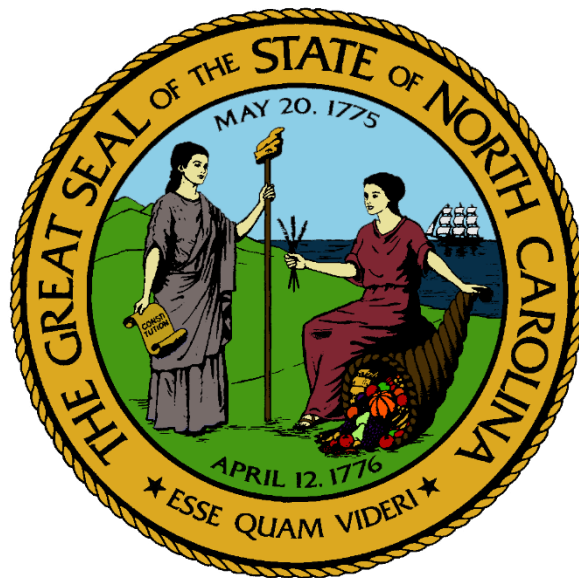
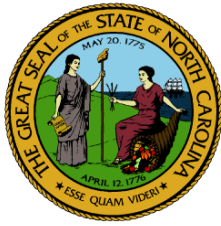


# THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



## 2019 ANNUAL REPORT

Lindsey Guice Smith  
Executive Director  
January 30, 2020



# THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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**A Neutral State Agency**  
Charged with Investigating Post-Conviction Claims of Innocence

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## LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY OF THE 2019-2020 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,



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Lindsey Guice Smith  
Executive Director  
North Carolina Innocence Inquiry Commission  
(919) 890-1580  
[NCIIC@nccourts.org](mailto:NCIIC@nccourts.org)

## **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 by February 1 of each year.

## **2019 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 2019 and the Commission's plans for 2020. Included are statistics for 2019 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 has worked for the Commission since January 2010 and has been Executive Director since October 2015.

In March 2019, Ms. Guice Smith was appointed to the Board of Directors for the International Association of Property and Evidence (IAPE). IAPE is a leader in the evidence field in providing training to evidence custodians and developing and distributing best practices in the industry. In November 2019, Ms. Guice Smith was elected Secretary of IAPE. In late 2019, Ms. Guice Smith was asked to be a part of the NC Clerk of Court's Workgroup on Handling, Storage, Preservation and Disposal of Evidence and was asked to serve as a subject matter expert to this group.

Since becoming Executive 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. Ms. Guice Smith has also made a concentrated effort to raise awareness about the Commission and to educate criminal justice partners on the success and sustainability of the Commission model. This includes education at the local, state, national and international level.

Donna Elizabeth “Beth” Tanner is the Commission’s 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. Ms. Tanner is also admitted to practice in each federal district in North Carolina and before the 4th Circuit Court of Appeals. Ms. Tanner started her career doing civil defense litigation with Cranfill Sumner & Hartzog, LLC. Ms. Tanner then represented the Department of Public Safety in both federal and state court as an Assistant Attorney General. Just prior to joining the Commission, Ms. Tanner was 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. Ms. Tanner’s role at the Commission includes representing the Commission in litigation.

In 2019, Ms. Tanner was recognized as one of Lawyers Weekly’s Leaders in the Law. Additionally, Ms. Tanner is a recipient of a scholarship from Campbell Law for the Campbell-Nottingham Law joint international LLM program. Ms. Tanner’s application, that resulted in a scholarship, was based on her plan to study topics related to the Commission’s work.

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.

Photographs of Commission staff and Commissioners can be found on the following pages. Biographies for the Commission staff and Commissioners can be found on the Commission's webpage at [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).



## Innocence Commission Staff



**Lindsey Guice Smith – Executive Director**

[Lindsey.G.Smith@nccourts.org](mailto:Lindsey.G.Smith@nccourts.org)



**Beth Tanner – Associate Director**

[Donna.E.Tanner@nccourts.org](mailto:Donna.E.Tanner@nccourts.org)



**Brian Ziegler – Staff Attorney**



**Julie Bridenstine – Staff Attorney**



**Catherine Matoian – Grant Staff Attorney**



**Mackenzie Myers – Grant Legal Investigator**



**Jason Fitts – Case Coordinator**



**Rena Cameron – Administrative Secretary**

## Commissioners



**The Honorable  
Anna Mills Wagoner  
Commission Chair**



**The Honorable  
Thomas H. Lock  
Alternate Chair**



**Seth Edwards  
Prosecuting Attorney**



**Michael A. Grace  
Criminal Defense  
Attorney**



**Sheriff Kevin Frye  
Sheriff**



**Sheriff Bobby  
Kimbrough  
Alternate Sheriff**



**Ashley Welch  
Alternate Prosecuting  
Attorney**



**Robin Colbert  
Victim Advocate**



**Frank Perry  
Public Member**



**Deborah Newton  
Alternate Discretionary  
Member II**



**Luther Johnson Britt III  
Alternate Criminal  
Defense Lawyer**



**Scott Bass  
Alternate Victim  
Advocate**



**Rick Glazier  
Discretionary Member  
II**



**Melissa Essary  
Alternate Discretionary  
Member I**



**Immanuel Jarvis  
Alternate Public  
Member**



**John Boswell  
Discretionary Member I**

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

### **A. CASE MANAGEMENT**

The Commission received a total of 226 new claims in 2019, bringing the Commission's yearly average to 212 claims per year. During 2019, the Commission completed its review/investigation and closed all but 51 of those new claims. At the end of 2019, the Commission had a total of 45 active cases in various stages of review/investigation and 29 cases where claims have been made, but claimants had not yet returned the Commission's questionnaire.<sup>1</sup>

Beginning 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, 2018, and 2019. In 2017, the average length of time for this process was 19 days per claim. In 2018, the average length of time for this process was 18 days per claim. In 2019, the average length of time for this process was 20 days per claim.<sup>2</sup> 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

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<sup>1</sup> See Commission Flow Chart for explanation of Commission phases. Flow Chart can be found at: <http://innocencecommission-nc.gov/resources/>

<sup>2</sup> In June 2019 the Commission's Administrative Assistant left the Commission to become a certified court reporter. Although the Commission hired a new Administrative Assistant quickly, the position was vacant for approximately 2 months. During this time period, the Commission's Case Coordinator took over all of the duties of the Administrative Assistant in addition to his own duties. Both the Administrative Assistant and Case Coordinator share the responsibility of completing the Initial Review Memos. The slight increase in 2019 can be attributed to this vacancy.

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 over the last three years.

As mentioned above, after reducing and stabilizing the amount of time for the Commission's initial review process, in 2018 and 2019, the Director shifted the focus to moving cases through the further review, investigation, and formal inquiry processes in a more timely and efficient manner. At the beginning of 2018, the Commission had seven cases that had been at the Commission for more than five years. At the end of 2019, only one case remained that had been at the Commission for more than five years. That case is expected to be completed in early 2020. Further, at the end of 2019, the Commission had only two additional cases that had been at the Commission for more than 3 years. Both of those cases are anticipated to be completed by the end of 2020. All other cases at the Commission at the end of 2019 were less than two years old.

While true that post-conviction innocence work, in the broader sense, often takes a decade or more to see resolution, the Commission has instituted processes and procedures that ensure that the Commission is reviewing innocence claims in a timely and efficient manner. Although each case is different and the circumstances of a case may affect the amount of time a case takes to be fully investigated by Commission staff, the Director is confident that the Commission is in a position to effectively and efficiently evaluate innocence claims as was the intent of the General Assembly when it created the Commission in 2006.

## B. GRANT FUNDING

In September 2018, the Commission was awarded a two-year grant in the amount of \$531,894 through the National Institute of Justice's (NIJ) FY 18 Postconviction Testing of DNA Evidence Program. This funding began on January 1, 2019 and runs through December 31, 2020. For violent felonies where the convicted 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, forensic experts, and DNA testing.

In September 2019, the Commission was awarded another two-year grant in the amount of \$180,001 through the National Institute of Justice's (NIJ) FY 19 Postconviction Testing of DNA Evidence Program. This funding begins on January 1, 2020 and runs through December 31, 2021. In 2018, the Commission's Director served on the NCDPS Sexual Assault Evidence Collection Kit Working Group. As a result of the work of that working group, legislation was proposed and ultimately signed into law requiring DNA testing on untested rape kits, commonly referred to as the Survivor Act. The Commission narrowly tailored the scope of this grant to cover testing of untested rape kits where the convicted person is claiming innocence. This grant was sought to specifically assist the state with testing of this subset of untested rape kits in furtherance of the Survivor Act. Although the Commission sought additional funding through this grant that would also cover staff members for implementing this grant, only funding for evidence searches, travel, training, supplies, forensic experts, and DNA testing was provided. The Commission looks forward to working closely with its law enforcement partners across North Carolina to implement this program.

The Commission has received funding continuously from NIJ since 2010, receiving five grants, totaling over \$2.5 million, for post-conviction DNA related cases. Since that time, nine

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. There are currently four cases pending before post-commission three-judge panels that were investigated under these grants. Furthermore, the Commission has also had DNA testing in eight cases that supported the conviction, and located files and/or evidence which had previously been declared missing, lost or destroyed in 28 cases. In 2019, 19 searches for evidence were conducted under the grant and 40 pieces of evidence analyzed for DNA testing.

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 has a strong working relationship with the NC State Crime Laboratory (NCSCCL) and uses NCSCCL, when possible, for DNA and other forensic testing, as well as to upload DNA profiles to the Combined DNA Index System (CODIS). The Commission will continue to apply for additional grant funding to offset the costs associated with investigating cases, conducting DNA testing, and evidence searches.

In 2019, the Commission also applied for a Victims of Crime Act (VOCA) grant from the Governor's Crime Commission for the first time. The Commission was awarded a \$188,000 VOCA grant aimed at hiring a Victim Services Coordinator, providing victim-centered training to Commission staff, and developing an educational program related to post-conviction Victim services. This grant will assist the Commission in providing additional Victim services to both primary and secondary Victims with whom the Commission comes in contact through our work.

Although the Commission is statutorily required to notify Victims when a case moves into Formal Inquiry, when a case is called for hearing, and of the results of any hearing, additional this funding is necessary to adequately address the needs of these often times overlooked Victims in the post-conviction context. The grant is a two-year grant running from October 1, 2019 through September 30, 2021. In late 2019, Commission staff was able to attend the National Center for Victims of Crime training in Denver, CO. The Commission is currently in the process of hiring its very first Victim Services Coordinator and looks forward to developing this program in 2020.

### C. CASE STATISTICS

In 2019, the Commission received a total of 226 new innocence claims. Since it began operating in 2007, the Commission has received 2,758 claims of actual innocence. As of December 31, 2019, 2,688 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 15 hearings.<sup>3</sup> Twelve 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.<sup>4</sup> The public records documents for each case presented at a Commission hearing or presented at a Motion for Appropriate Relief hearing based on a

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<sup>3</sup> One of the hearings involved two separate and unrelated convictions of one claimant; thus 16 cases have been heard.

<sup>4</sup> Of the sixteen cases that have been presented at Commission hearings, 13 were sent forward to a three-judge panel and 3 were not. Of the 13 sent forward to a three-judge panel, 8 resulted in the exonerations of 9 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. Three cases sent forward to a three-judge panel are still pending a hearing before the panel. Additionally, 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. 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.

Commission investigation, are available on the Commission's website at:

[www.innocencecommission-nc.gov/cases.html](http://www.innocencecommission-nc.gov/cases.html).

Throughout the Commission process, statistics are maintained for each case. These statistics reflect the types of crime at issue, the basis of the innocence claims submitted, and the reasons for rejection. The statistics show that the types of convictions reviewed by the Commission vary, with murder and sex offenses being the most common. Twenty-eight percent of cases are rejected by the Commission because the evidence was heard by the jury or was available at the time of plea. The Commission can only consider cases in which new evidence of innocence is now available. Included on the following five pages is a compilation of statistical data for the Commission. Further statistical data is available from the Commission's Director upon request.



# CASE STATISTICS

The Commission began operation in 2007

2758

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

2688

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

226

NUMBER OF CLAIMS RECEIVED IN 2019

15

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION\*

12

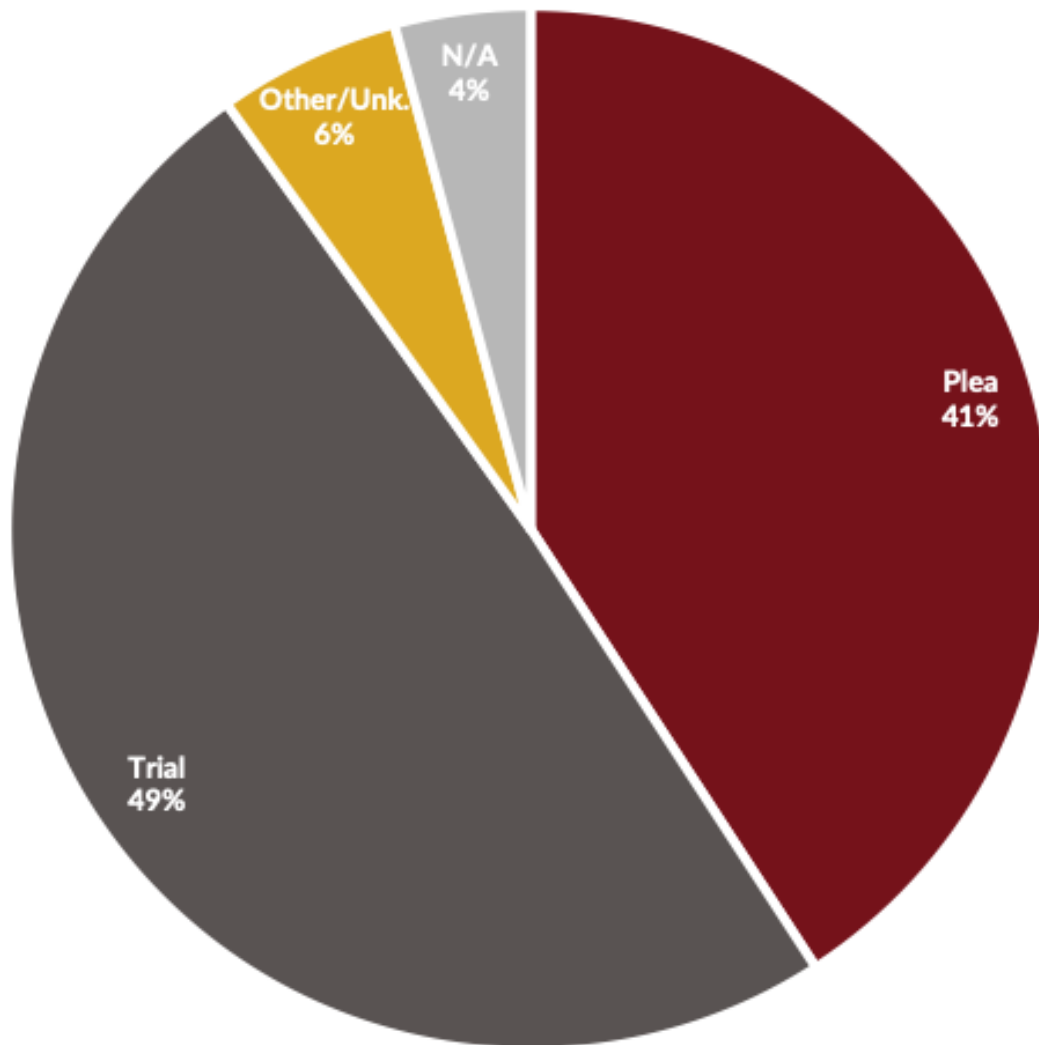
EXONERATIONS\*\*

**Data compiled December 31, 2019**

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

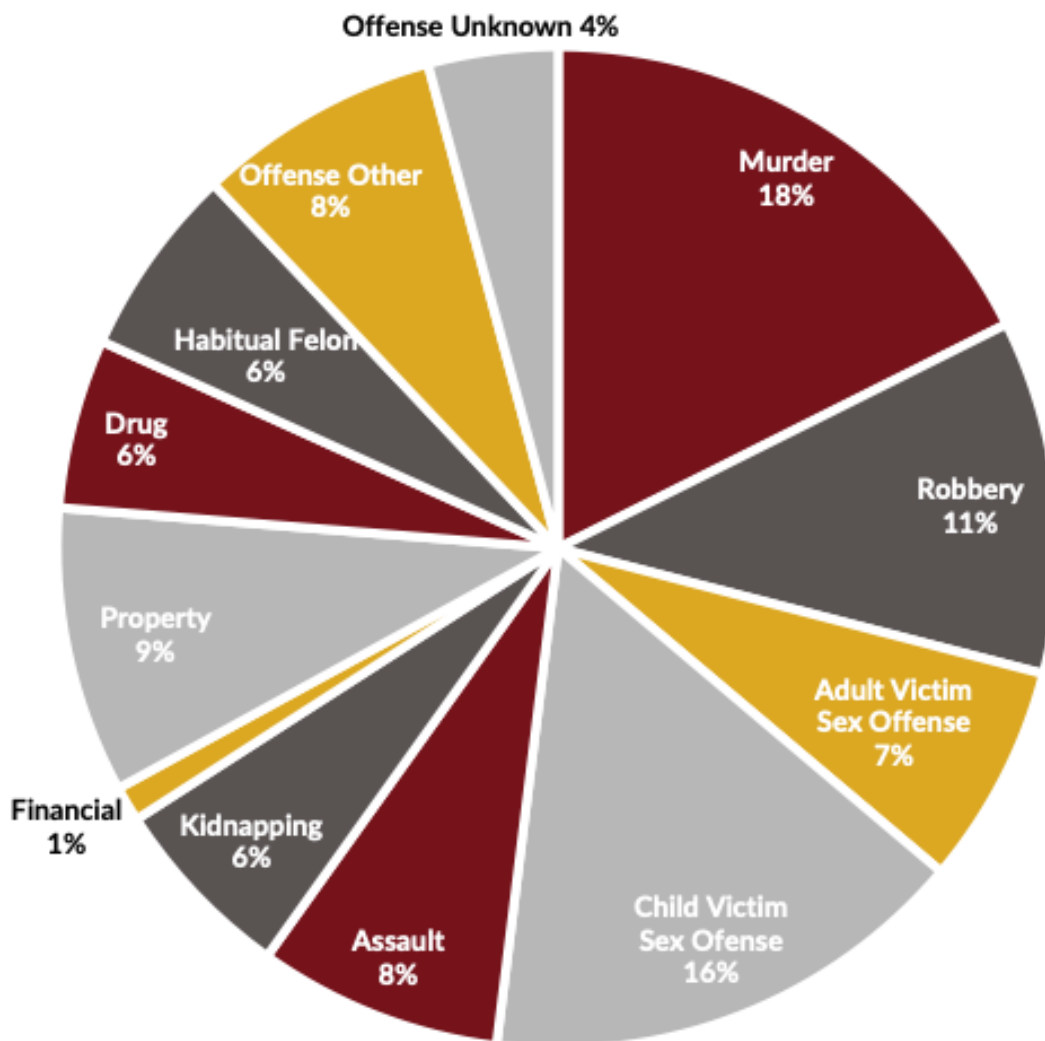
\*\*Twelve individuals have been exonerated as a result of the Commission's investigations. Currently, there are three cases that have been heard by the Commission that are pending a three judge panel: *State v. Spruill/Jones*, *State v. Williams*, and *State v. Evans*.

# Convictions Resulting from Trial or Plea



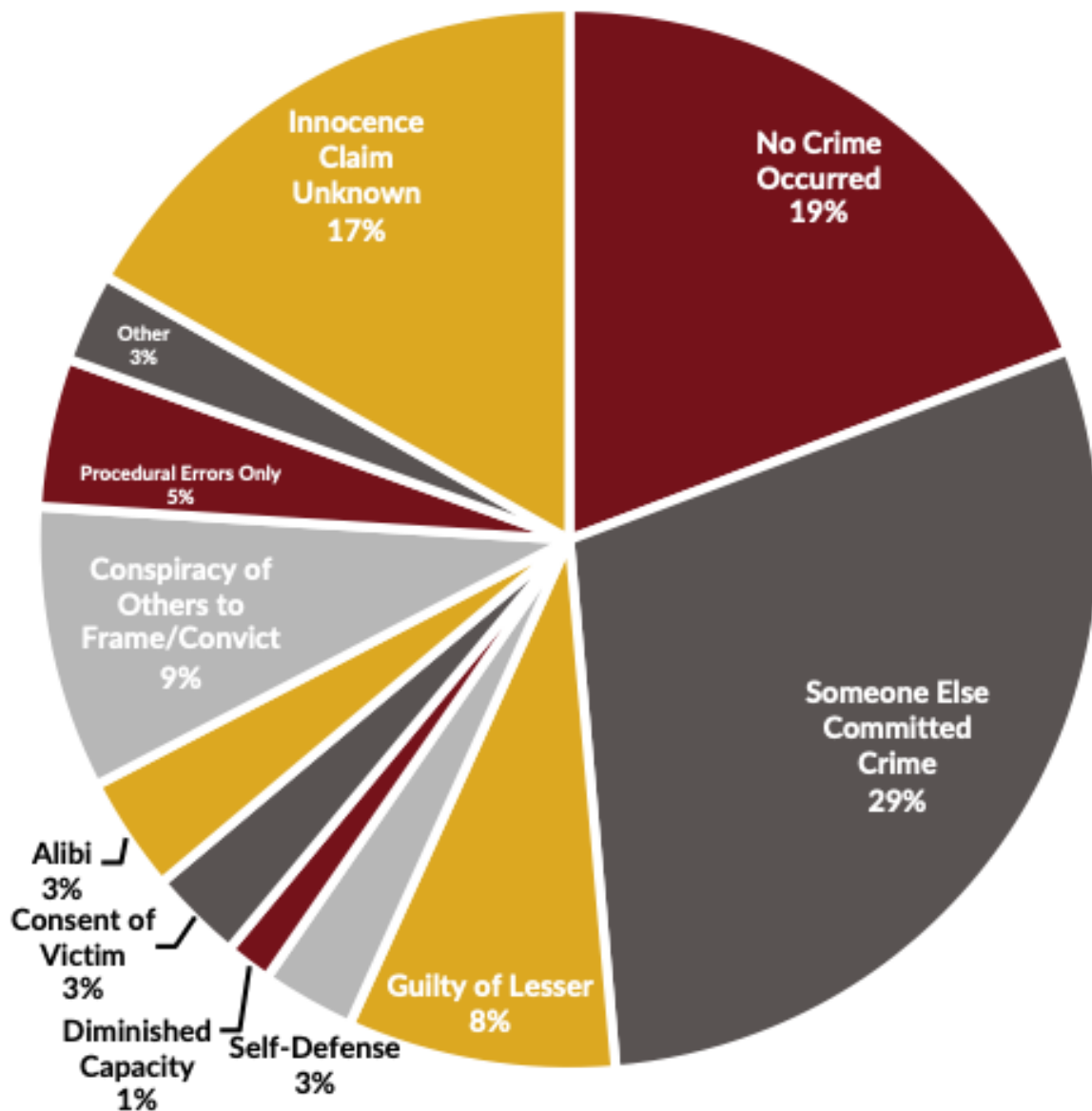
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

# Applicants' Convictions



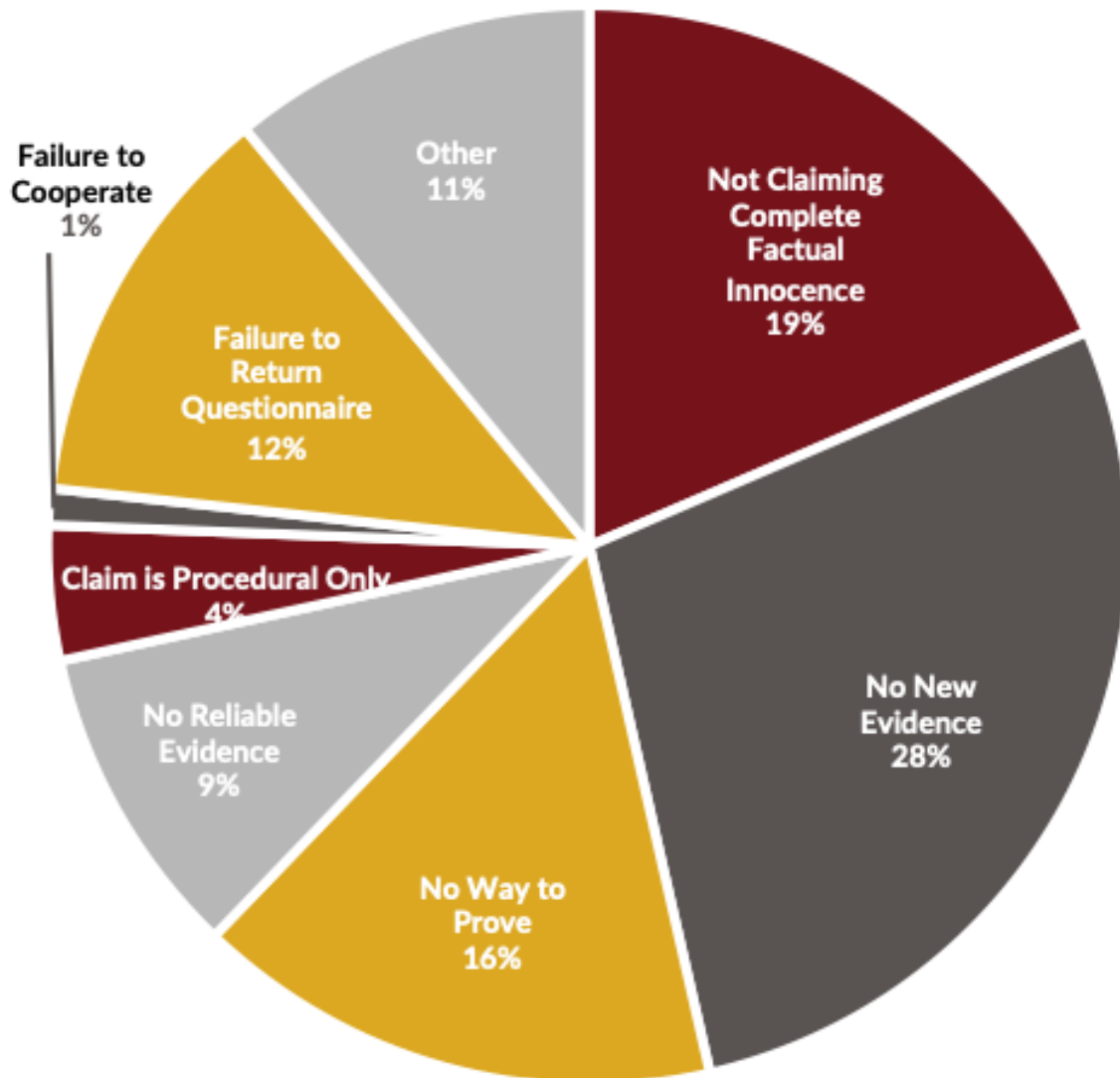
- Some applicants were convicted of multiple offenses.

# 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 2019, the Commission had 71 cases that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of over 65,000 pages of files and trial transcripts, over 110 interviews, 19 depositions, 22 requests/searches for evidence, and 40 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 28 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 2019, the Commission continued to successfully locate files and evidence.

On June 4-7, 2019, the Commission held a hearing in the cases of *State v. Merritt Williams*. Mr. Williams was claiming innocence related to two separate convictions. Both cases were presented to the Commission. At the conclusion of all evidence, the Commission concluded that there was sufficient evidence of factual innocence to merit judicial review in one of the cases and concluded that there was not sufficient evidence of factual innocence to merit

judicial review in the other case. The three-judge panel has been appointed by Chief Justice Beasley, and a three-judge panel hearing is pending.<sup>5</sup>

On September 9-10, 2019, the Commission held a hearing in the case of *State v. Kenneth Evans*. At the conclusion of all evidence, the Commission concluded 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 Beasley, and a three-judge panel hearing is pending.<sup>6</sup>

Keeping with the Commission's commitment to efficiency, the Commission filed with the Clerk of Court, in both cases, the public records documents within three business days of the completion of the Commission's hearing. This included thousands of pages that the Commissioners had considered both before and during the course of the Commission hearings.

In 2019, two individuals were exonerated after post-Commission three-judge panel hearings. In *State v. Grant*, the three-judge panel hearing was held on January 18, 2019 in Mecklenburg County. Mr. Grant's attorney was joined by the District Attorney's office in a motion asking the Court to find Mr. Grant innocent by clear and convincing evidence. The parties chose not to present additional evidence and offered the Commission's public record hearing documents as evidence. The three-judge panel unanimously ruled that Mr. Grant had proven his innocence by clear and convincing evidence and Mr. Grant was exonerated.

In *State v. Blackmon*, the three-judge panel hearing was held on August 20-22, 2019 in Wake County. At the end of the hearing, the three-judge panel unanimously concluded that Mr.

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<sup>5</sup> Public records documents available for this case can be found at: <https://innocencecommission-nc.gov/cases/state-v-williams/>

<sup>6</sup> Public records documents available for this case can be found at: <https://innocencecommission-nc.gov/cases/state-v-evans/>

Blackmon had proven by clear and convincing evidence that he was innocent. Mr. Blackmon was exonerated and released from prison on August 22, 2019.

#### E. OTHER 2019 ACTIVITIES AND ACCOMPLISHMENTS

In 2019, the Commission was able to move through a large volume of cases 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.

Since becoming Director in 2015, Ms. Guice Smith has increasingly focused on outreach and education regarding the Commission's unique mission and neutral investigative function. North Carolina is a leader in post-conviction innocence work due to this state-supported Commission. The Commission model has proven successful and sharing both within and outside of North Carolina how well the model works is important to ensuring the innocent, as well as the guilty, receive justice. In addition, because the Commission is neutral and unique in its purpose, it is vital to the Commission's success to distinguish itself from non-profit organizations, private attorneys, or other types of innocence groups whose role may not be based in neutrality. The Commission has become a leader in the fields of post-conviction and evidence practices.

Notably, the Director provided information to agencies and individuals in other states and nations who are considering creating a commission modeled after North Carolina's. For the fourth 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. Additionally, the Commission's Director participated in a panel at a University of Ottawa conference, "Wrongful Convictions in Canada and Israel: Barriers to Exoneration." The panel brought together leaders from across the world to discuss the role of independent commissions in investigating wrongful convictions.



The Commission's Director and Associate Director also gave presentations to and met with governmental agencies, civic groups, educational institutions, and the public. In 2019, presentations were given to: the NC Association of Chiefs of Police, the Conference of Clerks of Superior Court, the Superior Court Judge's Conference, Campbell Law, Elon University, the Wake Forest University Wrongful Convictions Forum, the UNC Law Women in Law Roundtable, the Cumberland County Library, and two Wake County libraries. As part of her role on the NIST/NIJ Evidence Management Steering Committee, The Commission's Director moderated a panel presentation and presented at the NIST/NIJ Evidence Management Conference. The presentation was titled The Role of Legislative Policy: Advocating for Change and provided an overview of the Commission's creation. Additionally, the Commission's Director and Associate Director routinely participated in meetings and interviews and answered questions about the Commission process with members of the General Assembly, the Governor's office, media outlets, writers, legal scholars, students, chiefs of police, and various other 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.

The Commission's Director has used her knowledge and expertise in best practices for evidence handling to educate both law enforcement agencies and clerk's offices about the best practices for handling evidence, particularly biological evidence. The Commission continues to see the benefits of this education as law enforcement agencies and clerk's offices make changes to their evidence handling and storage procedures. For example, the Commission had an opportunity to request evidence in a case in 2019 at an agency for which the Commission had conducted a full evidence room search several years prior. In a visit to this agency in 2019 the

Commission learned that based on its search years earlier the agency had made significant improvements to its evidence room and had turned was a part-time evidence custodian position into a full-time evidence custodian position. The Commission views interactions like this as significant for the criminal justice system in North Carolina.

The Commission's Director and staff continued to make information about the Commission publicly available. One way this is done is by publishing public information on the Commission's website. The website can be viewed at: <http://innocencecommission-nc.gov/>. In 2019, Commission staff continued to post daily on the Commission's Facebook page information about the Commission, public interest pieces related to innocence work, and other information related to criminal justice and the courts.

### **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 2019, the Commission's fourth annual audit was conducted. This was a detailed process that included several meetings between the Commission's Director, Associate Director, and AOC auditor.

The audit was completed on September 11, 2019. The Commission was evaluated in several risk categories, including evidence, accounting, and reporting and annual audit requirements. With respect to evidence, the audit states: "Our assessment in this area concludes that controls surrounding evidence have been intricately designed to reduce risks and are functioning extremely well. It is clear from our tests and observations that all employees handle evidence with the utmost care, respect, and attention, with the understanding that evidence integrity is critical to the organization meeting its objectives." With respect to accounting, the

audit states: “These tests revealed an appropriate segregation of duties between the NCAOC employees who make disbursements and record transactions, and Commission staff who authorize payment of invoices and analyze financial statements to ensure accuracy.” With respect to reporting and annual audit requirements, the audit states: “Internal controls are appropriate to ensure compliance with the reporting and audit requirements.”

The Commission has been given an overall audit 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 47% of those audited by AOC since 2015 and only 45% of those audited in 2019. The Commission will undergo another audit in 2020 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. Since 2017, the Commission has assessed the impact of these changes and in prior annual reports has provided extensive information about those impacts.

In an effort to decrease the workload of the Commission, the statute now limits direct applicants from claimants to homicides, robberies, offenses requiring registry in the sex offender database, and all A-E felonies. Data from 2019 continues to show that this change did not have a significant impact in reducing the Commission’s caseload, as it impacts only 6.8% of the claims received by the Commission since its effective date. Though the Commission has significantly

increased its efficiency over the last few years, this increase in efficiency is unrelated to this statutory change but is instead related to processes implemented by the Commission's leadership.

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, a process for which claimants are statutorily entitled to counsel. 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 typically take place prior to Formal Inquiry. Data from 2019 continues to show that this change has a significant effect on how quickly the Commission can interview a claimant or move a case into DNA testing once a decision has been made to do so. Because the process is largely unable to be controlled by the Commission, the Commission does not anticipate seeing any meaningful decrease in the length of time this process takes based on the data tracked since 2016.<sup>7</sup>

As long as these impacts continue to remain steady, without significant change, the Commission will not provide this data in its annual report going forward. The Commission will continue to track the data and should there be any significant change will report that. Members of the General Assembly can contact the Commission's Director for additional data.

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<sup>7</sup> Between August 1, 2016 and December 31, 2017, the average number of days for this process when the claimant already had an attorney was 27 days. Between August 1, 2016 and December 31, 2018, the average number of days for this process when the claimant already had an attorney was 28 days. Between August 1, 2016 and December 31, 2019, the average number of days for this process when the claimant already had an attorney was 34 days. Between August 1, 2016 and December 31, 2017, the average number of days for this process when the claimant had to be appointed an attorney was 91 days. Between August 1, 2016 and December 31, 2018, the average number of days for this process when the claimant had to be appointed an attorney was 90 days. Between August 1, 2016 and December 31, 2019, the average number of days for this process when the claimant had to be appointed an attorney was 91 days. To date, the process has not seen a meaningful increase in efficiency.

## **V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2020**

### **A. PLANS FOR 2020**

In 2020, 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 anticipates holding at least 2-3 hearings in 2020. Further, to date, three post-Commission three-judge panels are scheduled for 2020. In an effort to supplement its state funding, Commission leadership has sought additional grant funding and is now responsible for more grants than ever in the Commission's history. This will be the busiest year in the Commission's history, not only as to Commission hearings and Three-Judge Panel hearings, but also as to claims, outreach, and education.

The Commission remains available to assist other agencies and will continue to provide education and presentations throughout the state, country, and internationally, to as broad an audience as possible, in an effort 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. The Commission's new VOCA grant includes an education component regarding Victim services in the post-conviction setting. The Commission intends to provide this education both in North Carolina as well as on the national level. Specifically, the Commission has applied to present at the National Center for Victims of Crime – National Training Institute conference. Further, the Commission's Director has been invited to speak about the Commission at the 2020 Bode Technology Annual Forensic DNA Conference. Both the Commission's Director and Associate Director have received multiple invitations to speak to lawyers in North Carolina. To further this mission, the Commission is seeking a grant through the NC Bar Foundation that includes funding for additional educational opportunities. Finally, the

Commission continues to receive an increasing number of inquiries from other states interested in exploring the Commission model. In 2020, the Commission will continue to respond to these inquiries and assist states with this process.

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. The Commission has seen an increase in the number of contacts from superior court judges related to cases with pending Motions for Appropriate Relief and cases being referred to the Commission by attorneys and law school innocence projects and clinics. In 2020, the Commission will continue to field calls from judges and accept case referrals in an effort to make the criminal justice system more efficient. One of the original reasons for the creation of the Commission was to provide relief to the court system related to post-conviction motions. The Commission is fulfilling that role and will work to continue educating the legal community about its mission and ability to relieve the court system in this manner.

Members of the General Assembly may refer post-conviction innocence claims from their constituents to the North Carolina Innocence Inquiry Commission. Although the Commission does not currently plan to request any statutory changes to its governing statute, the Commission's Director and Associate Director will be available to members of the General Assembly throughout the 2020 Session should any legislation be proposed related to the Commission. The Commission does intend to request an expansion to its budget in the 2020 Session as detailed in Section B below.

Should the National Institute for Justice release a solicitation for a 2020 DNA Testing Assistance grant as it has in past years, the Commission plans to apply for this grant again. Although the Commission has a 2018 Grant that runs through December 31, 2020 and a 2019

Grant that runs through December 31, 2021, the Commission is committed to seeking additional funding for DNA testing and investigation of those cases. Further, the Commission plans to apply for a grant from the NC Bar Foundation to provide additional funding for education and outreach opportunities.

## 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 2018 Certified Appropriation from the General Assembly was \$584,029. As there is currently no FY 2019 budget in place, the Commission continues to work with the same budget it had in FY 2018. In addition to its state appropriation, the Commission has received three federal grants. Two of these grants ensure that the Commission is able to conduct DNA testing and evidence searches in cases where DNA testing may show innocence and assist with testing in cases where there are untested rape kits and the convicted person is claiming innocence. The third grant supports Victim services at the Commission, a previously unfunded area.

During 2018, the Commission assessed its budget and determined that additional funding should be requested from the General Assembly in 2019 in order to meet its statutory mandate to investigate and determine credible claims of factual innocence. An expansion for the Commission is included in the unpassed budget. Since that time, the Commission has reassessed its needs and determined that additional funding over and above that sought in 2019 is necessary. Over the last few years, the Commission has seen an increase in the costs associated with carrying out its statutory mandate. For example, although the Commission historically had one

hearing each year, that increased to three hearings in FY 18, three hearings in FY 19 and an anticipated two or three hearings in FY 20. The costs associated with multiple Commission hearings each year are not adequately funded through our current appropriation. This includes costs associated with transcripts of interviews conducted by Commission staff, costs associated with court reporters for our statutorily required hearing transcripts, travel and subsistence costs for Commissioners and witnesses, and costs associated with a need for additional expert witnesses. In 2018, the Commission explored options with AOC to assist with covering the cost of court reporters for Commission hearings, as a transcript is required to be made and filed by the Commission. Ultimately, it was determined that the Commission's budget would have to cover those costs. Although the Commission historically has been able to find court reporters who will work at the AOC indigent rate for Commission interview and hearing transcripts, that has become increasingly difficult, to the point that the Commission is seeking funding for an additional position to hire its own transcriptionist.

To adequately address the workload of the Commission, additional staff and salary increases based on an AOC study of current staff positions are necessary. Since 2017, Commission staff has been increasingly responsible for litigation on behalf of the Commission in arenas that were previously handled through AOC and the Attorney General's office. In addition, Commission staff is responsible for any legal issues that arise within its investigations. The Commission is currently fully staffed and has historically kept all of its positions filled, but finds itself in need of additional positions to cover the current workload. This funding will allow the Commission to continue investigating claims in an efficient and effective manner.



Although the Commission continues to receive grant funding from NIJ and hopes to secure additional grant funding from NIJ and/or the Governor's Crime Commission, the needs outlined above cannot fully be addressed with these grant funds.

The Commission's budget request has been submitted by AOC to the Office of State Budget and Management (OSBM), along with the AOC budget request and is included below for your consideration. The Commission respectfully requests that the General Assembly consider this request as the requested increase in recurring funds will ensure that the Commission can carry out its duties and ensure that post-conviction innocence claims are reviewed in a timely and efficient manner, as well as continue to provide relief to the overburdened judicial system. Should members have any questions about the budget request, the Commission's Director and Associate Director are available to discuss it further and in more detail. The Commission is not seeking any substantive legislative changes to its governing statute this year.

## Innocence Inquiry Commission Budget Request

Personnel	Recurring	Non-Recurring	Total	FTE
Staff Attorney	\$130,512	\$4,154	\$134,666	1.00
Staff Attorney II	\$144,287	\$4,154	\$148,441	1.00
Transcriptionist/Admin Assistant	\$78,157	\$4,274	\$82,421	1.00
Administrative Secretary	\$32,970	\$2,906	\$35,876	.50
<b><u>Total Personnel</u></b>	\$385,926	\$15,488	\$401,414	3.50
Other Operating/Site Requirements	Recurring	Non-Recurring	Total	FTE
Salary Adjustments	\$40,946	-	\$40,945	-
Investigative/Operations Funding	\$70,000	-	\$70,000	-
<b><u>Other Operating/Site Requirements</u></b>	\$110,946	-	\$110,946	-
<b><u>GRAND TOTAL</u></b>	<b><u>\$496,872</u></b>	<b><u>\$15,488</u></b>	<b><u>\$512,360</u></b>	<b><u>3.50</u></b>

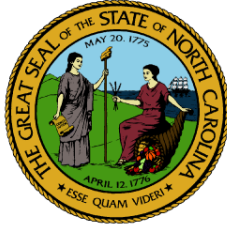
## CONCLUSION

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. We take seriously our mandate to ensure that the innocent, as well as the guilty, receive justice. The work of the Commission makes North Carolina a leader in criminal justice.

The Commission receives 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 additional funding of the Commission.

As described above, the Commission maintains a website ([innocencecommission-nc.gov](http://innocencecommission-nc.gov)) that provides the public with general information about the Commission.

The Commission's Director is available to meet with any member of the General Assembly to further discuss the work of the Commission. The Director can be reached at (919) 890-1580 or [NCIIC@nccourts.org](mailto:NCIIC@nccourts.org). The Commissioners and staff are pleased to serve the people of North Carolina and look forward to continuing that service each year.



# THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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