victim's next of kin at least 30 days prior to the presentation to the full Commission pursuant to N.C. G.S. § 15A-1468(b).
 - 1. **Closed Proceedings.** The victim or next of kin are permitted to attend closed proceedings, other than Commission deliberations, if they give 10 days notice to the Commission pursuant to N.C. G.S. § 15A-1468(b). The Commission Chair, in its discretion, may permit a victim to be accompanied to a closed hearing by a family member or other support person. If the Commission determines that the victim's presence may interfere with the any proceedings, the Commission may close any portion of the proceedings to the victim. N.C. G.S. § 15A-1468(b).
 - 2. **Notification of Result.** The Executive Director or his/her designee will use all due diligence to immediately notify the victim or the victim's next of kin of the Commission's decision. N.C. G.S. § 15A-1468(c).
- (F) **Recording.** A proceeding before the Commission shall be recorded and transcribed. All votes of the Commission members shall be a part of the record. N.C. G.S. § 15A-1468(e).
 - 1. **Confidential Records.** All records of the Commission proceedings are confidential and exempt from public record and meeting laws, except as described in section 2 below. N.C. G.S. § 15A-1468(e).
 - 2. **Judicial Review.** If the Commission votes for judicial review, the records that support that conclusion shall become public at the time of referral to the Superior Court of original jurisdiction. This public disclosure shall include all files and materials considered by the Commission and a full transcript of the hearing before the Commission. N.C. G.S. § 15A-1468(e).
 - 3. **No Further Review.** If the Commission votes against judicial review, the records shall remain confidential. N.C. G.S. § 15A-1468(e).
- (G) **Presentation.** The Executive Director or his/her designee shall make a presentation of all relevant evidence to the Commission. Relevant evidence will include information on evidence originally presented to a jury or used for plea bargaining, evidence presented at any post-conviction hearings, and any evidence supporting the convicted person's claim of complete factual innocence.
 - 1. **Hearing of Evidence.** All evidence will be presented simultaneously to each Commissioner. In no event will a Commissioner hear evidence apart from the other members of the Commission. This does not include Commission staff seeking approval from the Commission Chair for work on a case.

2. **Evidence.** The presentation may include evidence not limited to, affidavits, testimony of witnesses, presentation of physical evidence, expert testimony, laboratory reports, medical evidence, documents, recorded evidence, or electronic evidence.
 - a. **Testimony.** In the event that testimony is provided as a part of the presentation, the Commission Chair will administer the oath to the witness. The Executive Director of the Commission or his/her designee will examine the witness, but any member of the Commission may ask additional questions of the witness.
 3. **Written Report.** The Executive Director and/or his/her designee shall provide the members of the Commission with a written report of the relevant evidence in the case prior to the presentation.
- (H) **Vote.** After hearing the evidence, the Commission members will vote on whether there is sufficient evidence of factual innocence to merit judicial review. N.C. G.S. § 15A-1468(c).
1. **Closed Deliberation.** The Commission's deliberation and vote shall be closed.
 2. **The Standard of Review.** The standard for voting shall be "sufficient evidence of factual innocence to merit judicial review." N.C. G.S. § 15A-1468.
 3. **Five Votes Required.** If the case did not arise from a guilty plea, at least five members shall vote for judicial review in order for the case to be referred to the Chief Justice of the North Carolina Supreme Court pursuant to N.C. G.S. § 15A-1468(c).
 4. **Eight Votes Required.** If the case arose from a guilty plea, all eight members shall vote for judicial review in order for the case to move on. Cases that arose from a guilty plea will not be considered by the Commission before November, 2008. N.C. G.S. § 15A-1468(c).
 5. **All Members Vote.** "All eight voting members of the Commission shall participate in the final vote." N.C. G.S. § 15A-1468(c).
- (I) **Continuation of the Hearing.** The Commission may vote to continue the hearing and request additional information when they resume.
- (J) **Further Judicial Review.** In the event that the Commission votes for further judicial review, the opinion will be documented and the opinion and findings of fact will be filed with the Clerk of Court of original jurisdiction and a copy provided to the Senior Resident Superior Court Judge. N.C. G.S. § 15A-1468(c).
- (K) **No Review.** In the event that the Commission does not vote for further judicial review, the opinion will be documented and filed in the office of the Clerk of Superior Court in the district in which the case arose, with copies to the District Attorney and Senior Resident Superior Court Judge. N.C. G.S. § 15A-1468(c)
- (L) **Findings of Fact.** At the close of the voting, the Commission Chair will make specific findings of fact regarding the case. N.C. G.S. § 15A-1468(c).
- (M) **Service on Prosecution.** A copy of the opinion, findings of fact, and record will be served on the District Attorney in the original jurisdiction. If the case was a capital cases, service will on both the District Attorney and the Attorney General. N.C. G.S. § 15A-1468(c).

Article 7

Post-Commission Three Judge Panel

- (A) **Referral.** If the Commission votes that there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission will ask the Chief Justice of the North Carolina Supreme Court to commission a three-judge panel to hear evidence relevant to the Commission's recommendation. N.C. G.S. § 15A-1469.
1. **Previous Involvement in the Case.** The panel shall not include any judge who had substantial previous involvement in the case. N.C. G.S. § 15A-1469. Previous involvement includes involvement in pre-trial motions, at trial, or in a post-conviction MAR.
- (B) **Setting the Hearing.** The senior resident superior court judge in the original jurisdiction of the case shall enter an order setting the hearing for a special session of superior court. N.C. G.S. § 15A-1469(a).
2. **Response from the State.** The State will be required to file a response to the Commission's opinion within 60 days of the order setting the hearing. N.C. G.S. § 15A-1469(b).
- (C) **Victim Notification.** The Clerk of Court shall notify the victim or victim's next of kin by writing at least 30 days prior to the hearing. N.C. G.S. § 15A-1469(f).
- (D) **Counsel.** The convicted person may elect to retain his/her own counsel, represent himself/herself, or waive the right to counsel. If the convicted person chooses to apply for court appointed counsel, the senior judge on the panel shall determine the convicted person's indigency status and Indigent Defense Services shall assign counsel if necessary. N.C. G.S. § 15A-1469(e).
1. **Relief of Costs.** The senior judge on the panel may enter an order relieving the convicted person of any portion of the costs of proceedings. N.C. G.S. § 15A-1469(e).
- (E) **The State.** The District Attorney or his designee of the original conviction shall represent the State. N.C. G.S. § 15A-1469(c).
- (F) **Role of the Commission Staff.** The Executive Director shall be present at this hearing and available to the panel of Judges as needed including a presentation of a case summary.
- (G) **Right to be Present.** The Convicted Person has a right to be present at the hearing and have counsel present. If the convicted person chooses to waive his/her right to be present, the waiver shall be done in writing. N.C. G.S. § 15A-1469(d).
- (H) **The Hearing.** The hearing shall be an evidentiary hearing conducted by the three judge panel. The Judges may compel the testimony of any witnesses, including the convicted person. The Judges may also continue the hearing, if necessary, to secure additional information. The convicted person may not assert any privileges or prevent any witnesses from testifying. N.C. G.S. § 15A-1469(d).
- (I) **Conference.** The senior judge on the panel may allow the attorneys for the parties to appear before him for a conference on any matter in the case. N.C. G.S. § 15A-1469(g).

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- (J) **Judicial Standard.** The three judge panel¹ will hear the evidence and determine if there is clear and convincing evidence of the convicted person's innocence. N.C. G.S. § 15A-1469(h).
- (K) **Vote.** The vote of the three judge panel shall be unanimous. N.C. G.S. § 15A-1469(h).
 - 1. **Relief Granted.** If the vote of the panel is unanimous that clear and convincing evidence exists of the person's innocence, the panel shall enter a dismissal of all charges. N.C. G.S. § 15A-1469(h).
 - 2. **Relief Denied.** If the vote of the panel is not unanimous that clear and convincing evidence exists of the person's innocence, the panel shall deny relief. N.C. G.S. § 15A-1469(h).
- (L) **Finality of Decision.** The decision of the panel of three judges is final and no appeal is available. N.C. G.S. § 15A-1470(a).

Article 8 Other Proceedings

- (A) **Effect on Other Post-Conviction Motions.** The process has no effect on other post-conviction motions. N.C. G.S. § 15A-1470(b).
- (B) **Referral to Other Agency.** If the Executive Director, one or more members of the Commission, or one or more members of the three judge panel determine that a remedy other than that provided for by N.C. G.S. § 15A-1460-1475 may be appropriate; they shall notify the North Carolina Center on Actual Innocence or North Carolina Indigent Defense Services in writing so that they may pursue any appropriate action.
 - 1. **Return to Referring Agency.** If the case was referred from another agency, the case shall be returned to that agency so that they may pursue any appropriate action.

Article 9 Disclosure

- (A) **Evidence of Guilt.** Evidence uncovered by the Commission's staff that supports the convicted person's guilt will be made available to the district attorney if it was not available to the district attorney at the time of conviction.
 - 1. **Evidence of Other Crimes.** Evidence uncovered by the Commission's staff that tends to show the convicted person may have committed other unrelated felonies will be made available the district attorney who would have jurisdiction over those felonies.
 - 2. **Evidence of Greater Crimes.** Evidence uncovered by the Commission's staff that tends to show the convicted person may be guilty of a higher level crime than the one for which he/she was charged or convicted shall be made available to the district attorney who would have jurisdiction over the higher level crime.
 - 3. **Evidence of Other Person's Involvement.** Evidence uncovered by the Commission's staff that tends to show that other people may have been

The North Carolina Innocence Inquiry Commission Rules and Procedures

involved in commission of the crime will be made available the district attorney who would have jurisdiction over that crime.

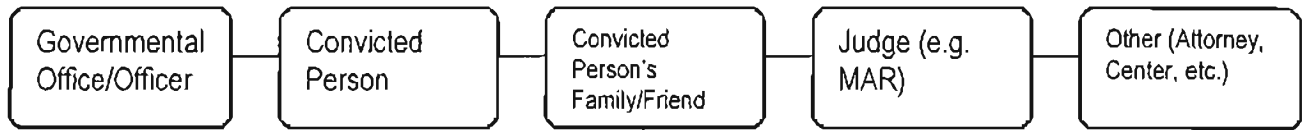
- (B) **Evidence Favorable to the Convicted Person.** Evidence uncovered by the Commission's staff that is favorable to the convicted person shall be disclosed to the convicted person and the convicted person's counsel. This evidence includes, but is not limited to evidence of innocence. The disclosure shall occur regardless of the outcome of the hearings. N.C. G.S. § 15A-1468(d).
- (C) **Evidence of Wrongdoing.** Evidence of criminal acts, professional misconduct, or other wrongdoings uncovered made as a finding by the Commission shall be referred to the proper authority. N.C. G.S. § 15A-1468(d).

Article 10 Other Duties of the Commission

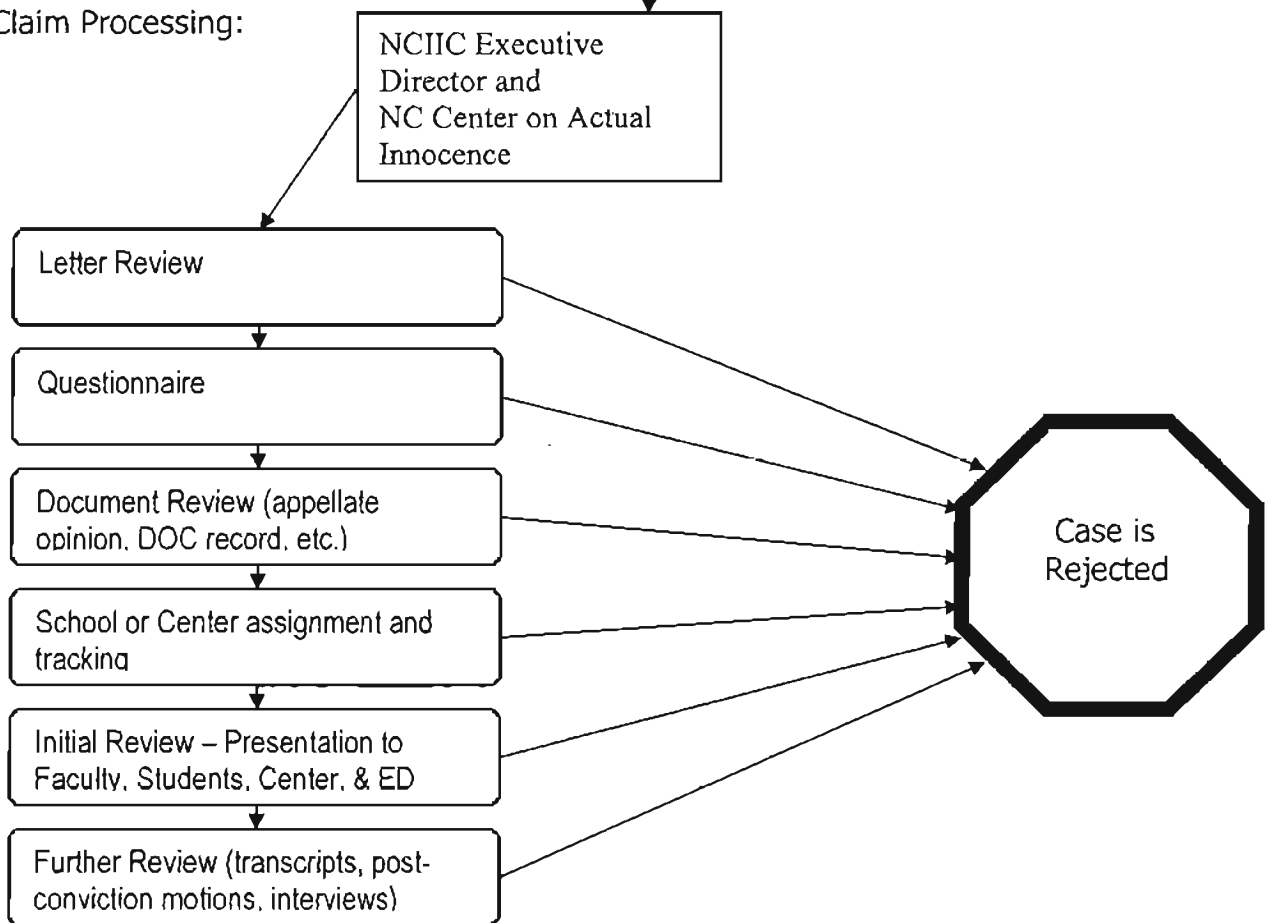
- (A) **Report to Legislature.** Beginning on January 1, 2008 the Commission will give an annual report to the legislature and recommend any funding and legislative changes. N.C. G.S. § 15A-1475.
- (B) **Website.** The Commission staff will maintain a website with access to information on how an innocence claim may be submitted and information on the Commission.
- (C) **Additional Funds.** The Executive Director or his/her designee will apply for and accept any funds that may become available to further the work of the Commission. N.C. G.S. § 15A-1466.

Case Progression through NCIIC Process

Innocence Claim Referral:

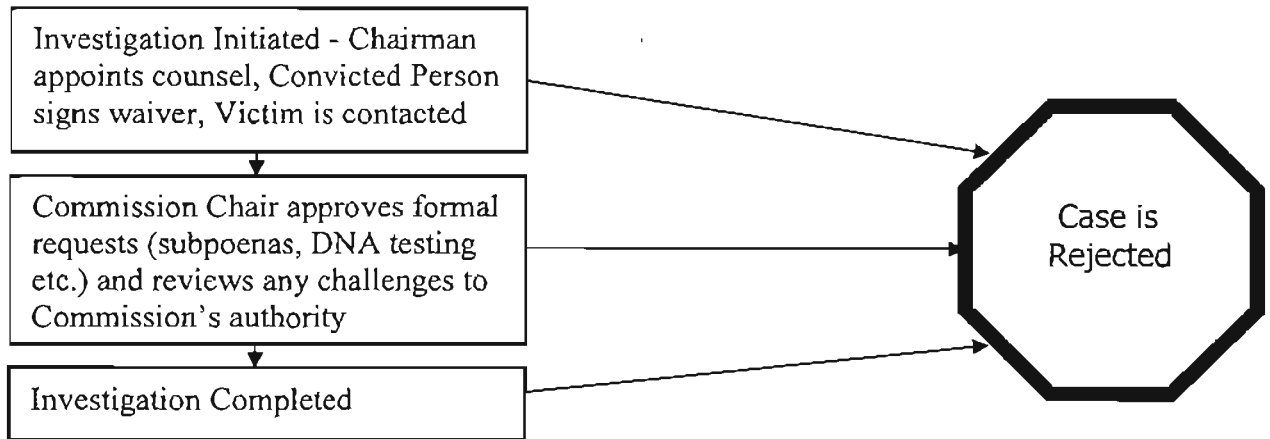


Claim Processing:

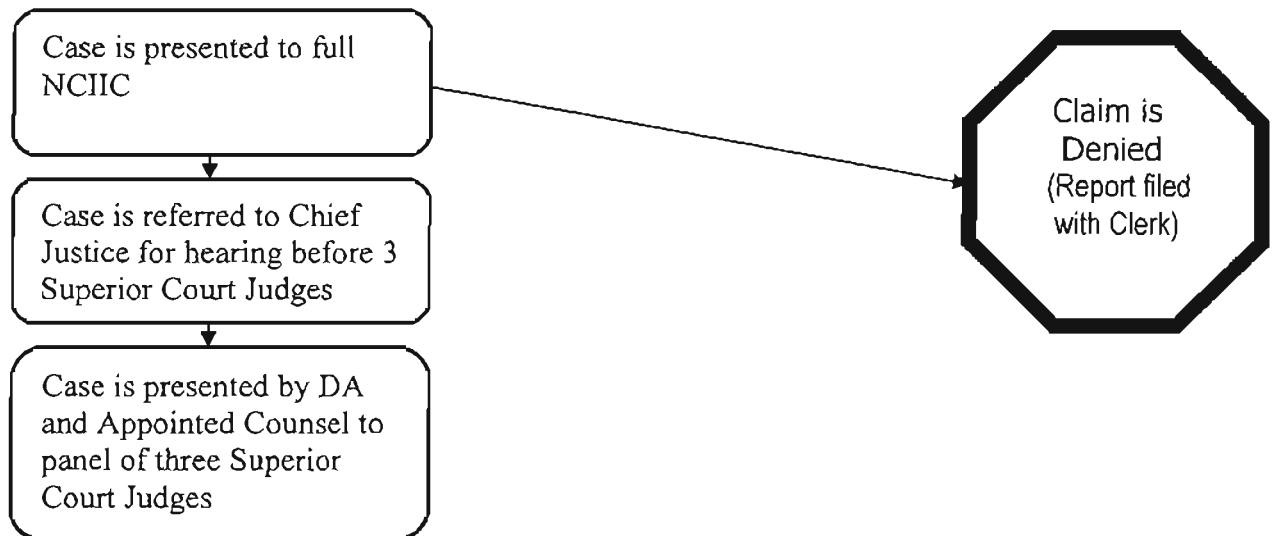


The North Carolina Innocence Inquiry Commission Rules and Procedures

Investigation Begins (Based on statistics from the NC Center on Actual Innocence at least 90% of Claims are rejected before investigation):



Case Presentation:



APPENDIX C

CASES RECEIVED BY THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2007

Number of Cases in Review*	149
Number of Cases Rejected	90
Number of Cases in Investigation	3
Number of Cases in Hearing	1
Total Number of Cases	243

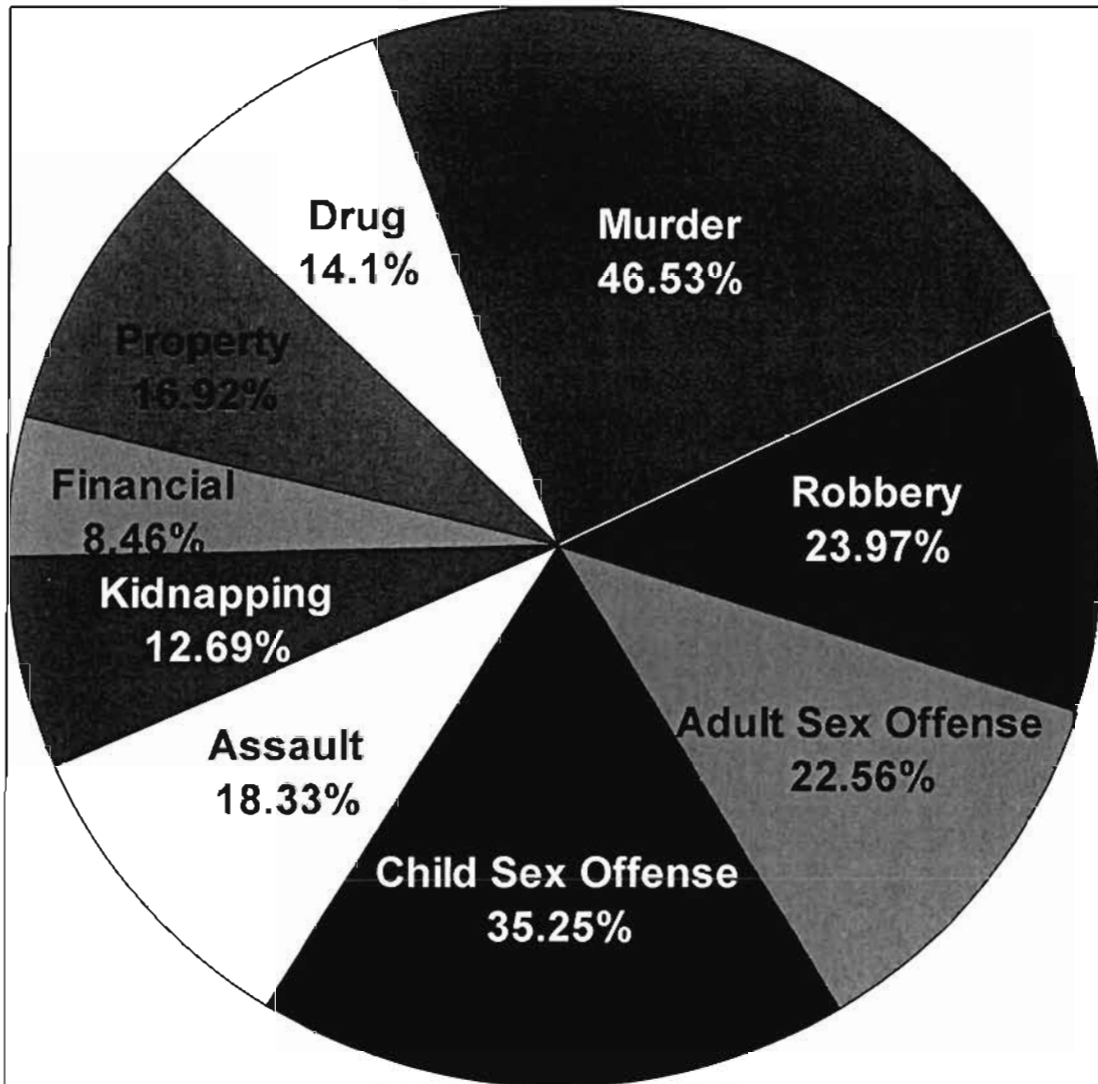
* Seven of these cases are ready to move into the investigative phase when staff resources permit.

APPENDIX D

CASE STATISTICS IN PIE CHARTS

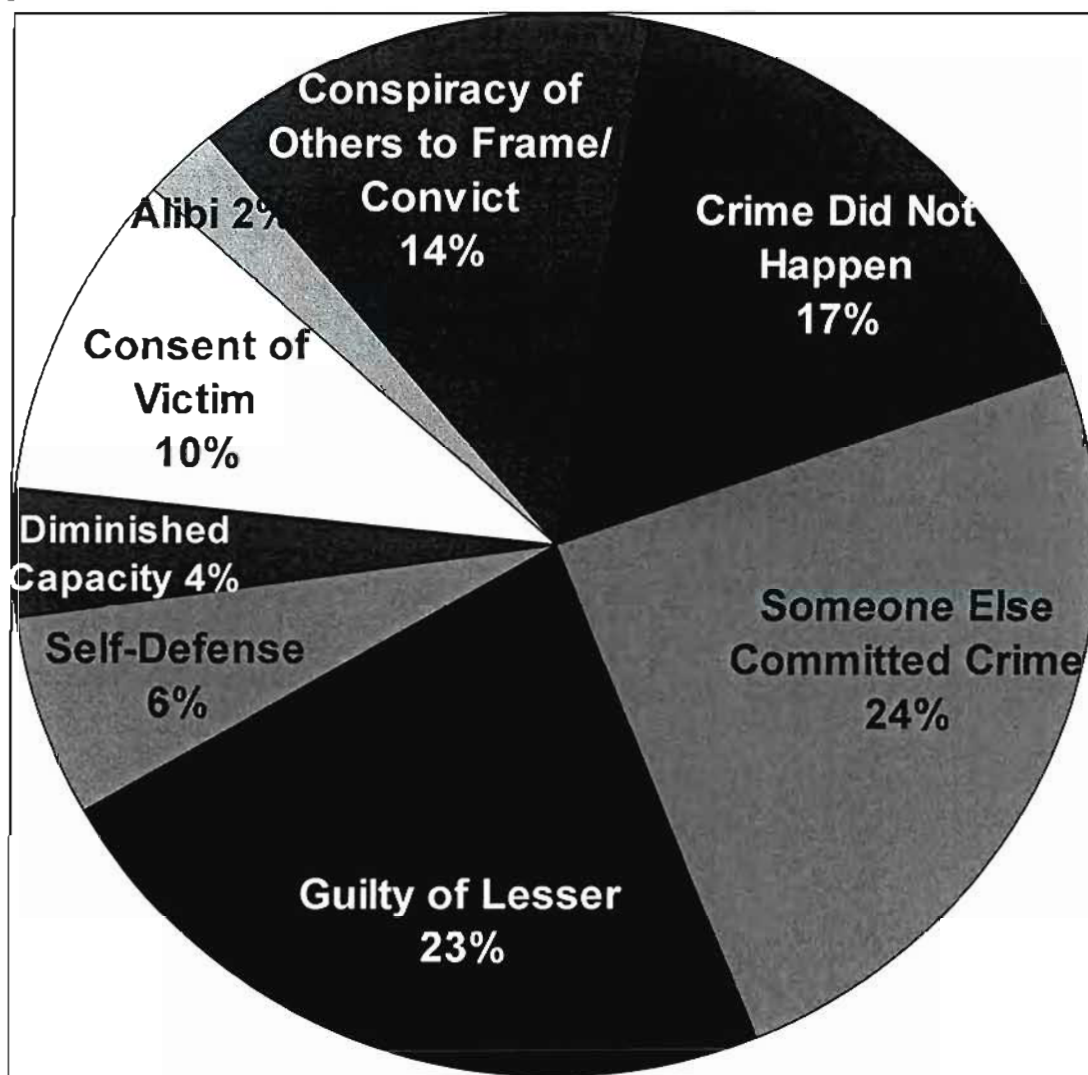
Case Statistics

Applicant's Convictions



- Some applicants were convicted of multiple offenses
- Data pulled from 141 cases total

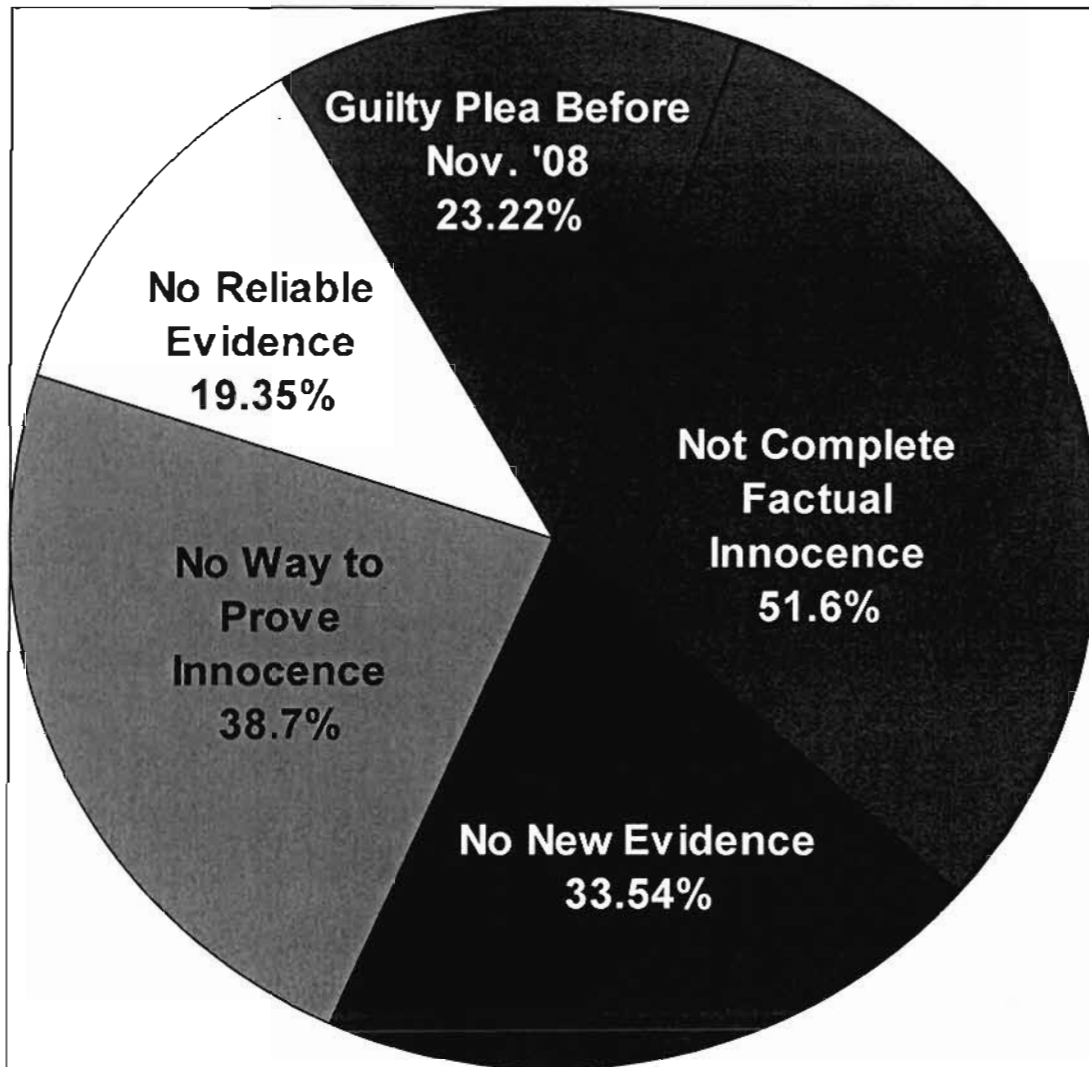
Innocence Claims



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. 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.

- Some applicants made multiple innocence claims
- Data pulled from 100 cases

Reasons for Rejection



- Some cases were rejected for multiple reasons
- Data pulled from all 90 rejected cases

APPENDIX E

PRESS RELEASE FOR CASE OF STATE V. HENRY ARCHIE REEVES. III

For release: Monday December 17, 2007

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

North Carolina Makes Legal History

Innocence Commission Conducts First Hearing and Case is Referred to Three-Judge Panel

RALEIGH, NC - The newly created North Carolina Innocence Inquiry Commission voted in favor of sending its first case on for further review. In a closed hearing on Friday, the Commission considered the case of *State v. Henry Reeves*. Mr. Reeves was convicted of taking indecent liberties with a child in Pitt County in 2001.

In 1999, Henry Reeves, then a police officer, was accused of molesting his daughter. Mr. Reeves pleaded not guilty to the charge and was tried twice in 2001. The first trial resulted in a hung jury and Mr. Reeves was convicted at the second trial. Mr. Reeves served two years in prison.

The Commission's Executive Director, Kendra Montgomery-Blinn, is unable to discuss the specific evidence in this case because it is a pending case. She noted, "This is the type of case that the Commission was created for. It involved a detailed and lengthy investigation that could only have been completed with the subpoena power granted to the Commission." The bulk of the evidence consisted of witnesses who did not testify at trial, but have since come forward.

Ms. Montgomery-Blinn went on to state that she enjoyed working with the Pitt County District Attorney's Office and the Pitt County Sheriff's Department. She remarked, "They were extremely helpful and cooperative with our investigation. The new evidence in this case was not available to them at the time of the trial and this was the first they had heard of it."

APPENDIX F

CHART DEPICTING HOURS SPENT INVESTIGATING CASE OF STATE V. HENRY ARCHIE REEVES, III

This chart illustrates the time the Innocence Commission staff spent on one case investigation. The investigation was a detailed and independent effort where both new evidence of innocence and new evidence of guilt was uncovered and disclosed to the Innocence Commission.

	Executive Director (hours)	Staff Attorney/Investigator (hours)	Administrative Assistant (hours)	Total for All Staff (hours)
Field Investigation	66	12	80	158
In House Investigation	98	18	65	181
General Administration	30	10	30	70
Meeting Preparation	42	41	133	216
Brief Preparation	60	0	12	72
Commission Meeting	12	12	12	36
Total (hours/days)	308 hours/ 39 days approx.	93 hours/ 12 days approx.	332/ 41 days approx.	733/ 92 days approx.

APPENDIX G
AOC BUDGET REQUEST FORMS

DRAFT

2008 - 2009 JUDICIAL BRANCH EXPANSION BUDGET REQUEST

(Submission are due to the Financial Services Division by Monday, February 18, 2008)

Division or Group: North Carolina Innocence Inquiry Commission

Contact Name/Telephone Number: (919) 890-1580

Title of Request or Project: Additional Staff

Priority Rank among Requests or Projects
submitted by Division or Group: 1

List Number of FTEs associated with Request or
Project by Position Classification and Grade: 2

JUSTIFICATION FOR REQUEST OR PROJECT: (Please limit your responses to no more than five sentences each)

What is the purpose of this request or project?

The demands of our caseload have made it impossible for the Commission staff to accept the bulk of cases in need of investigation. In 2007, we received 243 new cases. We currently have three cases in active investigation and one case in the final hearing phase. Seven more cases are ready for investigation, but we do not have the resources to accept them. We rely on a non-profit agency to screen our cases in order to ease our burden, but would like to assume control of all of our cases in the future.

What measures indicate the need for the request or project?

We have retained statistics on our cases and they are attached in a Word document. We have received 243 applications. Of those, we have rejected 90 cases, 149 cases are in screening phase, three cases are in investigation phase, and one case is in the final hearing phase. Seven cases are ready to move to the investigation phase, but are being deferred due to lack of staff resources. Our staff spent a combined 733 hours (or 92 working days) investigating one typical case.

What changes in operations are necessary? When or where will these changes occur?

Additional staff will allow the Commission to investigate more cases, as is our statutory duty per N.C.G.S. 15A, Article 92. We anticipate that additional staff would begin employment in August of 2008. Two more offices in the judicial center would be required and office supplies would be purchased and delivered before the new positions could be filled. Training is primarily "on the job" and new investigations would begin with a week or two of hire.

What result is expected if the request or project is funded?

Additional cases would be moved from review phase to intensive investigation phase. Our duty under N.C. G.S. 15A-1466 is to conduct inquiries and coordinate investigations of claims of factual innocence. We would be able to meet this duty for more cases if we had additional staff able to conduct the investigations. Increased resources would result in more timely resolutions of cases for the convicted person, the victim, the District Attorneys, the Attorney General, the SBI, and Indigent Defense Services.

How does the request or project relate to the goals of the Judicial Branch and the AOC?

Our investigations and case reviews are a statutory duty assigned to us by N.C. G.S. 15A-1466. We can fulfill that duty for more cases with adequate staff. The cases we work on affect other agencies within the Judicial Branch and AOC. Agencies we work with include: The District Attorney's Offices, the Attorney General's Office, the SBI, and Indigent Defense Services. A more efficient resolution in our cases will allow those agencies to close their files and devote their resources to other needs.

**NORTH CAROLINA JUDICIAL BRANCH
POSITION COSTS**

POSITION TITLE: INNOCENCE INQUIRY INVESTIGATOR

01/29/08

FUND	POSITION DESCRIPTION		
1600	DISTRICT ATTORNEYS		
1600	OFFICES - DISTRICT ATTORNEY	2007-08	2008-09
531130	EPA-Reg. Salaries-Approp. Staff Pay Plans (FR)		\$45,495
531511	Social Sec. (7.65%)		\$3,481
531521	Retirement (7.83%)		\$3,563
531561	Hospital Ins. (\$4,052/\$4,157)		\$4,157
533110	General Office Supplies (Includes Camera & Computer Supplies)		\$1,052
532714	Transportation-Ground In-State (1,000 Miles a Mo.)		\$6,060
532721	Lodging - In-State (12 Days @ \$63.75 Daily)		\$765
532724	Meals - In-State (12 Days @ \$34.00 Daily)		\$408
532811	Telecommunications		\$1,622
532812	Telecom. Data Charges - D.P. Lines		\$650
532930	Registration Fees (Con. Ed. & Computer Training)		\$530
535890	Other Administrative Expense		\$500
532430	Maint. Agreements (Telecom. Equip.)		\$52
532447	Maint. Agreements - PC's & Printers		\$104
532448	Maint. Agreements for Personal Computer Software		\$0
534521	Office Equipment (New Positions)		\$7,060 N/R
	Portable Dictation Unit	337	
	Base Level 7 Office Cube Config.	\$5,424	
	Digital Camera + Accessories	1,007	
	File Cabinet	292	
534528	Equip - Communications (Equip., Wiring, & Installation)	\$600	\$600 N/R
534534	Personal Computer & Printer Purchases (Includes Laptop P.C. System, Printer, Mainframe/LAN Connectivity, Internal CD-ROM, & CLR CD's)	1,286	1,286 N/R
534713	Personal Computer Software (Enhanced)	\$1,250	\$1,250 N/R
TOTALS:		\$0	\$78,635

*N/R = NONRECURRING COST

TOTAL 1ST-YEAR COMPUTER COSTS ANNUALIZED = \$4,336.

(Includes Hardware, Software, Supplies, D.P. Lines, & Training)

	2007-08	2008-09
RECURRING/NON-RECURRING COSTS		
RECURRING COSTS DIVISIBLE BY 12	\$0	\$67,253
RECURRING COSTS NOT DIVISIBLE	\$0	\$1,186
TOTAL RECURRING COSTS:	\$0	\$68,439
TOTAL NONRECURRING COSTS:	\$0	\$10,196

STATE FUNDING ALTERNATIVES

2008-09	COST ALTERNATIVES EFFECTIVE DATES	2008-09 POSITION COSTS			2009-10 EST RECURRING
		RECUR	N/R	TOTALS	
	Position Effective 7/1/08	\$68,439	\$10,196	\$78,635	\$68,439
	Position Effective 8/1/08	\$62,837	\$10,196	\$73,033	\$68,439
	Position Effective 9/1/08	\$57,233	\$10,196	\$67,429	\$68,439
	Position Effective 10/1/08	\$51,628	\$10,196	\$61,824	\$68,439
	Position Effective 11/1/08	\$46,024	\$10,196	\$56,220	\$68,439
	Position Effective 12/1/08	\$40,420	\$10,196	\$50,616	\$68,439
	Position Effective 1/1/09	\$34,815	\$10,196	\$45,011	\$68,439
	Position Effective 2/1/09	\$29,212	\$10,196	\$39,408	\$68,439
	Position Effective 3/1/09	\$23,606	\$10,196	\$33,802	\$68,439
	Position Effective 4/1/09	\$18,003	\$10,196	\$28,199	\$68,439
	Position Effective 5/1/09	\$12,399	\$10,196	\$22,595	\$68,439
	Position Effective 6/1/09	\$6,795	\$10,196	\$16,991	\$68,439

Note: Other effective date cost alternatives can be computed upon request.

POSITION TITLE: SECRETARY II
(SECRETARY II FOR INNOCENCE INQUIRY COMMISSION)

01/29/08

FUND	POSITION DESCRIPTION	2007-08	2008-09
1100	ADMINISTRATION & SERVICES		
531111	EPA-Reg. Salaries - Approp. (Gr. 12)		\$34,584
531511	Social Sec. (7.65%)		\$2,646
531521	Retirement (7.83%)		\$2,708
531561	Hospital Ins. (\$4,052/\$4,157)		\$4,157
533110	General Office Supplies (Includes Computer Supplies)		\$715
532714	Transportation - Ground In-State (Avg. @ 300 miles a mo.)		\$1,818
532721	Lodging - In-State (2 days @ \$63.75 Daily)		\$128
532724	Meals - In-State (2 days @ \$34.00 Daily)		\$68
532811	Telephone Service		\$389
532812	Telecom. Data Charges - D.P. Lines		\$650
532840	Postage/Postage Meter (532840003)		\$460
532930	Registration Fees (Computer Training)		\$500
535890	Other Administrative Expense		\$500
532430	Maint. Agreements (Telecom. Equip.)		\$52
532447	Maint. Agreements - PC's & Printers		\$93
532448	Maint. Agreements for Personal Computer Software		\$0
532523	Rent/Lease - Building & Office (NEW AOC Property Std.)		\$3,630 RECURR
534521	Office Equipment (New Positions)		\$6,489 N/R
	Base Level 7 Office Cube Config.	\$5,424	
	Typewriter	332	
	Side Chair	337	
	Transcriber	322	
	Desk Calculator	74	
534528	Equip - Communications (Equip., Wiring, & Installation)	\$600	\$600 N/R
534534	Personal Computer & Printer Purchases (Includes Desktop P.C. System, Printer, Mainframe/LAN Connectivity, & Installation)	\$915	\$915 N/R
534713	Personal Computer Software	\$500	\$500 N/R
TOTALS:		\$0	\$61,602

*N/R = NONRECURRING COST

TOTAL 1ST-YEAR COMPUTER COSTS ANNUALIZED = \$3,003.

(Includes Hardware, Software, Supplies, D.P. Lines & Training)

2007-08

2008-09

RECURRING/NON-RECURRING COSTS

RECURRING COSTS DIVISIBLE BY 12	\$0	\$51,953
RECURRING COSTS NOT DIVISIBLE	\$0	\$1,145
TOTAL RECURRING COSTS:	\$0	\$53,098

TOTAL NONRECURRING COSTS:

\$0

\$8,504

SECRETARY II (INNOCENCE INQUIRY COMMISSION)

2007-08

2008-09

ESTIMATES OF STATE FUNDING ALTERNATIVES

2008-09	COST ALTERNATIVES EFFECTIVE DATES	2008-09 POSITION COSTS			2009-10 EST RECURRING
		REC'OR	N/R	TOTALS	
	Position Effective 7/1/08	\$53,098	\$8,504	\$61,602	\$53,098
	Position Effective 8/1/08	\$49,075	\$8,504	\$57,579	\$53,098
	Position Effective 9/1/08	\$45,048	\$8,504	\$53,552	\$53,098
	Position Effective 10/1/08	\$41,020	\$8,504	\$49,524	\$53,098
	Position Effective 11/1/08	\$36,994	\$8,504	\$45,498	\$53,098
	Position Effective 12/1/08	\$32,968	\$8,504	\$41,472	\$53,098
	Position Effective 1/1/09	\$28,938	\$8,504	\$37,442	\$53,098
	Position Effective 2/1/09	\$24,915	\$8,504	\$33,419	\$53,098
	Position Effective 3/1/09	\$20,888	\$8,504	\$29,390	\$53,098
	Position Effective 4/1/09	\$16,859	\$8,504	\$25,363	\$53,098
	Position Effective 5/1/09	\$12,833	\$8,504	\$21,337	\$53,098
	Position Effective 6/1/09	\$8,807	\$8,504	\$17,311	\$53,098

Note: Other effective date cost alternatives can be computed upon request.