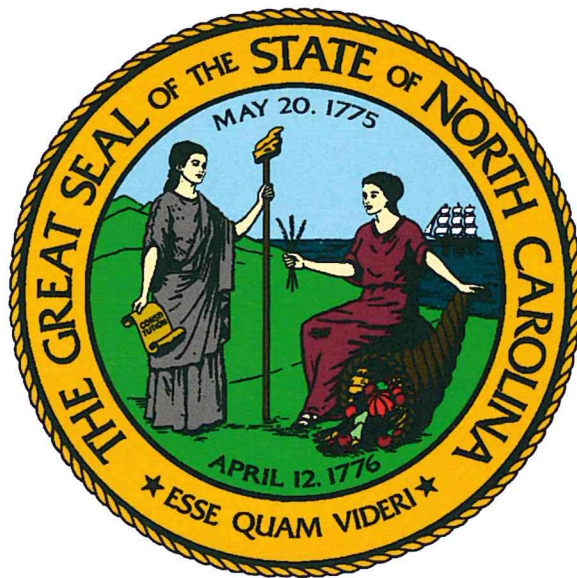


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



2017 ANNUAL REPORT

Lindsey Guice Smith
Executive Director
February 1, 2018

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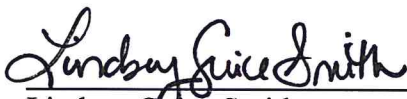
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LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY OF THE 2017-2018 SHORT 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.

2017 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 2017 and the Commission's plans for 2018. Included are statistics for 2017 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 currently 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 two years 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.

In October 2017, Donna Elizabeth "Beth" Tanner joined the Commission as its Associate Director. Ms. Tanner Graduated from UNC-Chapel Hill in 2005 with a Bachelor of Arts in both Romance Languages and English. She graduated from Campbell University Norman Adrian

Wiggins School of Law in 2008 and is admitted to practice law in North Carolina. Prior to joining the Commission, Ms. Tanner was an Assistant General Counsel with the North Carolina Department of Public Safety where she supported the Division of Adult Correction, including Prisons and Community Corrections, as well as Juvenile Justice and the Governor's Crime Commission.

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 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.

II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

A. CASE MANAGEMENT

The Commission received a total of 311 new claims in 2017, up from an average of 194 claims per year in past years.¹ During 2017, the Commission completed its review/investigation and closed all but 33 of those new claims. At the end of 2017, the Commission had a total of 53 active cases in various stages of review/investigation and 32 cases where claims have been made, but claimants had not yet returned the Commission's questionnaire.²

In 2016, through a concentrated effort to increase efficiency and streamline processes at the Commission, the Director and Commission staff worked to reduce the amount of time between when the Commission receives a questionnaire from a claimant and when the Director or Associate Director makes a determination on whether the case meets the statutory case criteria for further review or closes the case. This effort continued throughout 2017. In 2017, the average length of time for this process was 19 days per claim. Although each case is unique and the length of time to fully review a case is not predictable, the streamlining and increased efficiency of this process has allowed Commission staff to focus on further review and investigation of 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 2017.

¹ This increase may in part be attributed to an educational flyer that the Commission had posted in all North Carolina prisons detailing the Commission and requirements for review.

² See Commission Flow Chart for explanation of Commission phases. Flow Chart can be found at: <http://innocencecommission-nc.gov/resources/>

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 initially ran 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. In October 2017, the Commission received a one-year no-cost extension of its grant from NIJ, allowing the Commission to use remaining funding through December 31, 2018.

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 26 cases. In 2017, 23 searches for evidence were conducted under the grant and DNA analysis was conducted on 55 pieces of evidence.

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 311 new innocence claims. Since it began operating in 2007, the Commission has received 2,314 claims of actual innocence. As of December 31, 2017, 2,229 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 11 hearings. Ten individuals have been exonerated by a post commission three-judge panel or had their convictions vacated through a Motion for Appropriate Relief based on the Commission's investigation of their claim.³ The public records documents for each case presented at Commission hearing or presented at a Motion for Appropriate Relief hearing based on a Commission investigation, are available on the Commission's website at: www.innocencecommission-nc.gov/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

³ Of the eleven cases that have been presented at Commission hearings, 9 were sent forward to a three-judge panel and 2 were not. Of the 9 sent forward to a three-judge panel, 6 resulted in the exonerations of 7 individuals (one co-defendant case). Two cases sent forward to a three-judge panel resulted in a denial of relief by the three-judge panel. 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. These three individuals chose to pursue a Motion for Appropriate Relief after the Commission's investigation of their claim but before the Commission could move forward with a hearing on their claim. Additionally three other individuals (one case; 3 co-defendants) have had their convictions vacated through Motions for Appropriate Relief after denial of relief by the Commission at a Commission hearing.

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

The Commission began operation in 2007

2314

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

2229

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

311

NUMBER OF CLAIMS RECEIVED IN 2017

11

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION*

10

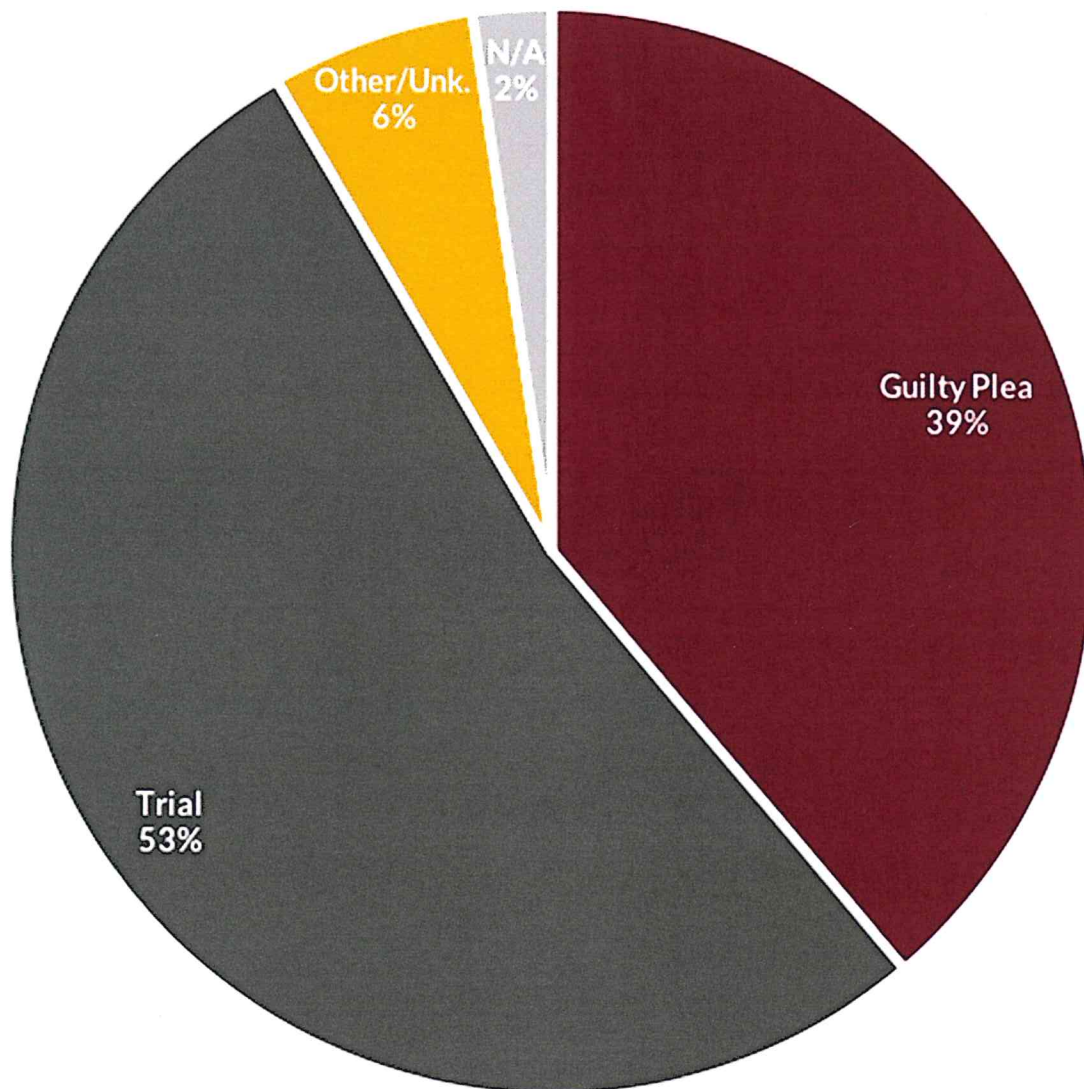
EXONERATIONS**

Data compiled December 31, 2017

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

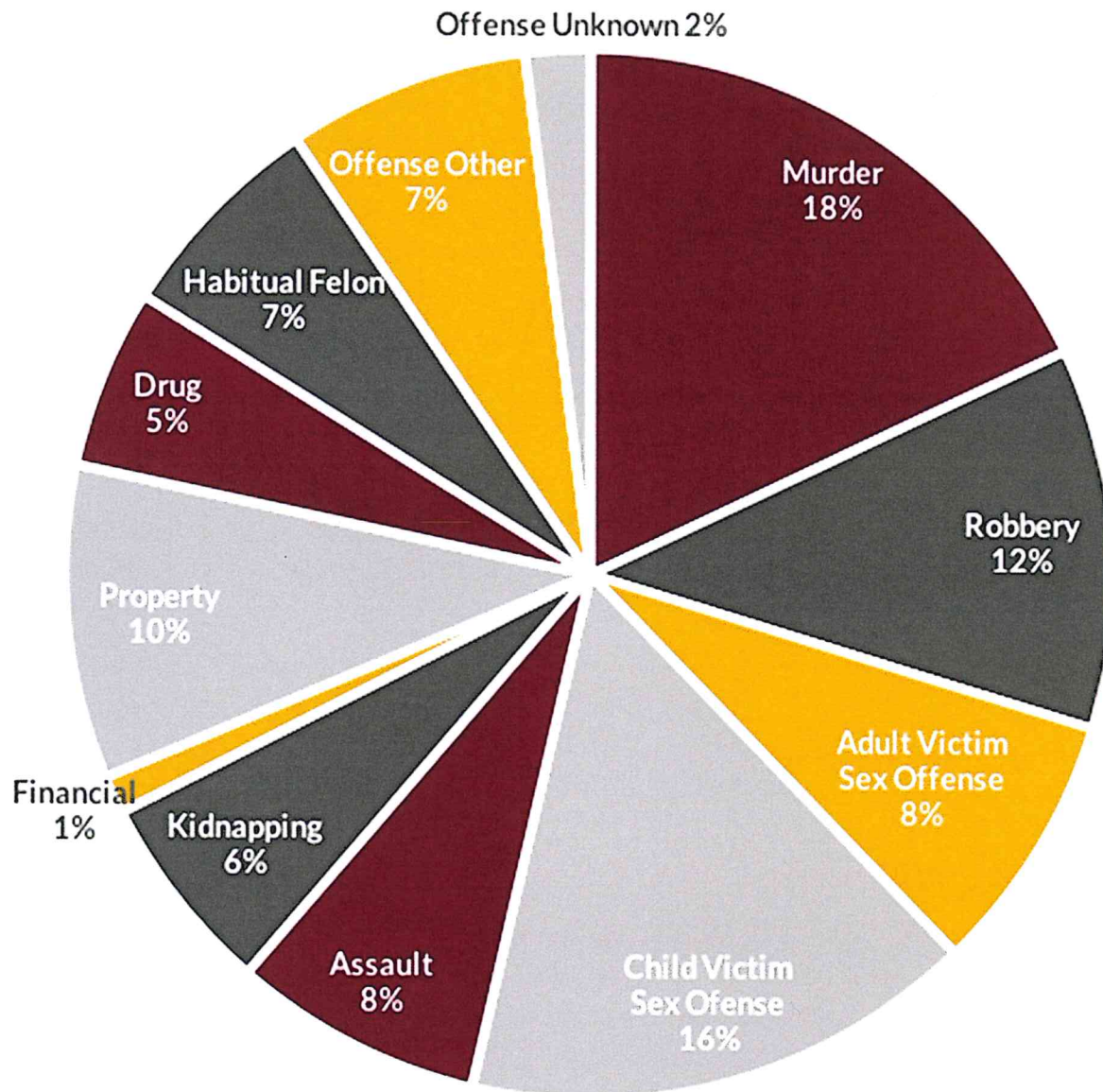
**Ten individuals have been exonerated as a result of the Commission's investigations.

Convictions Resulting from Trial or Guilty Plea



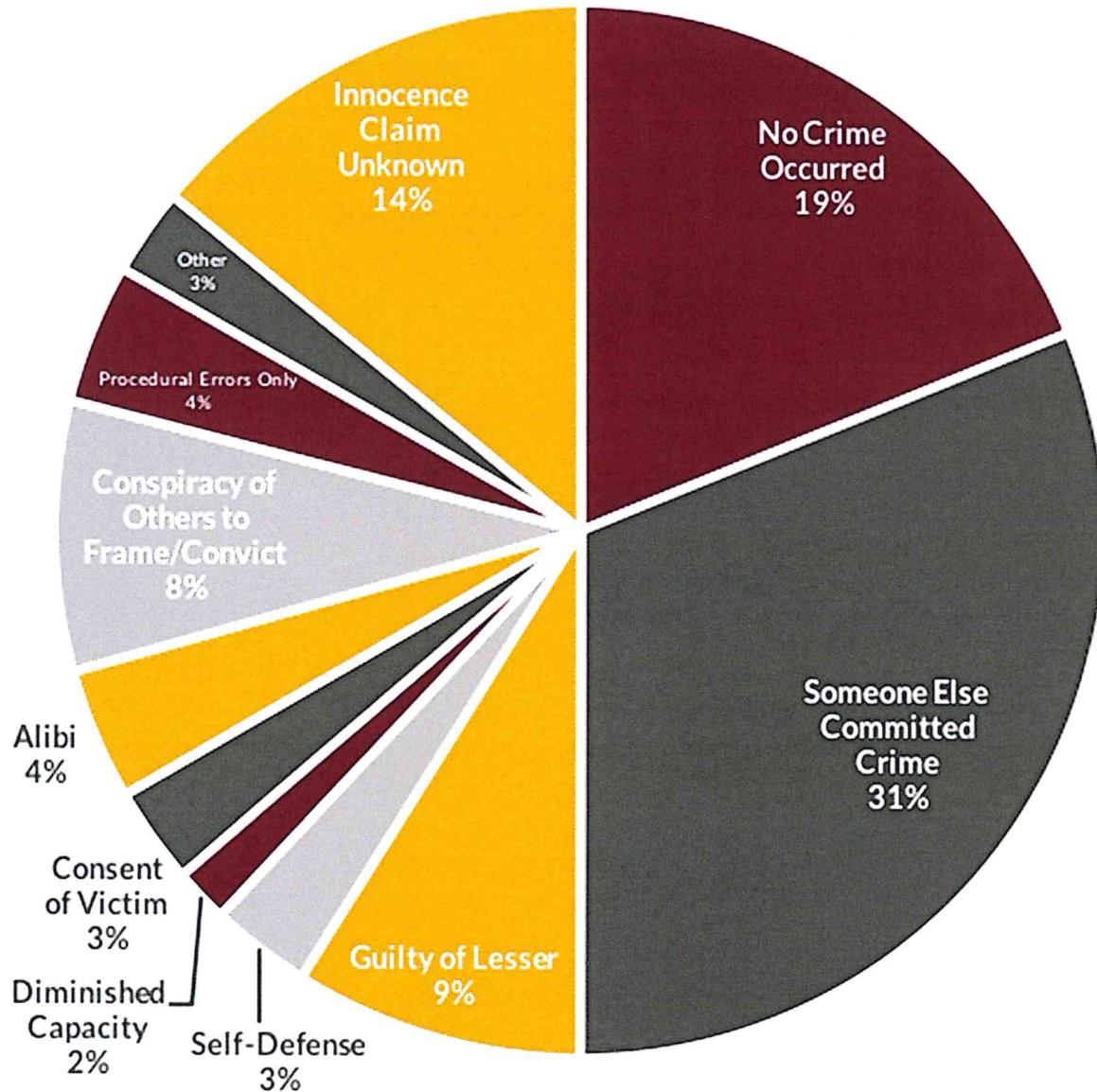
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

Applicants' Convictions



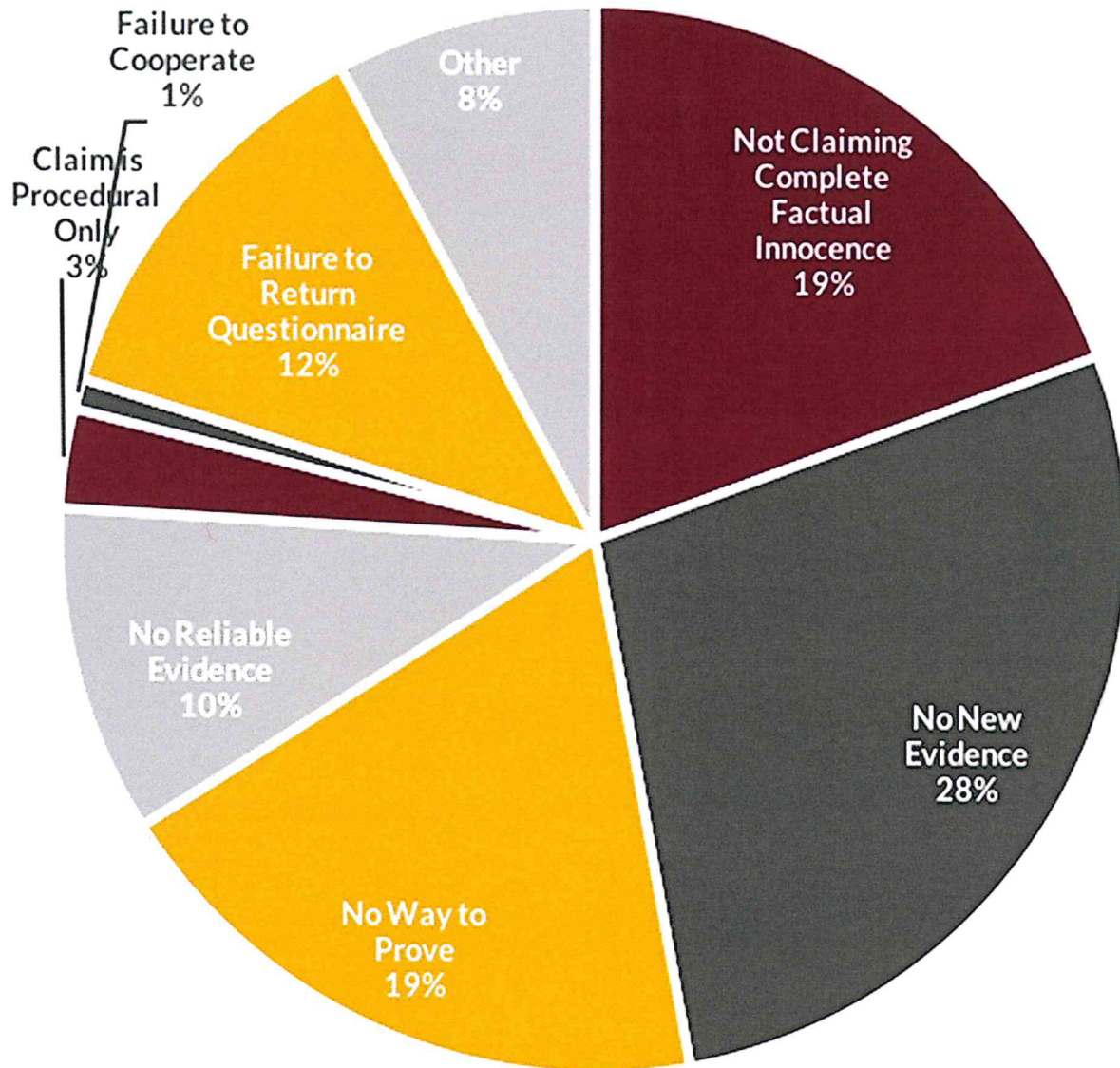
- Some applicants were convicted of multiple offenses.

Applicants' Innocence Claims



- Some applicants made multiple innocence claims.
- 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 2017, the Commission had over 60 cases that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of over 75,000 pages of files and trial transcripts, over 100 interviews, 23 requests/searches for evidence, and 55 pieces of evidence submitted for DNA analysis.

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. These conversations and searches have given the Commission and the agencies the Commission is working with, the opportunity to address the best practices for handling evidence. Moreover, the Commission has successfully located physical evidence and/or files in 26 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 2017, the Commission continued to successfully locate files and evidence.

On November 29, 2017, the Commission held a hearing in the case of State v. Israel Grant. At the conclusion of all evidence, the Commissioners voted unanimously 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.⁴

⁴ State v. Grant is a non-DNA case that was based on recantations by the Victims in the case. Public records documents available for this case can be found at: <http://innocencecommission-nc.gov/cases/state-v-grant/>.

E. OTHER 2017 ACTIVITIES AND ACCOMPLISHMENTS

In 2017, 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 staff continues to review and investigate cases in a neutral and thorough manner.

In 2017, the Commission also worked with the North Carolina Department of Natural and Cultural Resources to include Commission documents, including the Commission's confidential investigation files, on the State's Retention Schedule. Although the Commission had not previously been on the retention schedule, the Commission's practice has been to maintain its records. Working with the North Carolina Department of Natural and Cultural Resources also allowed the Commission to open up a conversation about other state agencies or groups who do not appear on the schedule, but whose records could be important to post-conviction work. In 2018, the Commission plans to continue working with NC DNCR to establish a confidential storage area for the Commission's files in order to best utilize the Commission's physical space.

The Commission's Director and staff continued to make information about the Commission publicly available. One way that the Director does this is by publishing public information on the Commission's website. In 2017 the Commission launched a new website that provides information in a concise and visually appealing format. This website overhaul was long overdue and brought the Commission's website up-to-date by using the most current technology. The new website allows the Commission's Director to submit content to the webmaster for publication on the same day and reduces the overall costs of updating and maintaining the

website. The website also allows the Commission to run analytics that show information on website traffic. The website can be viewed at <http://innocencecommission-nc.gov/>.

The Director also provided information to agencies and individuals in other states and nations who are considering creating a commission modeled after North Carolina's. For the second year, the Commission's Director was invited to speak to scholars at the US-Asia Law Institute of NYU Law School who were studying wrongful convictions and the various models for handling wrongful convictions.

The Commission's Director and Associate Director also gave presentations to governmental agencies, civic groups, educational institutions, and the public. In 2017, presentations were given to: Chief Justice Martin and staff, NC State University, Campbell University, Elon University, the North Carolina Judicial Fellows, North Carolina Department of Public Safety Prison Region Directors, the North Carolina Association of Property and Evidence, New York University Law U.S.-Asia Law Institute, Catawba Valley Community College, and Johnston Community College. Additionally, the Commission's Director and Associate Director routinely participated in interviews and answered questions about the Commission process with members of the General Assembly, media outlets, writers, legal scholars, students, and various organizations and agencies. Given the Commission's training and experience, law enforcement agencies have reached out to the Commission for assistance with their evidence storage rooms and evidence questions.

III. AUDIT 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 2017, the Commission's second 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 26, 2017. The Commission was evaluated in several risk categories, including evidence, grant compliance, relationships, accounting, confidentiality, and human resources. The Commission has been 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 43% of those audited by AOC since 2015. The Commission will undergo another audit in early 2018 and anticipates that the results will be similar.

IV. IMPACT OF 2016 LEGISLATIVE CHANGES

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. Throughout 2017, the Commission assessed the impact of these changes.

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, offenses requiring registry in the sex offender database, and all A-E felonies.

Between January 1, 2017 and December 31, 2017, the Commission received 18 claims directly from claimants which the Commission had to reject as a result of this law. The Commission received 311 claims between January 1, 2017 and December 31, 2017. This is a 5.8% reduction in the Commission's caseload. This change did not have a significant impact in reducing the Commission's caseload. Further, through increased efficiencies in streamlining the process by which cases are reviewed, the Commission has been able to reduce the amount of time it takes for a decision to be made as to whether a case will be closed or will be moved forward for further review. The Commission will continue to monitor this 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 or her 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 may be required to ensure that the claimant understands the rights he or she is 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, awaiting appointment of counsel, attorneys scheduling meetings with claimants, and awaiting receipt of 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, 2017, the Commission has had 12 cases that were affected by this process.⁵ Three involved cases where the claimant already had counsel who was able to advise the claimant regarding the waiver. This process took on average 27 days from the time the Commission provided the waiver to the attorney until the Commission received the waiver from the attorney or learned that the claimant wished to have the Commission discontinue review of the claim. In one of the three cases, the Commission was informed by the claimant's attorney that the claimant did not wish for the Commission to proceed with his case.

As of December 31, 2017, waivers had been returned in 8 of the remaining 9 cases. On average this process took 91 days. The cases ranged in length from 53 days to 136 days. The final case has been outstanding for 146 days⁶. As described above, waivers are now required

⁵ Prior to August 1, 2016, the Commission limited the waiver process to cases moving into Formal Inquiry and had only obtained waivers 21 times since the Commission began operation in 2007.

⁶ The waiver in this case was returned 1/29/2018, thus this process took 175 days in this case.

prior to the Commission conducting an interview with a claimant and/or conducting DNA testing in a case. When the Commission makes the decision to interview a claimant or conduct DNA testing, the waiver is sent out and the Commission can do very little, if any, work on the case during this time period. The delay caused by this change is significant.

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 had one claimant⁷ who chose to have the Commission discontinue its review of his claim and choose not 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 was originally scheduled to end at the end of 2017. Had the Commission not been able to obtain a single one-year no-cost extension, extending that deadline to the end of 2018, this change would have prevented the Commission from successfully completing testing in at least three cases. The Commission's ability to use the remaining funds for DNA testing prior to the end of 2018 continues to be 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.

⁷ See page 17 of this report.

V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2018

A. PLANS FOR 2018

In 2018, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing and investigating innocence claims in the most neutral, detailed and efficient manner possible.

The Commission will be working with others in the criminal justice system to determine whether any legislation should be proposed in the regular session in 2019 to improve the Commission by increasing efficiency, while maintaining the intended purpose of the Commission and the scope of its authority. The Commission's Director and Associate Director will be available to members of the General Assembly throughout the 2018 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.

If the National Institute for Justice releases a solicitation for a 2018 DNA Testing Assistance grant as it has in past years, the Commission will apply for this grant again. As our 2015 Grant expires at the end of 2018, securing another grant to assist with the costs associated with evidence searches and DNA testing, as well as personnel to review and investigate those cases, is of high importance to the Commission. The Commission plans to assess whether any partnerships with others in the criminal justice community can be made in applying for these funds.

Given that the 2015 Grant expires at the end of 2018 and that additional funding for a future grant is not guaranteed, the Commission plans to submit cases to the North Carolina State Crime Laboratory (NCSCL) in 2018 in an effort to assess whether the improvements made to the NCSCL over the last several years will allow the NCSCL to meet the Commission's testing needs and be a viable option for testing in the future. The NCSCL does not charge the Commission for DNA testing; however, past policies of the NCSCL, combined with NCSCL's backlog, and the lack of the most advanced testing types and technologies, have all prevented the Commission from testing at the NCSCL for the past several years. In 2017, the Commission staff met with the Director of the NCSCL and received an update on the current status of the NCSCL which included information that the timeframe for testing at the NCSCL is now comparable with that of private laboratories and that additional testing methodologies and kits have been added to the testing the NCSCL is able to conduct. The lab Director expressed a desire for the Commission to use the NCSCL for post-conviction DNA testing. Using the NCSCL where possible will help the Commission most efficiently use funds from its 2015 Grant and will help the Commission assess its needs for any future funding requests.

During 2018, the Commission plans to assess its current budget and determine whether any additional funding requests need to be made to the General Assembly in 2019. The Commission also plans to look for, and where appropriate, apply for, additional grant funding as allowed by N.C.G.S. § 15A-1466(6). Securing additional grant funding can assist the Commission in meeting its objectives while allowing the Commission to narrowly tailor any additional funding requests to the General Assembly in 2019. The Commission also plans to critically assess areas in which it may be beneficial to have legislation drafted that can assist the

Commission in increasing efficiency, so as to reduce unnecessary hurdles in effectively and efficiently investigating claims of innocence as the Commission's enabling statute directs.

Finally, the Commission's Director and Associate Director plan to offer presentations to a broader audience so as to further educate the criminal justice community, agencies, attorneys, and members of the public on the Commission and its role in the criminal justice community.

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 2017 Certified Appropriation from the General Assembly is \$567,776. 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. The Commission plans to assess its current budget and determine whether any additional funding requests need to be made to the General Assembly in 2019 in order to meet its statutory mandate to investigate and determine credible claims of factual innocence. Additionally, should the Commission not receive funding through a federal grant, 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 over 200 claims 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.

As described above, the Commission maintains a website that provides the public with general information about the Commission. The website may be viewed at:

<http://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.