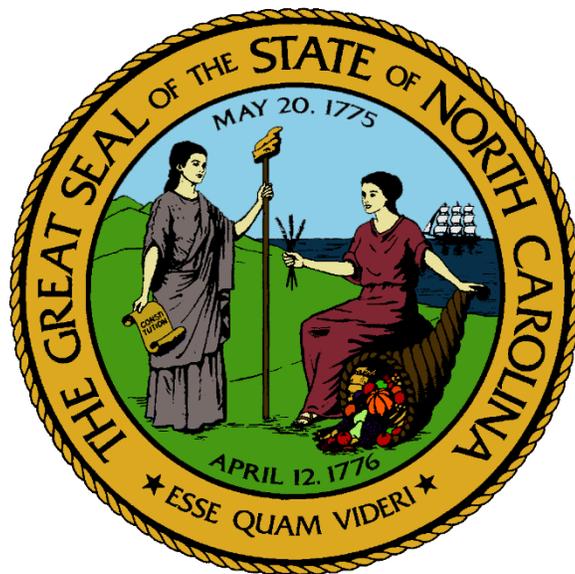


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



2022 ANNUAL REPORT

Lindsey Guice Smith
Executive Director
January 31, 2023



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 2022-2023 LONG SESSION OF THE GENERAL ASSEMBLY OF NORTH CAROLINA:

The North Carolina Innocence Inquiry Commission herewith submits to you for your consideration its annual report pursuant to N.C.G.S. § 15A-1475.

Respectfully Submitted,



Lindsey Guice Smith
Executive Director
North Carolina Innocence Inquiry Commission
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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 by February 1 of each year.

2022 ANNUAL REPORT

This annual report to the Joint Legislative Oversight Committee on Justice and Public Safety is provided pursuant to G.S. § 15A-1475. This report details the activities of the North Carolina Innocence Inquiry Commission in 2022 and the Commission's plans for 2023. Included are statistics for 2022 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.

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. She also served on North Carolina's Sexual Assault Evidence Collection Kit Working Group. Additionally, Ms. Guice Smith currently serves as the immediate Past 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 a working group in Ohio charged with making recommendations for handling innocence claims in the state and in 2022 the working group recommended that Ohio adopt an Innocence Inquiry Commission modeled largely after the North Carolina Innocence Inquiry Commission.

Susan Brooks is the Commission's Associate Director for Legal, Legislative, and Policy matters. Ms. Brooks joined the Commission in October 2022 in this capacity. Immediately prior to

joining the Commission, Ms. Brooks was a state agency administrator in the NC Office of Indigent Defense Services for over 18 years. Ms. Brooks started her career as an assistant public defender in Jacksonville, Florida. She returned to North Carolina to engage in civil practice, first as a plaintiffs' workers compensation attorney with Wallace & Graham, P.A. in Salisbury, NC, and then as an insurance defense attorney at Ragsdale Liggett P.L.L.C. in Raleigh, NC. Ms. Brooks is a 1990 graduate of NC State University with a Bachelor of Arts in English and a minor in Political Science. She received her J.D. from Harvard Law School in 1994 and is admitted to practice law in North Carolina.

Catherine Matoian is the Commission's Associate Director for Investigations. Ms. Matoian became the Commission's Associate Director for Investigations in June 2022, previously serving as a Staff Attorney at the Commission since 2013. As a staff attorney, Ms. Matoian became well versed in post-conviction DNA testing and DNA testing technologies, having worked under the Commission's Post-Conviction DNA Testing Assistance Program grant for 9 years. Ms. Matoian graduated from the University of North Carolina at Asheville in 2008 with a Bachelor of Arts in History. She graduated from the Norman Adrian Wiggins School of Law at Campbell University in 2012. Ms. Matoian is admitted to practice law in North Carolina.

The Commission's Chair is 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



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Catherine Matoian
Associate Director
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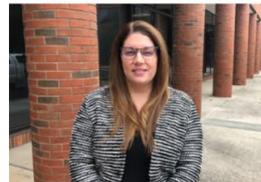
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Staff Attorney



Josh Cox
Staff Attorney



Alex Strombotne
Staff Attorney



Mackenzie Myers
Staff Attorney



Danielle Smith
Grant Staff Attorney



Taylor Miller
Grant Staff Attorney



Emma Paul
Victim Services Program Manager



Jason Fitts
Case Manager



Kristie Parker
Paralegal

Commissioners



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



**The Honorable
Wayland Sermons
Alternate Chair**



**Ashley Welch
Prosecuting Attorney**



**Luther Johnson Britt
Criminal Defense
Attorney**



**Sheriff Van Shaw
Sheriff**



**Robin Colbert
Victim Advocate**



**Todd Williams
Alternate Prosecuting
Attorney**



**Deborrah Newton
Alternate Criminal
Defense Attorney**



**Sheriff Joey Lemons
Alternate Sheriff**



**Scott Bass
Alternate Victim
Advocate**



**Kieran Shanahan
Discretionary Member I**



**Judge Beth Tanner
Alternate Discretionary
Member I**



**Paul "Skip" Stam
Discretionary Member II**



**Yvonne Mims Evans
Alternate Discretionary
Member II**



**Immanuel Jarvis
Public Member**



**Edward Landis
Alternate Public Member**

II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

2022 was a busy year for the Commission. In late 2021, the North Carolina General Assembly passed, and the Governor signed, a budget that included a budget expansion for the Commission, solidifying the State's confidence in the Commission's ability to carry out its mandate of providing an independent and balanced truth-seeking forum for credible post-conviction claims of factual innocence. In 2022, the Commission focused on efficiently moving claims through the Commission process, filling the new positions created by the budget expansion, educating other states, groups, and stakeholders about the Commission model, preparing for an overhaul of the Commission's antiquated database, starting a newsletter, and celebrating 15 years in operation.

A. CASE MANAGEMENT

The Commission received a total of 223 new claims in 2022, increasing the Commission's yearly average to 211 claims per year. During 2022, the Commission completed its review/investigation and closed all but 53 of those new claims.¹ At the end of 2022, the Commission had a total of 45 active cases in various stages of review/investigation and 35 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 makes a determination on whether the case meets the statutory case criteria for further review or closes the case.³ Prior to this effort, this process could take up to a year. This effort has continued since that time. In 2022, the average length of time for this process was 14.5 days⁴ per claim. Since 2017, the overall average length of time for this process is 18.1 days per claim. Although each case is unique and the length of time to fully review a case is not predictable, the streamlining and increased efficiency of this process has allowed Commission staff to focus on further review and investigation of cases in an effort to reduce overall review time. Going forward, the Commission anticipates that it will be able to keep up with the initial reviews in a timely manner consistent with that which it has achieved since 2017.

¹ This does not include the 35 claims that were pending return of the Commission questionnaire at the end of 2022. Each of these claims was made in the last quarter of 2022, however, because a questionnaire had not yet been returned, the claim has not yet been reviewed by the Commission.

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

³ This also includes claims where a questionnaire is not sent because a determination as to eligibility can be made at the time the claim is received.

⁴ This average is down from 16.5 days in 2021. The addition of a second Associate Director allowed the Executive Director to delegate some responsibilities, in turn providing for an even quicker turnaround time on initial review decisions.

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. In 2022, no cases reached the five-year mark at the Commission. At the completion of 2022, there are two active cases that have been with the Commission for more than three but less than five years and five active cases that have been with the Commission between two and three years; the remaining 38 active cases have been with the Commission for less than two 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.⁵ 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

DNA GRANTS

In September 2019, the Commission was awarded a 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 sought and received a one-year extension on this grant. This grant ended on December 31, 2022. The Commission was able to exhaust all funds awarded during the grant period.

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

Using this grant, the Commission was able to conduct an audit of 905 closed sexual assault cases where convicted persons had previously applied to the Commission claiming innocence. As a result of this audit, 24 cases were reopened. In total, the Commission investigated 50

⁵Anecdotally, the Commission recently reviewed a claim where the NC Court of Appeals had remanded an MAR back to the trial court to be heard on the merits, but due to an oversight, that hearing didn't occur for four years. In another case, an MAR filed in 2018 has yet to be heard. In that case, the claimant's attorney withdrew due to his law license being suspended in 2021, the claimant requested an attorney, and to date, according to the court file, the request for an attorney has not been addressed, no hearing has been scheduled, and no decision has been made.

⁶ See Preamble to Session Law 2006-184.

claims using the 2019 Grant funds, conducted 59 searches for evidence, and conducted DNA testing in five cases. In one of those cases, the DNA testing supported the claimant's conviction.

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. In 2022, the Commission sought a one-year extension given the delay in receipt of funding. That extension was approved, and this grant now ends on September 30, 2023. 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 2022, the Commission was awarded a three-year grant in the amount of \$550,000 through the Bureau of Justice Assistance FY 22 Postconviction Testing of DNA Evidence Program. This funding was slated to begin on October 1, 2022, and run through September 30, 2025; however, the funds were not released for use until December 2022. As with our 2020 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 seven grants, totaling over \$3.5 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. Furthermore, the Commission has also had DNA testing conducted in 11 cases that supported the conviction and located files and/or evidence which had previously been declared missing, lost or destroyed in 29 cases. In 2022, 21 searches for evidence were conducted under the grants and 21 DNA tests were conducted on 20 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 (NCSCCL) and uses NCSCCL, when possible, for DNA and other forensic testing, as well as to upload DNA profiles to the Combined DNA Index System (CODIS). The Commission will continue to apply for additional grant funding to offset the costs associated with investigating cases, conducting DNA testing, and evidence searches.

VOCA GRANTS

In 2022, 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 its 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-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 received a one-year extension on this grant in early 2022 that allowed the Commission to continue its work under this grant until September 30, 2023. In 2022, this grant continued to support victim-centered, trauma informed training to Commission staff, as well as continued to allow victims to have meaningful participation in the Commission process. In late 2021, the Commission received funding from the General Assembly to fund its Victim Services Program on a permanent basis.

In 2022, the Commission sought and received a 2022-2024 VOCA grant to fund a partnership with the national nonprofit Healing Justice. Healing Justice is a unique organization that utilizes restorative justice and justice reform to provide healing to individuals and families harmed by injustices and to prevent future harm. This grant awards the Commission \$48,855.50 over two years, from October 1, 2022, to September 30, 2024. The purpose of the partnership is to offer restorative justice services to crime victims and family members impacted by Commission investigations, as well as exonerees, their family members, and other criminal justice stakeholders who were involved in the wrongful conviction and exoneration. While the Commission's Victim Services Program provides support to crime victims during the process of an investigation, there are few resources to offer after an exoneration to address these victims' feelings of loss, grief, betrayal, fear, and abandonment. This project will address this gap in NC by creating restorative justice processes through which the Commission, in partnership with Healing Justice, can meet the needs of crime victims in the wake of exonerations. As a victim-centered response to crime, restorative justice processes are primed to address the complexity of exoneration cases and the unique harm they cause to crime victims. Restorative circles, conferences, and other activities will be used to provide victims with a safe space to meet others involved in these cases and ask questions, share, and understand different perspectives, and explore opportunities for healing.

C. CASE STATISTICS

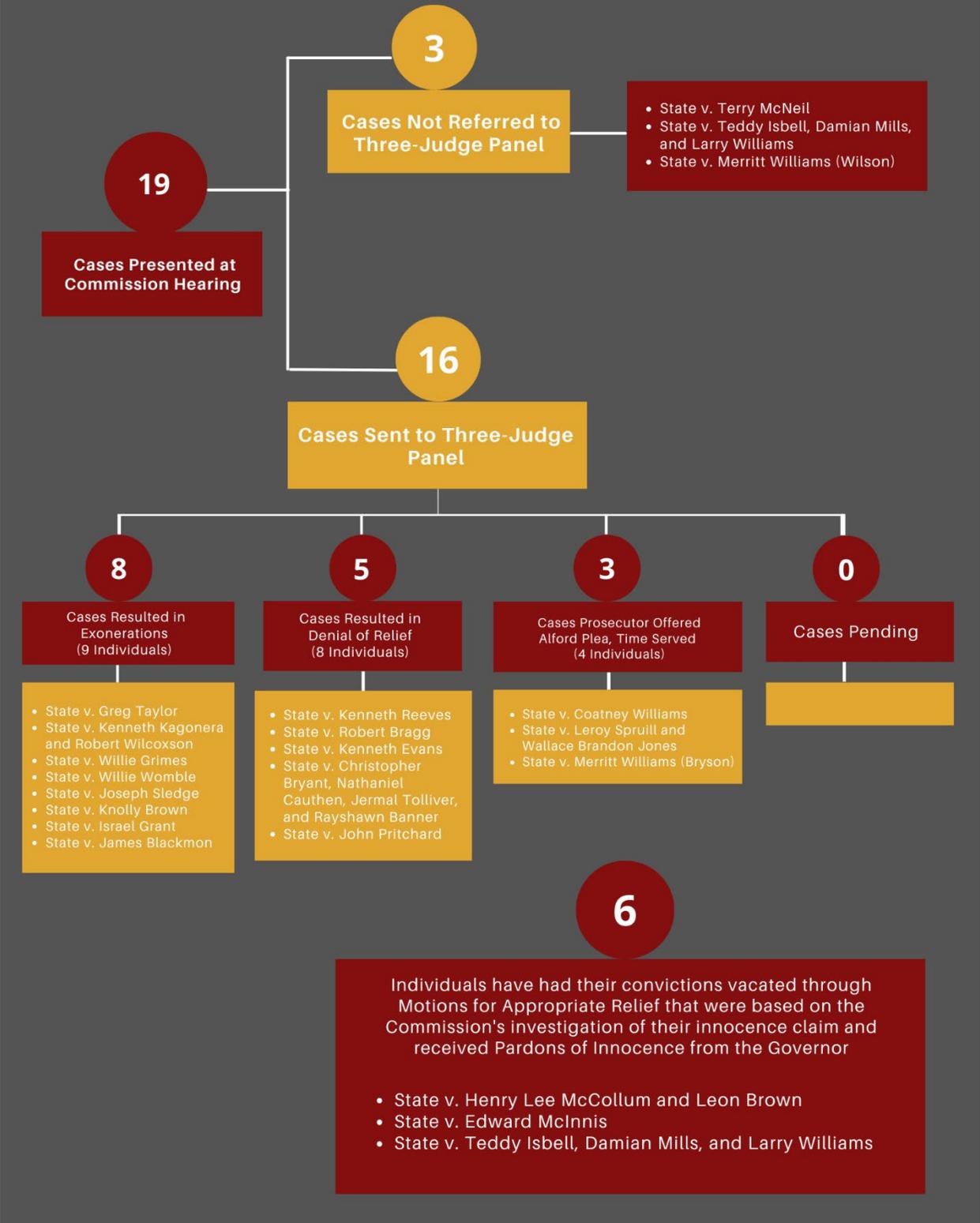
In 2022, the Commission received a total of 223 new innocence claims. Since it began operating in 2007, the Commission has received 3,373 claims of actual innocence. As of December 31, 2022, 3,033 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 18 hearings.⁷ 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.⁸ 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 three pages is a compilation of statistical data for the Commission. Further statistical data is available from the Commission's Director upon request.

⁷ One of the hearings involved two separate and unrelated convictions of one claimant; thus 19 cases have been heard.

⁸ 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). Five cases sent forward to a three-judge panel resulted in a denial of relief by the three-judge panel (eight individuals). Three cases (four individuals) 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. Additionally, six individuals have had their convictions vacated through Motions for Appropriate Relief that were based on the Commission's investigation of their innocence claims and have received Pardons of Innocence from the Governor.





THE NORTH CAROLINA
INNOCENCE
INQUIRY COMMISSION

CASE STATISTICS

The Commission began operation in 2007

3373

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

3302

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

223

NUMBER OF CLAIMS RECEIVED IN 2022

18

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION

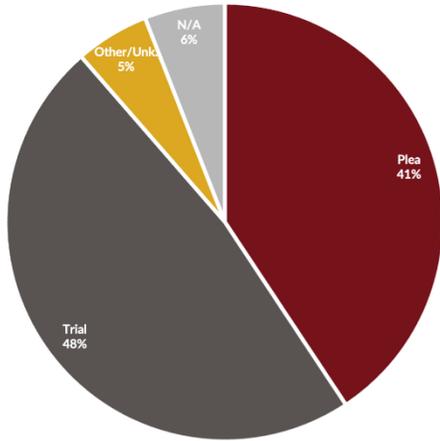
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EXONERATIONS*

Data compiled December 31, 2022

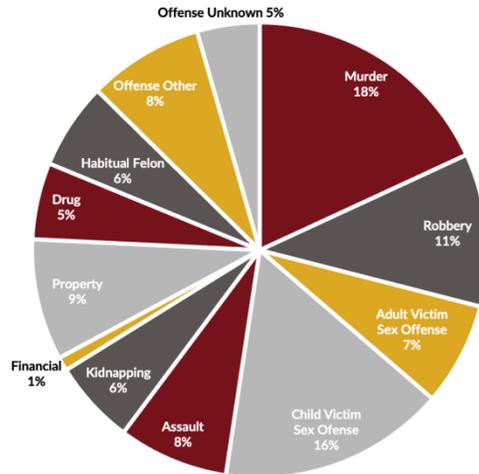
*Includes individuals exonerated as a result of the Commission's investigations either through a post-conviction three-judge panel or a Motion for Appropriate Relief (MAR) and Governor's pardon of innocence. There are currently no cases pending hearing before a post-Commission three-judge panel.

Convictions Resulting from Trial or Plea



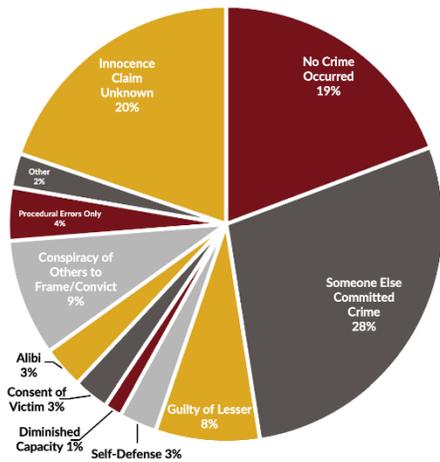
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

Applicants' Convictions



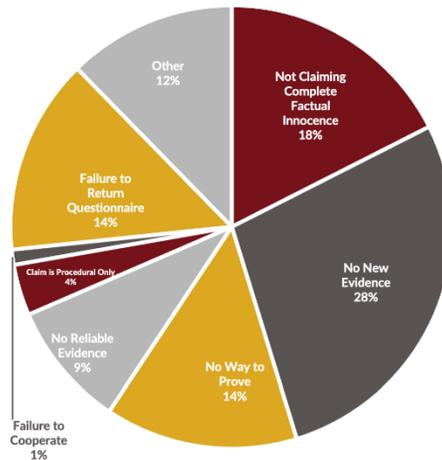
- Some applicants were convicted of multiple offenses.

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

The Commission staff continues to review and investigate cases in a neutral and thorough manner. In 2022, the Commission had 78 cases that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of files, documents, trial transcripts, and jail/prison calls; interviews and depositions; subpoenas, motions, and proposed orders; searches for evidence; submission of evidence for DNA and other forensic testing; and consultation with experts, among others.

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 clerks' 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 29 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 2022, the Commission continued to successfully locate files and evidence.

In 2022, three three-judge panels were scheduled for hearing. In *State v. Bryant, et. al.*, a three-judge panel hearing was held in Forsyth County from April 18, 2022, through April 28, 2022. At the conclusion of the hearing, the three-judge panel unanimously ruled that Mr. Bryant, Mr. Cauthen, Mr. Tolliver, and Mr. Banner had not proven their innocence by clear and convincing evidence and relief was denied.

In *State v. Pritchard*, a three-judge panel hearing was held in Yancey County from July 11-13, 2022. At the conclusion of the hearing, the three-judge panel unanimously ruled that Mr. Pritchard had not proven his innocence by clear and convincing evidence and relief was denied.

In *State v. M. Williams*, after the Commission referred the case to a three-judge panel, but prior to the three-judge panel hearing, the Forsyth County District Attorney's office offered Mr. Williams the opportunity to enter an Alford Plea.⁹ On June 16, 2022, the assistant district attorney and counsel for Mr. Williams consented to a Motion for Appropriate Relief, vacating Mr. Williams' conviction for murder and allowing him to enter an Alford Plea for breaking and/or entering. Mr. Williams accepted the Alford Plea, maintaining his innocence, and was sentenced to three years on the breaking and/or entering conviction. That sentence retroactively began on August 4, 1987. Mr. Williams remains incarcerated on another unrelated conviction.

⁹ 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).

2021 was the first year since its inception, in which the Commission saw a prosecutor offer an Alford Plea for time served in lieu of having the case heard at a three-judge panel. The Commission has now seen this occur in three cases, which may indicate that this will become a more common outcome going forward. In those cases, the claimants, along with their attorneys, were faced with a decision, much like defendants are faced with pre-trial, to weigh moving forward with a three-judge panel hearing where the burden of proof is on them versus taking an Alford Plea which provides them with time served and allows them to effectively continue to maintain their innocence while obtaining immediate relief. 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. 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. In all three cases, the claimants were serving lengthy prison sentences.

E. OTHER 2022 ACTIVITIES AND ACCOMPLISHMENTS

15TH ANNIVERSARY CELEBRATION

In 2021, the Commission reached 15 years of operation. Due to the global pandemic, the Commission was unable to properly celebrate that milestone. Instead, the Commission celebrated its 15th Anniversary in 2022. The Commission held several events throughout the week of October 24, 2022 to mark the occasion, including a 15th Anniversary Celebration and our first CLE to educate the legal community about the Commission process.

Chief Justice Paul Newby declared the week of October 24, 2022 to be Innocence Inquiry Commission week for the North Carolina Judicial Branch, and Governor Roy Cooper declared the week of October 24, 2022 to be Innocence Inquiry Commission week for the state of North Carolina. The Commission was honored to receive recognition from both the Chief Justice and the Governor for its impact on the criminal justice system in North Carolina.

On October 26, 2022, the Commission held its 15th Anniversary Celebration at the Dorothy and Roy Park Alumni Center at NC State University in Raleigh, NC. The Commission welcomed current and former Commissioners, former staff members, members of the General Assembly, and various stakeholders and partners from across the criminal justice community. The Commission is thankful to those in attendance for their continued support.

During the event, the Commission's Executive Director welcomed guests and highlighted the Commission's accomplishments in its first 15 years, as well as honored the 15 individuals who have been exonerated as part of the Commission's process. In total, these exonerations represent 296 years spent in prison for crimes they did not commit.

After pre-recorded comments from Chief Justice Paul Newby, the Commission's current Chair, Senior Resident Superior Court Judge Thomas Lock, and Representative Jamie Boles both spoke about the Commission's impact on them personally and on the criminal justice system in North Carolina. Finally, the Commission presented its first Criminal Justice Partner Award to Chief David L. Hess of the Roxboro Police Department in recognition of someone who has worked alongside the Commission to support its mission to ensure the innocent as well as the guilty receive justice.

On October 27, 2022, the Commission held a CLE at the North Carolina Judicial Center. Executive Director Lindsey Guice Smith gave an overview of the Commission's process and accomplishments over the last 15 years, Victim Services Program Manager Emma Paul gave a presentation about the Commission's groundbreaking Victim Services Program, former Associate Director Beth Tanner gave a presentation on her research into the data compiled by the Commission over 15 years and how it can shape the criminal justice system, and Commissioners Johnson Britt, Robin Colbert, and John Boswell participated on a panel to share their experiences on the Commission.

In October, the Commission also launched its quarterly newsletter. To receive the newsletter and keep up with the work of the Commission throughout the year, sign up on our website at <https://innocencecommission-nc.gov>.

BUDGET

As part of the FY2021-2022 budget, in January 2022, the Commission received funding for four additional state funded positions including a second associate director, two additional staff attorneys, and a Victim Services Program Manager. Commission leadership began working to fill these positions immediately. The Commission also experienced turnover in 2022, with two staff attorneys leaving for other positions and the Commission's Associate Director leaving to become a District Court Judge. After promoting from within for several positions, much of 2022 was spent recruiting, hiring, and training new staff. The Commission is currently fully staffed with 10 state funded staff members and two grant funded staff members.

DATABASE

After receiving additional operating funds from the General Assembly in January 2022, the Commission began working to identify a software program and database developer to overhaul and replace the Commission's current Access database. The Commission's current database is antiquated and extremely limited, particularly with respect to its ability to provide useable reports from the data contained in the database. In fact, with the Commission's current database, the Commission's Executive Director spends several weeks in January of each year hand pulling and hand counting data for many of the statistics provided in this report. As such, it is critical to the continued success and efficiency of the Commission that the Commission replace its outdated database with a modern database. A modern database will not only allow the Commission to report data more efficiently but will also allow the Commission to report additional data that it currently has within the database but cannot report.

Although the Commission made every effort to have contracts in place for both the developer and software prior to the end of FY21-22, this was not possible. In light of that, the Commission sought and received from the Office of State Budget Management permission to carry forward its budget to cover the cost of the project. By the end of 2022, both the software and developer contracts were in place, and the project was well underway. The Commission's Executive Director was able to work with the developer this January to write reports within the new database software so that reports could be generated rather than having to manually pull and count data.

The project is estimated and on track to be complete in April-May 2023. In addition to moving the contents of the old database to the new software, the developer will create new features within the database to allow the Commission to collect, track and report additional data. As the only agency of its kind in the nation, with other states and nations looking to the Commission as a model for post-conviction innocence claim review, the ability to provide robust data is important.

VICTIM SERVICES PROGRAM

Presentations: In 2022, the Commission's Victim Services Program Manager Emma Paul sought to share lessons learned in providing post-conviction victim services with other criminal justice stakeholders across the state, including District Attorneys' offices, public defenders, victim advocates, and law enforcement. This effort aims to address the dearth of victim services and information in the post-conviction space and to open the door to coordinating post-conviction services between agencies. Commission staff traveled to Beaufort County and Buncombe County and to the Elected Clerk's Summer Conference to deliver presentations. This effort will continue in 2023. The Victim Services Program Manager also provided presentations at Campbell University School of Law and at the National Center for Victims of Crime's National Training Institute in St. Louis, Missouri.

Safety Planning: In the wake of an exoneration or release following an Alford Plea, crime victims often have serious safety and security concerns. To assist victims in rebuilding a sense of safety, the Commission created a process through which crime victims can receive monetary assistance to purchase security measures for their homes. This might include camera doorbells, deadbolts, and outdoor lighting. This assistance can also be used for counseling, as we understand that feeling safe is both physical and psychological. The monetary assistance provides up to \$750.00 per case. Throughout this process, the Victim Services Program Manager is available to help create a safety plan, discuss safety concerns, and develop strategies to address the specific concerns the victim might have.

Victim Services Staff Training: Staff training is an essential part of the Commission's victim services program. In addition to attending the National Organization for Victim Assistance Conference and the National Center for Victims of Crime Training Institute, the entire Commission staff participated in a Victim Services Training Retreat. The retreat allows staff time away from the office to discuss the hard questions of providing victim services: How do we implement trauma-informed practices in Commission investigations? How do we engage with

vulnerable individuals, such as people with serious mental illness, during investigations? How can we limit the impact secondary traumatic stress has on staff? These trainings give staff the tools they need to manage difficult and potentially re-traumatizing interactions with crime victims and witnesses.

OUTREACH

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.¹⁰ 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, in 2022, an Ohio taskforce recommended the creation of the Ohio Innocence Inquiry Commission, modeled largely after the NC Innocence Inquiry Commission. This recommendation came after a lengthy study in which the taskforce heard from the Director and Associate Director of the Commission, along with leaders at other post-conviction innocence models. The full report can be viewed at <https://www.supremecourt.ohio.gov/docs/Boards/CIPR/Report.pdf>. The four-page section outlining the recommendation of the creation of the Ohio Innocence Inquiry Commission modeled after the NC Innocence Inquiry Commission is attached to this report as Appendix A and can be found on pages 45-48 of the full report.

Additionally, in February 2022, Canada released its final report as it relates to the creation of a Canadian Criminal Case Review Commission. The commission that Canada seeks to create is much broader than that of the NC Innocence Inquiry Commission, however, the Commission appreciates the opportunity to consult with Canada as a committee considered how best to handle wrongful conviction claims in Canada.

¹⁰ See article: Local Law Scholars Differ on How to Approach Actual Innocence Work, But Agree That Reticence Among Prosecutors to Reopen Cases 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/> Additionally, in 2022, the Commission screened cases in an average of 14.5 days from receipt of the claim/questionnaire. The Commission's oldest case has been active with the Commission for less than five years and is anticipated to be heard at a hearing in 2023. 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.

The Commission's Director and Associate Directors also gave presentations to and met with governmental agencies, civic groups, educational institutions, and the public. In 2022, virtual or in-person presentations were given to: the Wake County Bar Association, the Moore County Bar Association, the NC Association for Property and Evidence, Campbell University School of Law, Elon University, the Women's Forum of NC, the NC Pro Bono Resource Center, the Buncombe County District Attorney's Office, the Beaufort County District Attorney's Office, the NC Conference of Clerks of Superior Court, and the National Center for Victims of Crime's National Training Institute. Additionally, the Commission provided a half-day CLE as part of its 15th Anniversary celebration.

Additionally, the Commission's Director and Associate Directors routinely participated in meetings and interviews and answered questions about the Commission process with members of the General Assembly, other state government agencies and officials, 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 2022, 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 2022, the Commission's seventh annual audit was conducted. This was a detailed process that included several meetings and communications between the Commission's Director, Associate Director, and AOC auditor.

The audit was completed on November 16, 2022. The Commission was evaluated in several risk categories, including evidence, accounting, reporting and annual audit requirements, and 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 “For the Commission to attract and retain talented, qualified individuals, statutory changes that grant judicial longevity pay to Director of the Commission, Assistant Directors of the Commission, and all licensed staff attorneys should be approved. For the Commission to attract and retain a talented, qualified Director of the Commission and assist with succession planning in the future, statutory changes that grant membership in the Consolidated Judicial Retirement System to the Commission Director should be approved.” Based on this recommendation, the Commission is seeking both items in the FY23-24 budget as outlined in section IV below.

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 55% of those audited by AOC since 2015 and only 63% of those audited in 2022. The Commission has received an Effective audit rating every year that it has been audited. The Commission will undergo another audit in 2023 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 2023

A. PLANS FOR 2023

In 2023, 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. In addition to casework, the Commission will also focus on outreach, the database project, training, and further developing its Victim Services Program. The Commission will also request additional funding, as described in more detail below.

In 2023, 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 focus on sharing the Commission model through outreach to other states and countries considering the Commission model for post-conviction innocence review. The Director will also focus on outreach to criminal justice stakeholders, as well as the public, in an effort to educate them on the Commission’s role in the criminal justice community. Several presentations are already planned throughout North Carolina and the U.S.

The Commission’s Associate Director for legislative, legal and policy matters, Susan Brooks, will focus on the Commission’s legislative priorities as well as complex legal matters before the Commission. Ms. Brooks will be available to members of the General Assembly to provide education about the Commission and answer any questions they may have. The Commission’s Associate Director for investigations, Catherine Matoian, will focus on ensuring Commission staff investigates claims efficiently and fully and moves any cases that are ready forward to a hearing. The Commission anticipates holding at least one hearing in 2023.

In 2023, the Commission's Director will work closely with the Commission's database developer complete the development of the Commission's new database and migrate data from the old database to the new database while assessing what additional data the Commission should collect in the new database. This project is estimated to be completed in April or May 2023 utilizing carryover budget funds from FY21-22.

The Commission will also bring in-house a National Institute of Trial Advocacy 3-day training on deposition and interviewing skills for eight of its attorneys. This state-of-the-art training will prepare Commission staff to conduct comprehensive and clear depositions and interviews, which are an integral part of their work. Several staff members will also attend various conferences on DNA testing technologies, preparing staff to most effectively assess and utilize DNA testing in their cases. The Commission's evidence custodians will attend trainings through the North Carolina Association for Property and Evidence to ensure that the Commission is handling and storing evidence in accordance with best practices and statutory requirements. Finally, Commission staff will attend training related to our Victim Services Program, including trauma-informed interview guidelines and other training relevant to our work.

In 2023, the Commission's Victim Services Program will continue to collaborate with Healing Justice under its 2022 Victims of Crime Act (VOCA) grant on its restorative justice program. Additionally, the Commission will continue to work on developing services to assist exonerees in their transition from incarceration. In 2023, we aim to identify partner organizations and create a process for connecting exonerees with resources and services as they work to rebuild their lives. Finally, the Commission will continue to provide 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 serves as a resource for other agencies and elected officials who receive innocence claims but lack the resources to investigate and evaluate them. Over the last few years, 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 2023, the Commission will continue to field calls from judges and accept case referrals in an effort to make the criminal justice system more effective. 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 Legal, Legislative, and Policy Associate Director will be available to members of the General Assembly throughout the 2023 Session should any legislation be proposed related to the Commission. As outlined below, the Commission is requesting

additional funding to support its work and ensure the Commission is competitive with respect to talent management.

B. FUTURE NEEDS OF THE COMMISSION

Pursuant to N.C.G.S. § 15A-1475, the Commission’s Annual Report shall recommend the funding needed by the Commission. In evaluating our fiscal needs over the last year, the Commission had determined that it needs additional funding. As such our budget request is as follows:

NC INNOCENCE INQUIRY COMMISSION LEGISLATIVE 2023 LONG SESSION REQUESTS

Item	Recurring Request	Non-Recurring Request
Judicial Retirement & Longevity* for Executive Director	\$43,765.00	\$232,720.00
Administrative Assistant Position	\$79,114.00	\$2,843.00
Judicial Longevity for Other Attorneys*	\$22,637.00	\$40,497.00
Grand Total	\$145,516.00	\$276,060.00

JUDICIAL RETIREMENT AND JUDICIAL LONGEVITY FOR COMMISSION EXECUTIVE DIRECTOR

The Commission’s Executive Director is a statutorily created position that does not currently qualify for judicial retirement and judicial longevity. Judicial retirement is included for other statutorily required positions, such as justices, judges, district attorneys, clerks of superior court, public defenders, administrative officer of the courts and the director of IDS. Not having those benefits deters judges, district attorneys, public defenders, and other judicial officials who have earned judicial retirement and judicial longevity from serving in this position. These benefits were recommended by NCAOC’s auditors in the Commission’s most recent (2022) annual audit.

JUDICIAL LONGEVITY FOR COMMISSION ATTORNEYS

The Commission also employs several staff members, including its Associate Directors and staff attorneys, who are licensed attorneys. These staff members do not earn judicial longevity. Ensuring neutrality and a well-rounded investigative approach within the Commission starts with hiring. It can be challenging to attract and retain the most highly qualified talent available within the State when individuals who have served in the court system as judges, district attorneys or assistants, or public defenders or assistants lose their former level of longevity if they become a member of Commission staff. As the only judicial branch criminal justice state agency without the judicial longevity benefit for its attorneys, the Commission is at a disadvantage to recruit and retain the most talented and qualified candidates. This benefit was recommended by NCAOC’s auditors in the Commission’s most recent (2022) annual audit.

ADDITIONAL ADMINISTRATIVE ASSISTANT POSITION

While the Commission was fortunate to be granted additional positions by the General Assembly in the last biennium, this resulted in the administrative assistant’s responsibilities increasing from serving six (6) full-time attorneys to serving nine (9) full-time attorneys, as well as two (2) other

staff members. The Commission's Administrative Assistant was recently promoted to Paralegal to better align with her current workload and duties. This workload is not sustainable for one person and requires assistance through the means of an additional support staff member. Given the amount of work required, the Commission cannot rely on temporary assistance from interns and volunteers or on paid overtime from other staff members pitching in to assist to cover the expanding workload. The Commission requests an additional administrative assistant position to limit the strain placed on the current individual serving in that role and to maintain efficient as well as effective operations.

Additionally, pursuant to N.C.G.S. § 15A-1475, the Commission's Annual Report shall recommend the funding needed by district attorneys in order to meet their responsibilities under the Commission's statute. In consultation with the Conference of District Attorneys, it has been suggested that the Conference of District Attorneys receive funding for a resource prosecutor who would be the District Attorney's designee under N.C.G.S. § 15A-1468 and could assist the District Attorney with three-judge panels under N.C.G.S. § 15A-1469. The creation of this position would assist District Attorneys with what can be a unique and resource-heavy process and provide continuity between the Commission and District Attorneys, creating greater efficiency within the process.

Outside of the statutory changes required to provide judicial retirement and judicial longevity for the Commission's Director and judicial longevity for the Commission's licensed attorneys, 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 discussions surrounding any substantive changes to its statute being considered, as such changes may significantly impact the operations of the Commission and may require a request for additional funding for operating expenses and/or staff.

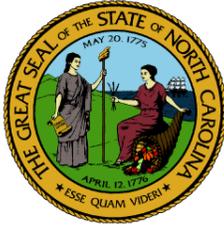
CONCLUSION

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 General Assembly, through its support of the Commission, has positioned North Carolina to continue to be a leader in innovative criminal justice reform.

The Commission receives on average 211 claims per year and continues to investigate cases that ultimately result in the exoneration of innocent individuals, confirm guilt of convicted persons, and lead to arrests and convictions of other individuals who have gone undetected. 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, Director, and Legal, Legislative, and Policy Associate 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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