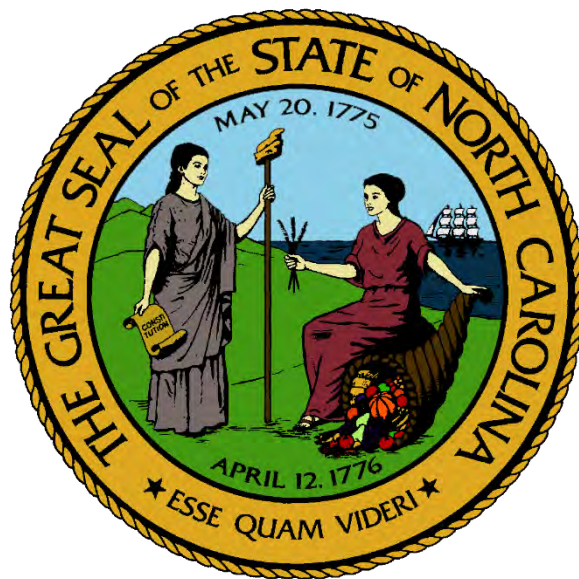
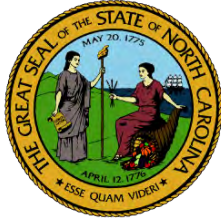


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



2021 ANNUAL REPORT

Lindsey Guice Smith
Executive Director
January 31, 2022



THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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 2021-2022 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,



Lindsey Guice Smith
Executive Director
North Carolina Innocence Inquiry Commission
(919) 890-1580
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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.

2021 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 2021 and the Commission's plans for 2022. Included are statistics for 2021 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 2021 the Commission received an unprecedented budget expansion that will allow the Commission not only to continue the work that it has been doing for over fifteen years, but to also expand on that work for years to come. The Commission would like to thank the General Assembly for its support of this historic budget expansion and its continued support of the Commission and its work.

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 and as a Lead Instructor 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. Ms. Guice Smith assisted in developing an IAPE course specifically designed for Clerks of Court which she co-teaches to Clerks throughout the United States. Ms. Guice Smith served on the NC Clerk of Court's Workgroup on Handling, Storage, Preservation and Disposal of Evidence and served 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 2021, Ms. Guice Smith consulted with Judges and scholars in Canada as they navigated the creation of an independent Canadian Criminal Case Review Commission. In addition, Ms. Guice Smith spoke with individuals and groups 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. In 2021, Ms. Tanner worked to secure additional funding for the Commission in the 2021-2022 budget process. Her efforts were successful and ensure that the Commission can continue its legacy in improving North Carolina’s criminal justice system.

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 2021, the Commission’s Chair was Senior Resident Superior Court Judge Thomas H. Lock. 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. Prior to joining the Commission, Judge Lock served as chief judge of a post-Commission three-judge panel in the Innocence Inquiry Commission case of State v. Joseph Sledge.

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



Corinne Fowler – Grant Staff Attorney



Mackenzie Myers – Grant Legal Investigator



Jason Fitts – Case Coordinator

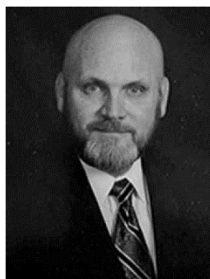


Emma Paul – Victim Services Coordinator

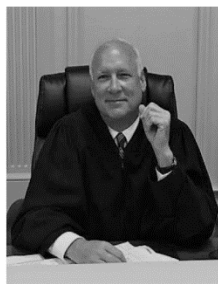


Kristie Parker – Administrative Secretary

Commissioners



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



**The Honorable
Wayland Sermons
Alternate Chair**



**Ashely Welch
Prosecuting Attorney**



**Luther Johnson Britt
Criminal Defense
Attorney**



**Sheriff Kevin Frye
Sheriff***



**Robin Colbert
Victim Advocate**



**Todd Williams
Alternate Prosecuting
Attorney**



**Deborah Newton
Alternate Criminal
Defense Lawyer**



**Sheriff Bobby Kimbrough
Alternate Sheriff***



**Scott Bass
Alternate Victim
Advocate**



**John Boswell
Discretionary Member I**



**Melissa Essary
Alternate Discretionary
Member I**



**Rick Glazier
Discretionary Member II**



**Yvonne Mims Evans
Alternate Discretionary
Member II**



**Frank Perry
Public Member***



**Immanuel Jarvis
Alternate Public
Member***

*The terms for these Commissioners ended on December 31, 2021. The positions are currently awaiting appointments by Chief Judge Donna Stroud.

II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

The year 2021 began as the year 2020 ended, in the middle of a worldwide pandemic. For the Commission staff, 2020 proved to be an unprecedented year, which the Commission successfully navigated. 2021 was no different. The availability of vaccinations for our staff in early 2021 allowed staff to begin to move back into the field for its investigations whereas most investigative work had been conducted from the office or home in 2020. Commission leadership and staff continued to successfully navigate the challenges of the pandemic throughout 2021, modifying work as needed while allowing the Commission to continue to be efficient and effective in its mission to conduct neutral and thorough investigations into post-conviction claims of factual innocence. Commission leadership worked to balance the health, safety, and wellbeing of its staff with the demands of the Commission's work and the need for continued productivity. Ultimately, 2021 was a year that saw no reduction in productivity and output and in fact saw increases in productivity and output in some areas.

A. CASE MANAGEMENT

The Commission received a total of 268¹ new claims in 2021, increasing the Commission's yearly average to 210 claims per year. During 2021, the Commission completed its review/investigation and closed all but 62 of those new claims.² At the end of 2021, the Commission had a total of 76 active cases in various stages of review/investigation and 50 cases where claims have been made, but claimants had not yet returned the Commission's questionnaire.³

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 2021, the average length of time for this process was 16.5 days⁴ per claim. Since 2017, the overall average length of time for this process is 18.8 days per claim. Although each case is unique and the length of time to fully review a case is not predictable, the streamlining and increased efficiency of this process has allowed Commission staff to focus on further review and investigation of cases in an effort to reduce overall review time. Going forward, the Commission anticipates that it will be able to

¹ This number is much higher than that of 2020, which was 173 claims. 2020's claims were lower than the several years prior, likely due to COVID-19's impact on prisons.

² This does not include the 50 claims that were pending return of the Commission questionnaire at the end of 2021. Each of these claims was made in the last quarter 2021, however, because a questionnaire had not yet been returned, the claim has not yet been reviewed by the Commission.

³ See Commission Flow Chart for explanation of Commission phases. Flow Chart can be found at: <http://innocencecommission-nc.gov/resources/>

⁴ This average is down from 20.5 days in 2020.

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. By early 2021, both of those cases had been completed. At the completion of 2021, there are two active cases that have been with the Commission for more than three, but less than four years, four active cases have been with the Commission between two and three years, and the remaining 56 active cases have been with the Commission for less than 2 years.

While true that post-conviction innocence work, in the broader sense, often takes a decade or more to see resolution, as noted in a recent INDY Week article (which outlines both law school and other non-profit models in the state)⁵ 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 2006.⁶

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 ended on December 31, 2021. The Commission was able to exhaust all funds awarded during the grant period. For violent felonies where the convicted person is claiming innocence and DNA testing might show innocence, the grant funding covered 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. In late 2021, the Commission

⁵See Local Law Scholars Differ on How to Approach Actual Innocence Work, But Agree That Reticence Among Prosecutors to Reopen Cass is One of the Greatest Obstacles to Achieving True Justice. <https://indyweek.com/news/northcarolina/local-law-scholars-differ-on-how-to-approach-innocence-work/> stating that "Screening handwritten letters from North Carolina inmates is the first stage of an arduous process that sometimes takes decades." and "At Wake Forest, Rabil says, there's currently a two-year wait list for case screenings."

⁶ See Preamble to Session Law 2006-184.

sought and received a one-year extension on this grant. This grant will now end on December 31, 2022. 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.

For cases where there is an untested rape kit, the convicted person is claiming innocence and DNA testing might show innocence, the grant funding covers one full-time staff attorney, case reviews, evidence searches, travel, training, supplies, forensic experts, and DNA testing.

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 pushed back the start date under this grant until February 2021. While this grant is scheduled to end in 2022, the Commission anticipates seeking a one-year extension given the delay in receipt of funding. 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 two cases pending before post-commission three-judge panels that were investigated under these grants.⁷ Furthermore, the Commission has also had DNA testing in nine cases that supported the conviction, and located files and/or evidence which had previously been declared missing, lost or destroyed in 28 cases. In 2021, 26 searches for evidence were conducted under the grants and 31 DNA tests were conducted on 21 pieces of evidence.

Through the current and past grants, the Commission has developed strong working relationships with state and local agencies, as well as private laboratories. The Commission has been able to secure competitive rates for DNA testing at private laboratories, allowing the Commission to conduct DNA testing with the latest technology. The Commission 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

⁷ These two cases involve a total of six co-defendants. One case involves one defendant. The second case involves four co-defendants.

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 2021, the Commission continued implementing 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 assisted 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 funding is necessary to adequately address the needs of these often times overlooked Victims in the post-conviction context. The grant was a two-year grant running from October 1, 2019 through September 30, 2021.

The Commission learned in mid-2021 that it would not receive a VOCA grant in 2021 and sought permanent state funding for this program in its budget expansion request. That request was fully funded on a recurring basis and the work the Commission began under the 2019 VOCA grant will continue. In early 2022, the Commission learned that it would receive an extension on its 2019 VOCA grant that had expired in September 2021. The Commission hopes to utilize the extended funds to achieve sustainability for its Victim Services Program and set it up for continued success and expansion. Throughout 2021, funding from this grant supported trauma informed training for both Commission staff and Commissioners and allowed Victims to have meaningful participation in the Commission process. 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.

The Commission plans to seek a smaller VOCA grant in 2022 to further develop an additional piece of its Victim Services Program in conjunction with the non-profit, Healing Justice. Healing Justice is a unique national nonprofit organization that utilizes restorative justice and justice reform to provide healing to individuals and families harmed by injustices and to prevent future harm. The Commission seeks grant funds to develop and implement a program with healing justice for restorative justice between individuals exonerated through the Commission process and original victims of crime and their family members where those individuals wish to pursue restorative justice. As restorative justice is one of the Governor's priorities in the 2022 funding cycle, the Commission hopes that its program will be chosen for funding through a 2022 VOCA grant.

C. CASE STATISTICS

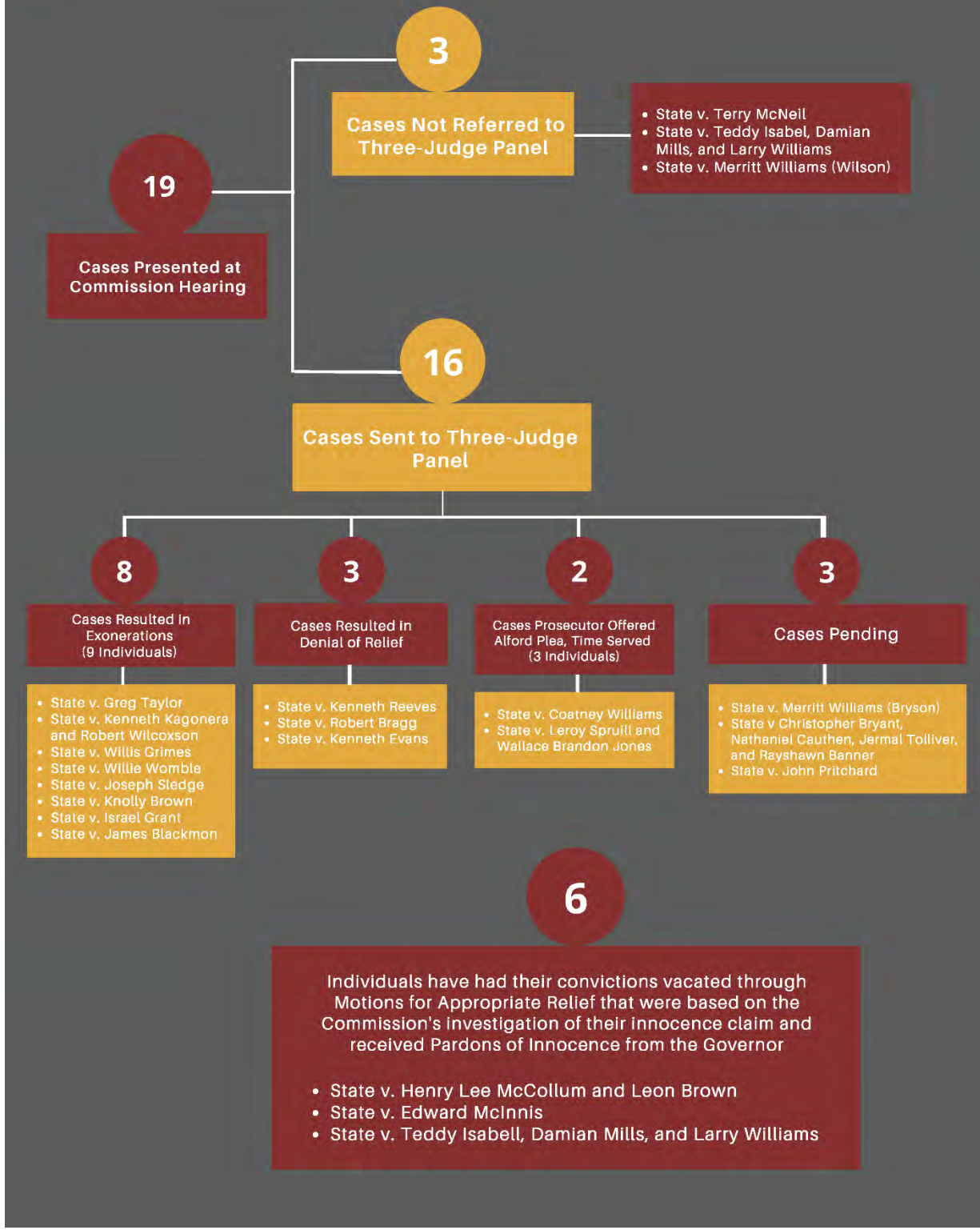
In 2021, the Commission received a total of 268 new innocence claims. Since it began operating in 2007, the Commission has received 3,154 claims of actual innocence. As of December 31, 2021, 3,033 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 18 hearings.⁸ 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.⁹ 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.

⁸ One of the hearings involved two separate and unrelated convictions of one claimant; thus 19 cases have been heard.

⁹ Of the 19 cases that have been presented at Commission hearings, 16 were sent forward to a three-judge panel and three were not. Of the 16 sent forward to a three-judge panel, eight resulted in the exonerations of nine 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. Two cases (three claimants) sent forward to a three-judge panel resulted in the prosecutor 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 six 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.





THE NORTH CAROLINA
INNOCENCE
INQUIRY COMMISSION

CASE STATISTICS

The Commission began operation in 2007

3155

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

3033

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

268

NUMBER OF CLAIMS RECEIVED IN 2020

18

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION

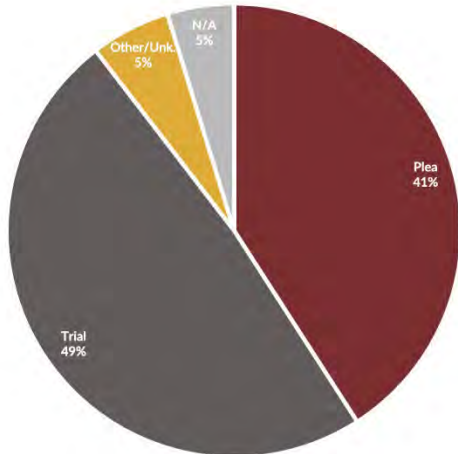
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EXONERATIONS*

Data compiled January 4, 2022

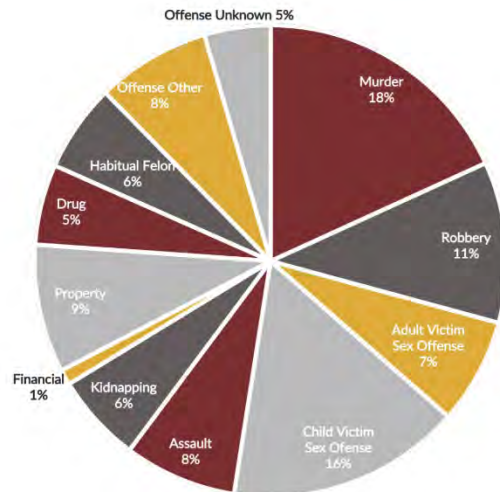
*Includes individuals exonerated as a result of the Commission's investigations either through a post-conviction three-judge panel or a Motion for Appropriate Relief (MAR) and Governor's pardon of innocence. Currently, there are three cases that have been heard by the Commission that are pending a three-judge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

Convictions Resulting from Trial or Plea



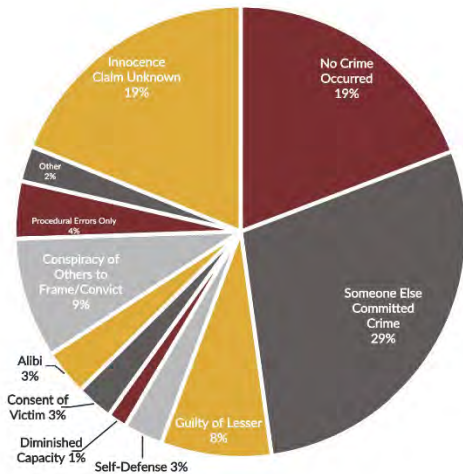
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

Applicants' Convictions



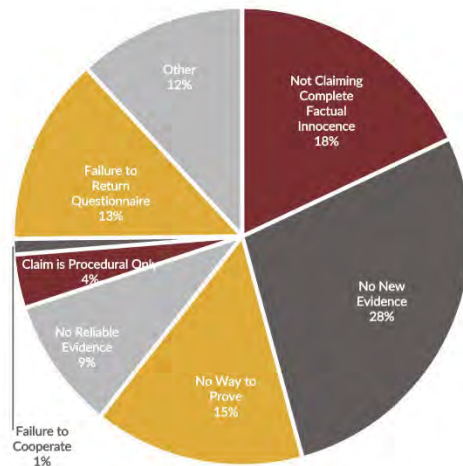
- Some applicants were convicted of multiple offenses.

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 2021, the Commission had 82 cases¹⁰ that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of approximately 137,000 pages¹¹ of files and trial transcripts, the review of almost 200 jail/prison phone calls (approximately 15 minutes each), 57 interviews, 6 depositions, 5 complex special hearings, 30 requests/searches for evidence, 21 pieces of evidence submitted for DNA analysis, 24 pieces of evidence submitted for other forensic analysis, and consultation with 17 experts, including 7 in one case.

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 2021, the Commission continued to successfully locate files and evidence.

On December 14-15, 2021, the Commission held a hearing in the cases of *State v. John Pritchard*. At the conclusion of all evidence, the Commission concluded that there was sufficient evidence of factual innocence to merit judicial review as to Mr. Pritchard's conviction for second degree murder. The Commission concluded that there was not sufficient evidence of factual innocence to merit judicial review as to Mr. Pritchard's convictions for Delivery of a Schedule II Controlled Substance and Possession with Intent to Manufacture Sell or Distribute a Schedule II Controlled Substance. The three-judge panel was appointed by Chief Justice Newby, and a three-judge panel hearing is pending.¹²

Keeping with the Commission's commitment to efficiency, the Commission filed with the Clerk of Court, the public records documents within two 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 hearing.

In 2021, three three-judge panels were scheduled,¹³ however, all but one was continued to 2022. In *State v. C. Williams*, after the Commission referred the case to a three-judge panel,

¹⁰ This is up from 64 cases in 2020.

¹¹ Of note, interns/volunteers for the Commission reviewed approximately 64,000 of those pages and worked over 2,400 hours in 2021.

¹² Public records documents available for this case can be found at: <https://innocencecommission-nc.gov/cases/state-v-john-pritchard/>

¹³ The three-judge panels in *State v. Spruill/Jones*, *State v. M. Williams*, and *State v. Bryant et. al.*, were scheduled in 2021.

but prior to a date being set for the three-judge panel, the District Attorney offered Mr. Williams the opportunity to enter an Alford Plea.¹⁴ On January 21, 2021, Mr. Williams accepted the Alford Plea. He was released from prison on January 25, 2021.

In *State v. Spruill/Jones*, the three-judge panel hearing was scheduled to be held November 8-19, 2021. Prior to the beginning of the hearing, the Attorney General's Office offered Mr. Spruill and Mr. Jones the opportunity to enter Alford Pleas¹⁵ which would allow both to be released with time served. On November 8, 2021, both Mr. Spruill and Mr. Jones entered Alford pleas. They were released from prison on November 10, 2021.

Prior to these two cases, the Commission had not had a case where the prosecutor offered an Alford Plea for time served in lieu of having the case heard at a three-judge panel. The practical implications for this outcome are that the claimant, who has claimed innocence and for which the Commission has found sufficient evidence of innocence to merit judicial review, is not in fact determined to be innocent, but rather retains a conviction on their record and is released from prison. In the above two cases, the claimants were serving lengthy prison sentences, one of which was a life without parole sentence, another of which involved an additional 40 years, and the third was life with parole (eligible in 2011 but had not been granted parole). Further, without an exoneration through the Commission process or a pardon of innocence from the Governor, these claimants are not eligible for compensation through the Industrial Commission for a wrongful conviction.

E. OTHER 2021 ACTIVITIES AND ACCOMPLISHMENTS

In 2021, despite the continued 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.

Commission leadership worked diligently in 2021 to ensure that the Commission's budget expansion request made it into the final General Assembly budget. This involved developing relationships with legislators and meeting with them to demonstrate the Commission's need for the budget expansion. While the Commission has sought to increase efficiency over the past six years, that has not come without a cost. Much of that has meant that Commission leadership and staff have worked significant overtime hours and the Commission has relied heavily on interns and volunteers.¹⁶ This is discussed more fully in the audit section below. In order to continue the efficiency and effectiveness of the agency, while pushing the agency into spaces it has not yet been able to reach, a budget expansion was necessary. The General

¹⁴ An Alford Plea "is when a defendant maintains his innocence but admits that the state has sufficient evidence to convict him and agrees to be treated as guilty." See *North Carolina v. Alford*, 400 U.S. 25 (1970).

¹⁵ *Id.*

¹⁶ Interns and volunteers reviewed approximately 45% of the 137,000 pages reviewed by the Commission in 2021.

Assembly agreed with the Commission, much to our great appreciation, adding, among other things, much needed staff with three additional full-time positions, operating expenses, and funding for the Commission's Victim Services Program and Coordinator. The General Assembly, through its support of the Commission, has positioned North Carolina to continue to be a leader in innovative criminal justice reform.

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. In fact, as it stands, the Commission has proven to be the most efficient method for timely and thorough review of post-conviction claims of factual innocence.¹⁷ 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 and Associate Director provided information to agencies and individuals in other states who are considering creating a commission modeled after North Carolina's. Additionally, the Director and Associate Director consulted with Judges and scholars in Canada as they navigated the creation of an independent Canadian Criminal Case Review Commission. The Director also worked with editors on the book chapter about the Commission that she submitted in late 2020 for a book tentatively titled *Wrongful Convictions in Israel and Canada: Barriers to Exoneration*.

The Commission's Director and Associate Director also gave presentations to and met with governmental agencies, civic groups, educational institutions, and the public. In 2021, virtual or in person presentations were given to: the Ohio Taskforce on Conviction Integrity and Postconviction Review, the NC Coalition Against Sexual Assault, the NC Police Executives Association, the NC Association for Identification, the NC Association of Private Investigators, the NC Department of Public Safety (prison leadership and four regional meetings), the Moore County Bar Association, NC State University, and Elon University. In June 2021, the Commission's Director participated in a panel through the National Association of Sentencing Commissions titled: *Vetting Wrongful Convictions*.

¹⁷ See article: *Local Law Scholars Differ on How to Approach Actual Innocence Work, But Agree That Reticence Among Prosecutors to Reopen Cass is One of the Greatest Obstacles to Achieving True Justice*. <https://indyweek.com/news/northcarolina/local-law-scholars-differ-on-how-to-approach-innocence-work/> stating that "Screening handwritten letters from North Carolina inmates is the first stage of an arduous process that sometimes takes decades." and "At Wake Forest, Rabil says, there's currently a two-year wait list for case screenings." The Commission screens cases in an average of 16.5 days from receipt of the claim/questionnaire. The Commission's oldest case has been active with the Commission for less than four years and is anticipated to be completed in 2022. The Commission acknowledges that the role of the Commission is different than the role of defense attorneys representing clients in post-conviction innocence litigation but submits that the Commission's neutral model which includes broad statutory authority to obtain files and evidence necessary to its inquiry is the most efficient method for timely and thorough review of post-conviction claims of innocence.

In an effort to share information about the Commission more widely, the Commission worked with the Administrative Office of the Courts to develop three episodes of the “All Things Judicial” Podcast on the Commission. The first episode focused on the Commissioners experiences at the Commission (Episode 14). The second episode focused on the Commission’s Victim Services Program (Episode 16). The final episode focused on the Commission staff and its work (Episode 19). The podcast is available publicly on the AOC website, <https://www.nccourts.gov/learn/all-things-judicial-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, the Supreme Court, the Court of Appeals, 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 2021, 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 2021, the Commission’s sixth 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 29, 2021. 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 reviewed in detail talent management at the Commission and concluded that additional staff positions were needed. The Commission's budget expansion largely resolves the issues related to talent management that were identified in this audit.

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 54% of those audited by AOC since 2015 and only 73% of those audited in 2021. The Commission will undergo another audit in 2022 and anticipates that the results will be similar. A copy of the Commission's audit report is available upon request.

IV. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2022

A. PLANS FOR 2022

In 2022, 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 plans to hire for the newly created Associate Director position. This Associate Director's focus will be on case investigations. The Commission's current Associate Director, Beth Tanner, will focus on complex legal matters before the Commission as well as the Commission's legislative priorities, while maintaining a caseload. The Commission's Director will continue to manage the day-to-day operations of the of the Commission, review all claims that come to the Commission and increase her focus on sharing the Commission model with other states and countries. The Commission will also hire two new staff attorneys as funded in the expansion budget. The Commission anticipates holding at least two hearings in 2022. Further, three cases are pending post-Commission three-judge panel hearings and are likely to be held in 2022.

In 2022, the Commission will be applying again for a Victims of Crime Act (VOCA) grant through the Governor's Crime Commission (GCC) to support a new program related to restorative justice under its Victim Services Program. The Commission also anticipates expanding its Victim Services Program through its appropriated state funds to provide support to exonerees, who the Commission views as Victims of crime as well as implementing training for criminal justice partners who interact with Victims of crime in the post-conviction context with respect to what the Commission has learned through implementation of its Victim Services Program.

The Commission continues to seek out additional grant funding and anticipates applying for another BJA Postconviction DNA Testing grant in 2022. As other appropriate grants are identified, the Commission intends to apply for them. 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. Finally, the Commission continues to receive an increasing number of inquiries from other states interested in exploring the Commission model. In 2022, 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 2022, 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 2022 Session should any legislation be proposed related to the Commission.

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. While the Commission does not have any current funding requests, the Commission is continually evaluating any needs we may have and will communicate with legislative members as needed.

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. This year in particular, we are grateful for the trust the General Assembly has placed in the Commission by providing for an expansion to our budget. 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 210 claims per year and continues to investigate cases that ultimately result in the exoneration of innocent individuals. The steady flow of cases and hearings demonstrate the need for the continued existence and funding of the Commission.

As described above, the Commission maintains a website (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.



THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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