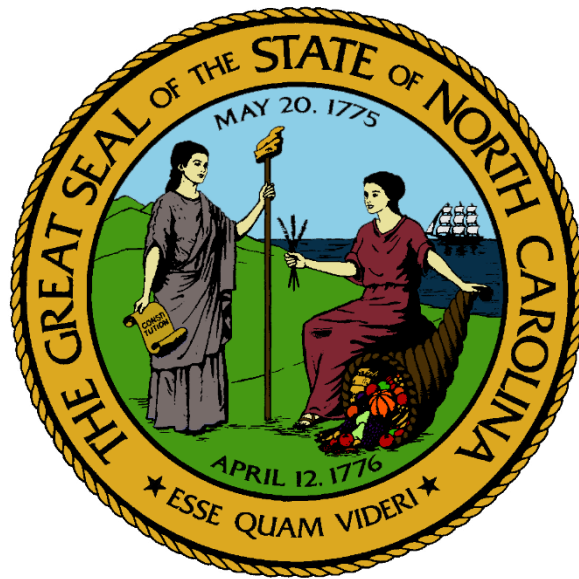
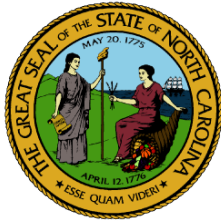


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



2020 ANNUAL REPORT

Lindsey Guice Smith
Executive Director
January 29, 2021



THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

A Neutral State Agency

Charged with Investigating Post-Conviction Claims of Innocence

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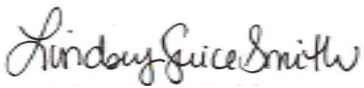
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LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY OF THE 2021-2022 LONG 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,



Lindsey Guice Smith
Executive Director
North Carolina Innocence Inquiry Commission
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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.

2020 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 2020 and the Commission's plans for 2021. Included are statistics for 2020 as well as cumulative case statistics detailing case data since the Commission began operating in 2007. The Commission is proud of the accomplishments we continue to achieve in making North Carolina a leader in answering the call to improve our criminal justice system. **In order to continue at this level, the Commission requires additional funding from the North Carolina General Assembly.** A summary of the Commission's financial needs can be found on page 21 of this report.

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.

Ms. Guice Smith currently serves as Secretary on 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 2020, Ms. Guice Smith assisted in developing an IAPE course specifically designed for Clerks of Court and co-taught classes to Clerks of Court in Virginia and North Carolina. Ms. Guice Smith is also on the NC Clerk of Court's Workgroup on Handling, Storage, Preservation and Disposal of Evidence and serves as a subject matter expert to this group. Additionally, Ms. Guice Smith currently serves as the President of the North Carolina Association for Property and Evidence (NCAPE) and is on the National Institute for Standards and Technology/National Institute of Justice (NIST/NIJ) Evidence Management Executive Steering Committee.

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. In 2020, Ms. Guice Smith drafted and submitted a book chapter about the Commission for a book tentatively titled: *Wrongful Convictions in Israel and Canada: Barriers to Exoneration*. In addition, Ms. Guice Smith spoke with contingencies from several states about the Commission's model and how it can be implemented in other states.

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 is currently working toward her Masters in Law through a joint program between Campbell University Norman Adrian Wiggins School of Law and Nottingham Trent School of Law. She is focusing her research on the use of discovery tools by the Commission as a possibility for expansion in pre-trial litigation in the criminal setting.

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.

In 2020, the Commission’s Chair was 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. Judge Wagoner’s final term with the Commission expired on December 31, 2020.

In January 2021, Senior Resident Superior Court Judge Thomas H. Lock was appointed as the Commission’s Chair. Judge Lock has served as the Commission’s alternate Chair since 2015 and began his term as Chair on January 1, 2021. Judge Lock was elected to the Superior Court bench in 2006 and currently serves as the Senior Resident Superior Court Judge for Judicial District 11B (Johnston County). Judge Lock graduated with a B.A. from the University of North Carolina at Chapel Hill in 1978 and from the University of North Carolina School of Law in 1981. Prior to his election as a Superior Court Judge, Judge Lock worked as an assistant district attorney, worked in private practice, and served as elected District Attorney in the Eleventh Prosecutorial District. Since his election to the bench, Judge Lock has served on the executive board of the North Carolina 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.

Innocence Commission Staff



Lindsey Guice Smith – Executive Director

Lindsey.G.Smith@nccourts.org



Beth Tanner – Associate Director

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

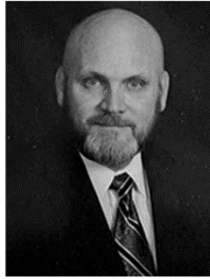


Kristie Parker – Administrative Secretary

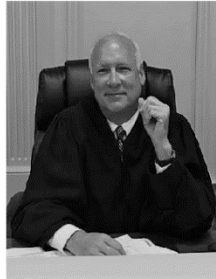


Emma Paul – Victim Services Coordinator

Commissioners



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



**The Honorable
Wayland Sermons
Alternate Chair**



**Ashely Welch
Prosecuting Attorney**



**TBD
Criminal Defense
Attorney**



**Sheriff Kevin Frye
Sheriff**



**Sheriff Bobby
Kimbrough
Alternate Sheriff**



**Todd Williams
Alternate Prosecuting
Attorney**



**Robin Colbert
Victim Advocate**



**Frank Perry
Public Member**



**Deborah Newton
Alternate Discretionary
Member II**



**TBD
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

The year 2020 proved to be an unprecedented year for the Commission, as it was for the world. The Commission began the year in preparation for a hearing in one of its largest and most complex cases to date. That hearing was held March 9-13, 2020 and resulted in the case being referred forward to a three-judge panel. During that hearing, the Commission, along with the rest of the world, was alerted to the rapidly increasing concerns surrounding the Corona Virus. On March 16, 2020, Commission staff came back to the office to finalize work related to the completion of its hearing and then immediately pivoted to a work from home model for most of its staff.

The ensuing months resulted in Commission leadership balancing the health, safety, and wellbeing of its staff with the demands of the Commission's work and the need for continued productivity. The Commission staff handled the pandemic and the changes that came from this altered work environment well and as is reflected in the remainder of this section, had a year that saw little to no reduction in productivity and output. In fact, in September 2020, the Commission held a second Commission hearing. This hearing was held in person with a modified, socially distant approach and was live streamed by the Administrative Office of the Courts to ensure that the public could view the hearing.

A. CASE MANAGEMENT

The Commission received a total of 173¹ new claims in 2020, bringing the Commission's yearly average to 208 claims per year. During 2020, the Commission completed its review/investigation and closed all but 45 of those new claims. At the end of 2020, the Commission had a total of 44 active cases in various stages of review/investigation and 22 cases where claims have been made, but claimants had not yet returned the Commission's questionnaire.²

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. Prior to this effort, this process could take up to a year. This effort has continued since that time. In 2020, the average length of time for this process was 20.5 days per claim. Since 2017, the overall average length of time for this process is 19.375 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

¹ This number is lower than the last several years and may be due to COVID-19s impact on prisons.

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

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 since 2017.

As mentioned above, after reducing and stabilizing the amount of time for the Commission's initial review process, beginning in 2018, 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. All of those were completed by the end of 2019. By 2020, there were two additional cases that had reached the five-year mark at the Commission. One of those cases was heard by the full Commission in March 2020 and was referred to a three-judge panel. The remaining case has an upcoming hearing involving the movement of a federal inmate from out of state that has been delayed multiple times in 2020 due to the COVID-19 pandemic. At the completion of 2020, all other active cases have been with the Commission for less than three years.

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. In late 2020, the Commission sought and received a one-year extension on this grant. The grant will end on December 1, 2021. 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 began 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. Throughout 2020, Commission staff worked closely with its law enforcement partners across North Carolina to implement this program. Due to the limited time that Commission staff had to work on this project, in late 2020, the Commission sought to change the scope of this grant to include one full-time staff-member to complete the project in 2021. The Commission's change in scope and budget modification were approved.

In October 2020, the Commission was awarded a two-year grant in the amount of \$531,894 through the Bureau of Justice Assistance FY 20 Postconviction Testing of DNA Evidence Program (formerly housed under NIJ). This funding was slated to begin on October 1, 2020 and run through September 30, 2022; however, a new grants management system and technical glitches along the way have pushed back the start date under this grant until early 2021. As with our 2018 Grant, 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.

The Commission has received funding continuously from NIJ and/or BJA since 2010, receiving six grants, totaling over \$2.99 million, for post-conviction DNA related cases. Since that time, twelve individuals have been exonerated or had their convictions vacated through Motions for Appropriate Relief and been granted pardons of innocence based on investigations, evidence searches and/or DNA testing conducted by the Commission under these grants. There are currently three 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, 13 searches for evidence were conducted under the grants and 31 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 (NCSCL) and uses NCSCL, 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 2020, the Commission also implemented its Victims of Crime Act (VOCA) grant from the Governor's Crime Commission, which it received for the first time in October 2019. 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 assists 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 2020, the Commission hired Victim Services Coordinator, Emma Paul who spent 2020 building the Commission's Victim Services program. Throughout 2020 funding from this grant supported trauma informed training and allowed Victims to have meaningful participation in Commission hearings. Since implementing this program in early 2020, the Commission has seen a greater than 50% increase in victim participation in the Commission's process over the prior two years, even during the COVID-19 pandemic.

C. CASE STATISTICS

In 2020, the Commission received a total of 173 new innocence claims. Since it began operating in 2007, the Commission has received 2,914 claims of actual innocence. As of December 31, 2020, 2,853 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 17 hearings.³ Fifteen individuals have been exonerated by a post-Commission three-judge panel or had their convictions vacated through a Motion for Appropriate Relief and been granted a pardon of innocence by the Governor based on the Commission's investigation of their claim.⁴ The public records documents for each case presented at a 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 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.

³ One of the hearings involved two separate and unrelated convictions of one claimant; thus 18 cases have been heard.

⁴ Of the 18 cases that have been presented at Commission hearings, 15 were sent forward to a three-judge panel and three were not. Of the 15 sent forward to a three-judge panel, 8 resulted in the exonerations of 9 individuals (one co-defendant case). Three 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 resulted in the DA offering the claimant an Alford Plea for time served, negating the need for the three-judge panel hearing. Three cases sent forward to a three-judge panel are still pending a hearing before the panel. These three cases involve a total of 7 claimants. Additionally, six individuals have had their convictions vacated through Motions for Appropriate Relief that were based on the Commission's investigation of their innocence claim and have received Pardons of Innocence from the Governor.

CASE STATISTICS

The Commission began operation in 2007

2914

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

2853

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

173

NUMBER OF CLAIMS RECEIVED IN 2020

17

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION

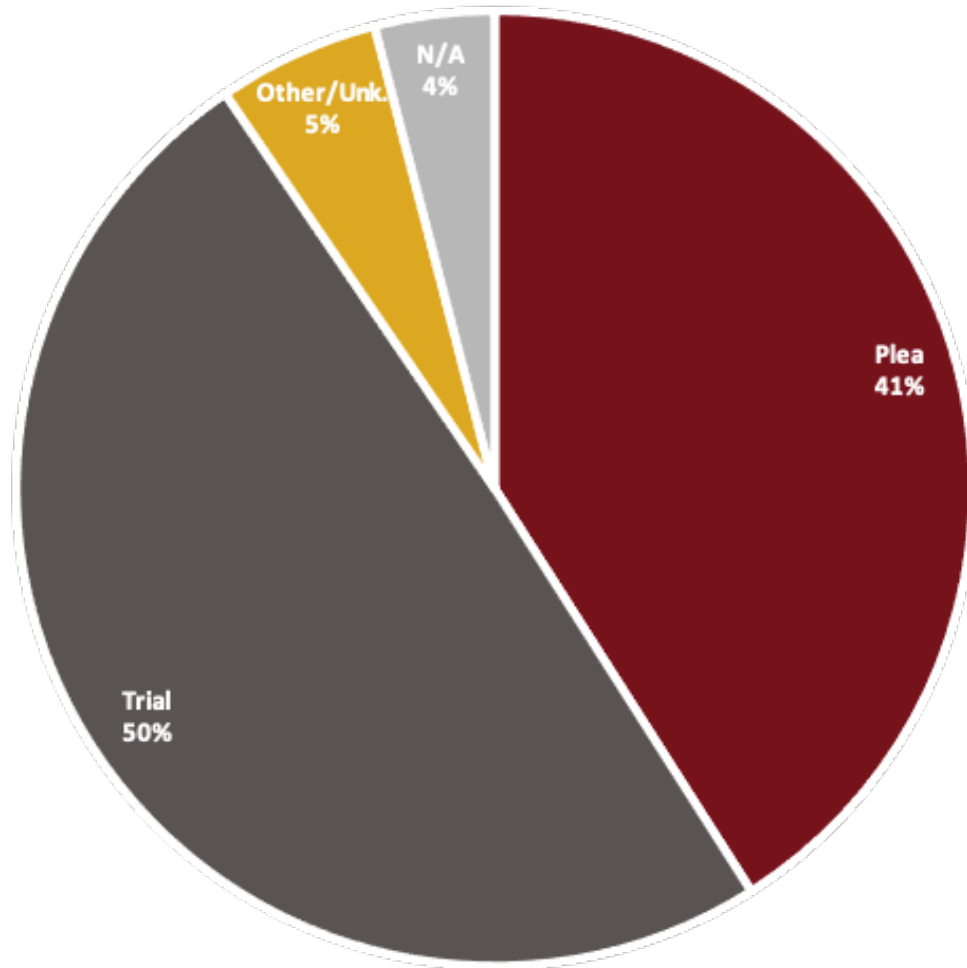
15

EXONERATIONS*

Data compiled December 31, 2020

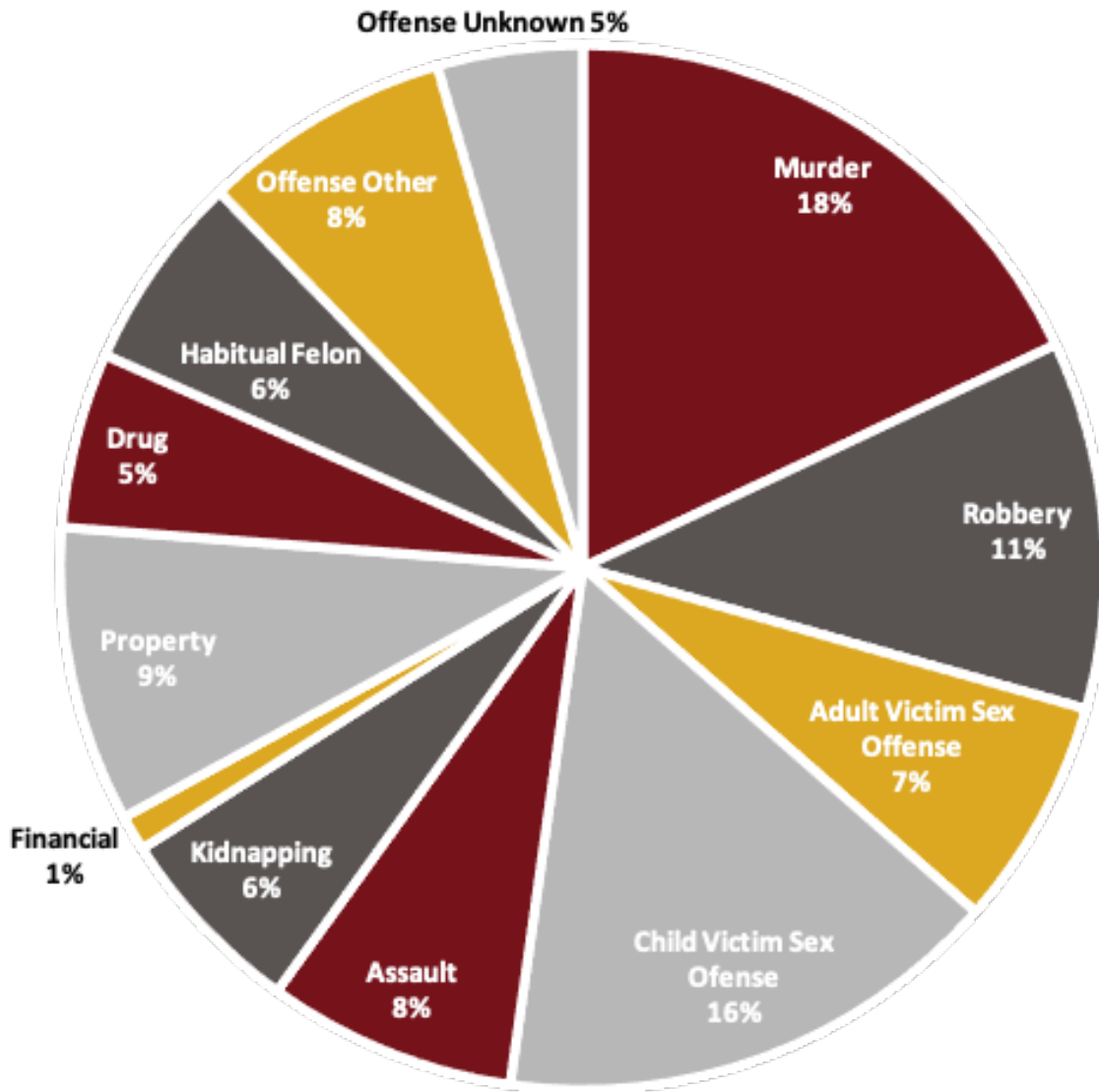
*Includes individuals exonerated as a result of the Commission's investigations either through a post-conviction three-judge panel or a Motion for Appropriate Relief (MAR) and Governor's pardon of innocence. Currently, there are three cases that have been heard by the Commission that are pending a three-judge panel: State v. Spruill/Jones, State v. M. Williams, and State v. Bryant/Cauthen/Tolliver/Banner.

Convictions Resulting from Trial or Plea



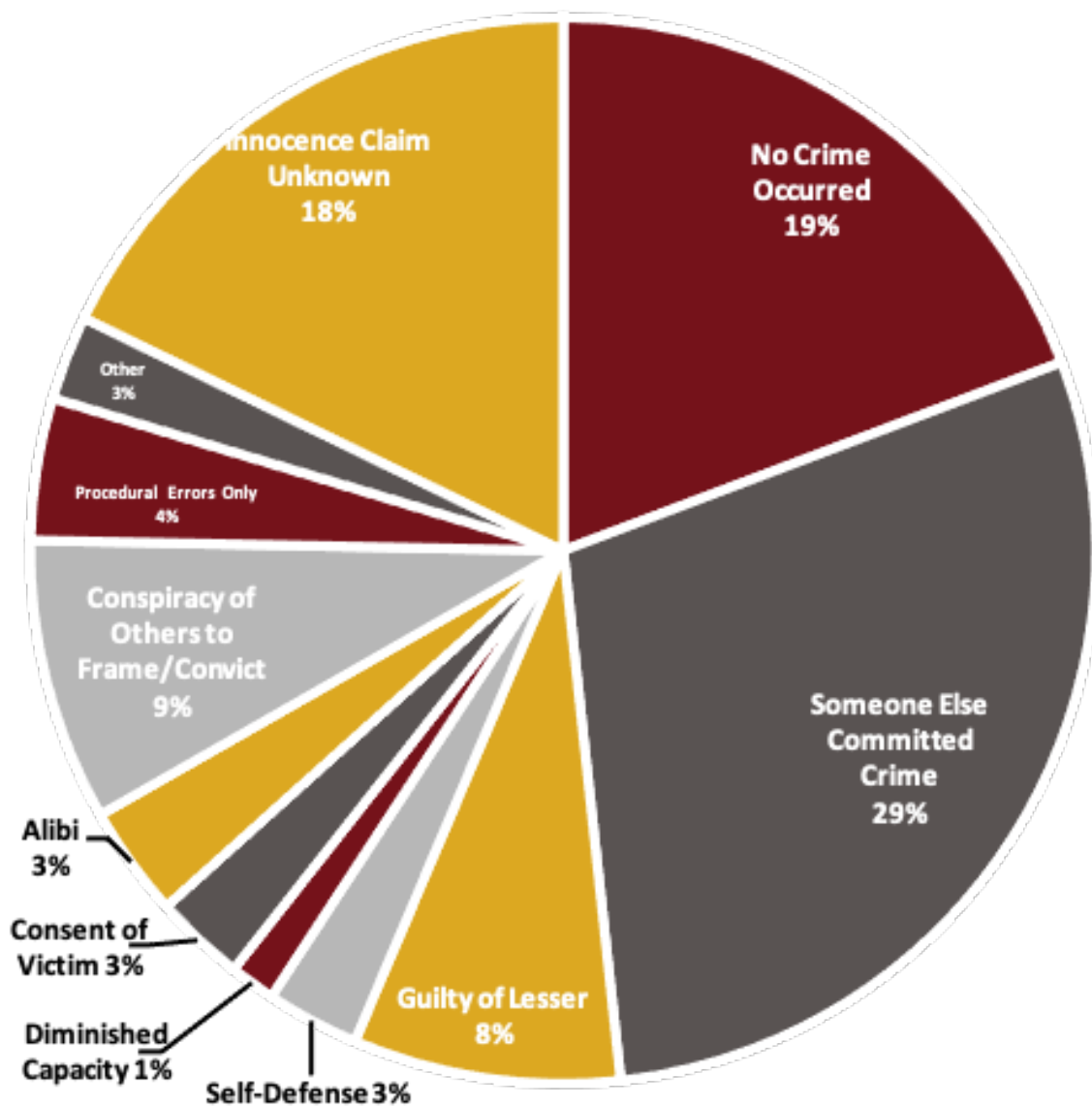
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

Applicants' Convictions



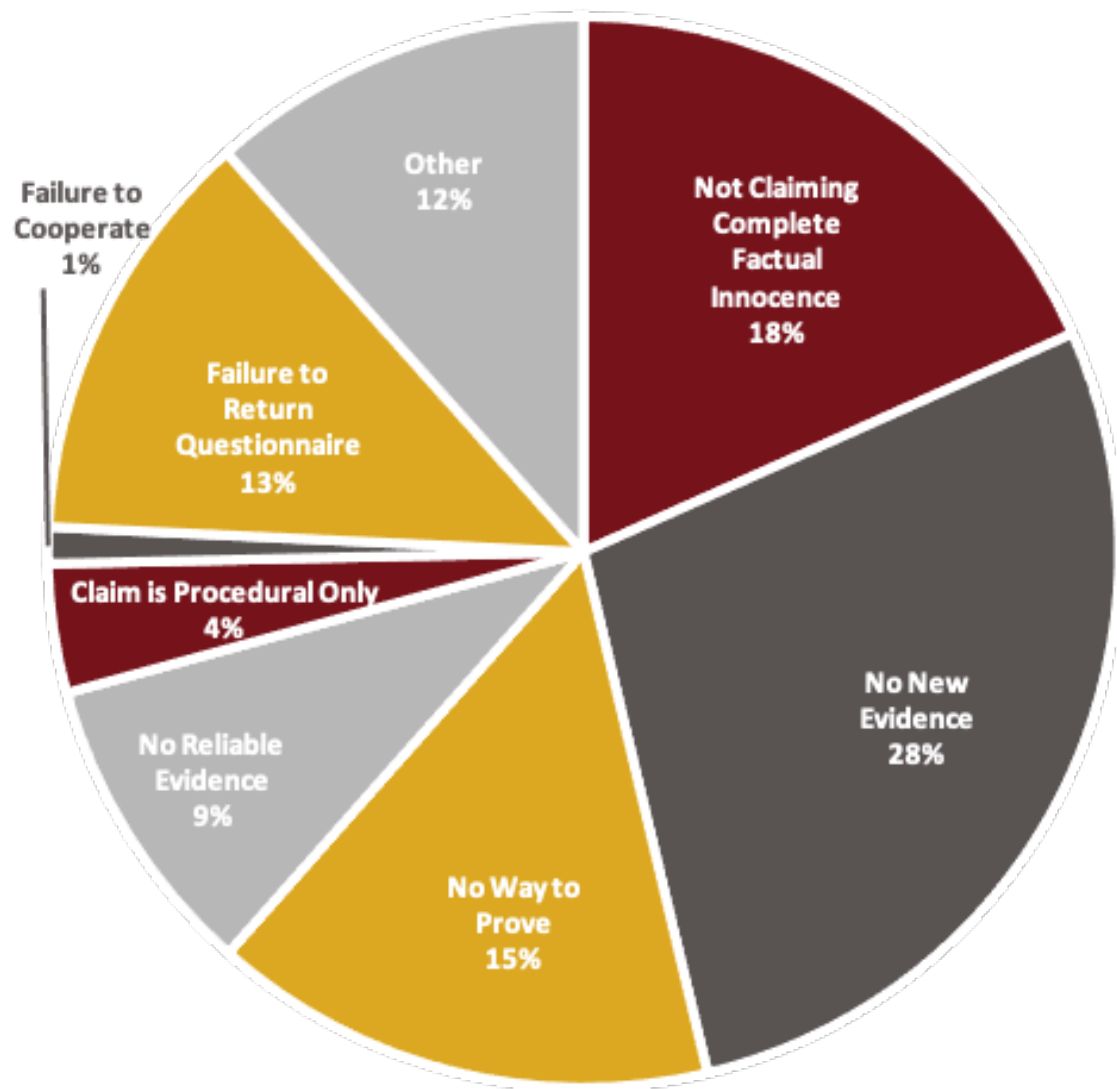
- Some applicants were convicted of multiple offenses.

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 2020, the Commission had 64 cases that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of approximately 60,000 pages of files and trial transcripts, the review of over 425 jail/prison phone calls (approximately 15 minutes each), 95 interviews, 18 depositions, 13 requests/searches for evidence, and 31 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 2020, the Commission continued to successfully locate files and evidence.

On March 9-13, 2020, the Commission held a hearing in the cases of *State v. Christopher Bryant*, *State v. Nathaniel Cauthen*, *State v. Jermal Tolliver*, and *State v. Rayshawn Banner*. At the conclusion of all evidence, the Commission concluded that there was sufficient evidence of factual innocence to merit judicial review as to all four co-defendants. The three-judge panel was appointed by former Chief Justice Beasley, and a three-judge panel hearing is pending.⁵

On September 28-29, 2020, the Commission held a hearing in the case of *State v. Coatney Williams*. The Commission held this hearing despite court closures due to the COVID-19 pandemic. Commission leadership implemented safety protocols and made changes to the hearing process so that the hearing could still move forward safely, while ensuring that the public could view the hearing via livestream. 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 was appointed by former Chief Justice Beasley. In lieu of the case being heard by a three-judge panel, the District Attorney offered Mr. Williams an Alford Plea where he would be released with time served. Mr. Williams accepted that plea, allowing him to maintain his innocence and be released.⁶

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

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

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

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 2020, four three-judge panels were scheduled⁷, however, due to the COVID-19 pandemic, all but one was continued to 2021. In *State v. Evans*, the three-judge panel hearing was held August 17-18, 2020 and October 12, 2020. At the conclusion of the hearing, the three-judge panel ruled unanimously that Mr. Evans had not proven his innocence by clear and convincing evidence and relief was denied.

E. OTHER 2020 ACTIVITIES AND ACCOMPLISHMENTS

In 2020, despite the challenges associated with the COVID-19 pandemic, 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 who are considering creating a commission modeled after North Carolina's. Additionally, the Director was asked to write a chapter about the Commission for a book tentatively titled *Wrongful Convictions in Israel and Canada: Barriers to Exoneration*. This chapter was submitted in late 2020.

The Commission's Director and Associate Director also gave presentations to and met with governmental agencies, civic groups, educational institutions, and the public. Although most in person events were cancelled, in 2020, virtual presentations were given to: The Wake County Association of Women Attorneys, the Wake County Academy of Trial Lawyers, and Elon University. In November 2020, the Commission's Director, Associate Director and Victim Services Coordinator, along with and Victim Advocate Commissioners Robin Colbert and Scott Bass participated in a panel titled: *The North Carolina Innocence Inquiry Commission: Lessons Learned in Post-Conviction Victim Education* at the National Centers for Victims of Crime's 2020

⁷ The three-judge panels in *State v. Spruill/Jones*, *State v. Evans*, *State v. M. Williams*, and *State v. Bryant et. al.* were scheduled in 2020.

Virtual Training conference. In December 2020, the Director discussed the Commission with C.L. King on his Impacting Life 24/7 podcast.

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.

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 2020, Commission staff continued to post regularly 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 2020, the Commission's fifth 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 October 26, 2020. The Commission was evaluated in several risk categories, including evidence, accounting, reporting and annual audit requirements, and most notably, talent management. With respect to evidence, accounting, and reporting and annual audit requirements, the audit found that internal controls were designed to reduce risk and were appropriate.

The auditor spent a significant portion of her review examining talent management at the Commission. The auditor reviewed data which shows that:

- A total of 1,445 overtime hours were worked by nine, full-time Commission staff members, including grant staff in FY2019-2020. This was deemed significant.
- During FY2019-2020, multiple pro bono students and nine interns contributed 2,150 hours to help the Commission manage its workload. From June 2019 through September 2020, that total was an estimate 4,339 hours.
- The Commission has three, full-time staff members that are supported 100% by grant funds. The Commission continues to apply for grants, but should the Commission not

receive future grants, the loss of these staff members would result in the Commission not having the manpower to support cases in which DNA testing is a component or to support victim services.

- The Commission has had an increased number of hearings since 2018, going from an average of 1 hearing per fiscal year to 2-3 hearings per fiscal year. The increase in hearings is directly tied to an increase in workload.
- The Commission has two staff positions that were previously studied by AOC Human Resources and deemed eligible for reclassification to a higher salary grade. Additionally, one additional position that needs to be studied by HR that will likely result in a reclassification. The reclassifications have not been implemented as the Commission does not have funding available for the increase in salary. These employees continue to do the work outlined in the higher salary grade positions without compensation.

The auditor concluded that “In order for the Commission to hire and retain valuable employees, meet their objectives, manage the increasing workload, and reduce overtime required of current staff, additional staff positions should be approved. In order for the Commission to retain current talent additional funding should be approved which allows staff to be compensated at the stepped-up grades which have been determined by Human Resources.”

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 51% of those audited by AOC since 2015 and only 69% of those audited in 2020. The Commission will undergo another audit in 2021 and anticipates that the results will be similar. The Commission is hopeful that the General Assembly will consider its request for additional personnel and salary allocations to address the talent management issues noted in the Commission’s 2020 annual audit. A copy of the Commission’s audit report is available upon request.

IV. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2021

A. PLANS FOR 2021

In 2021, 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 two hearings in 2021. Further, four cases are pending post-Commission three-judge panel hearings and are likely to be scheduled for 2021. 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. In 2021, the Commission will be applying again for a Victims of Crime Act (VOCA) grant through the Governor’s Crime Commission (GCC) to support its Victim Services Program. This year is anticipated to be very busy, 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 VOCA grant, which was awarded in late 2019, includes an education component regarding Victim services in the post-conviction setting. In 2021, the Commission intends to continue to provide this education both in North Carolina as well as on the national level. The Commission's Director has been invited to speak about the Commission at the North Carolina International Association for Identification 2021 Conference as well as the North Carolina Coalition Against Sexual Assault 2021 Conference. Finally, the Commission continues to receive an increasing number of inquiries from other states interested in exploring the Commission model. In 2021, 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 2021, 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 2021 Session should any legislation be proposed related to the Commission. The Commission does intend to request an expansion to its budget in the 2021 Session as detailed in Section B below.

B. FUTURE NEEDS OF THE COMMISSION

The Commission is not requesting any substantive changes to its governing statute at this time. We request that the Commission be alerted and included in any substantive changes being considered. 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 FY2020-2021 Certified Appropriation from the General Assembly is \$620,697. In addition to its state appropriation, the Commission has received four federal grants that will be active in 2021. Three 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 fourth grant supports Victim services at the Commission, a previously unfunded area.

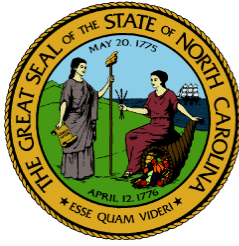
In 2018, the Commission assessed its budget and determined that additional funding should be requested from the General Assembly in 2019 in order to meet its statutory mandate to investigate and determine credible claims of factual innocence. An expansion for the Commission was included in the unsigned budget in 2019. Since that time, the Commission has reassessed its needs and determined that additional funding over and above that sought in previous years 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 FY2018-2019, two hearings in FY2019-2020 and an anticipated two hearings in FY2020-2021. The costs associated with multiple Commission hearings each year are not adequately funded through the Commission's 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. Additionally, the Commission has seen an increased need for the use of expert consultation and testimony in our cases. While most will agree to work at the State's indigent rate, costs associated with this increased need are not covered in the Commission's current budget.

To adequately address the workload of the Commission, additional staff and salary increases based on an AOC study of current staff positions are necessary. The Commission is currently fully staffed and has historically kept all of its positions filled but finds itself in need of additional positions to handle the current workload, as evidenced in the Commission 2020 Annual Audit as outlined above. 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 BJA and hopes to secure additional grant funding from the Governor's Crime Commission in 2021, 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 or need additional information 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.



THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

Judge Thomas H. Lock
Chair

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Lindsey Guice Smith
Executive Director

NC Innocence Inquiry Commission 2021 Budget Expansion Request

Item	Recurring Request	Non-Recurring Request	Total Request
Compensation Study Adjustments for Multiple Existing Positions	\$ 42,048.21	\$ -	\$ 42,048.21
Staff Attorney - New Position	\$ 132,969.00	\$ 4,154.00	\$ 137,123.00
Staff Attorney II - New Position	\$ 159,436.00	\$ 11,221.00	\$ 170,657.00
Associate Director - New Position	\$ 161,610.00	\$ 12,808.00	\$ 174,418.00
Operating Expenses	\$ 50,000.00	\$ -	\$ 50,000.00
Grand Total	\$ 546,063.21	\$ 28,183.00	\$ 574,246.21

*All requests include salary, fringe benefits, and other expenses associated with each position.

The Commission is not requesting changes to its governing statute at this time. We request that the Commission be alerted and included in any changes to its governing statute that can be found in 15A-1460 et.al.

CONCLUSION

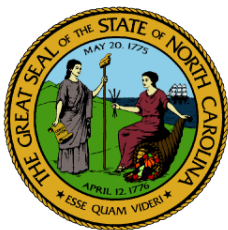
The members and staff of the North Carolina Innocence Inquiry Commission would like to thank the Joint Legislative Committee on Justice and Public Safety and the entire General Assembly for their creation and support of this groundbreaking part of the criminal justice system. The criminal justice system 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 on average 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 (innocencecommision-nc.gov) that provides the public with general information about the Commission.

The Commission's Chair and Director are available to meet with any member of the General Assembly to further discuss the work of the Commission. They can be reached at (919) 890-1580 or 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.

NOTES



THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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