



North Carolina Center on Actual Innocence

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*Identify, Investigate, and Advance Toward Justice*

# Innocence Agencies and Reform Efforts in North Carolina

Joint Legislative Oversight Committee on IDS/Innocence Inquiry Commission

January 26, 2016

Presented by Christine Mumma, NCCAI Executive Director

[www.NCCAI.org](http://www.NCCAI.org)

# North Carolina Innocence Organizations

## National Innocence Network Members

- N.C. Center on Actual Innocence - NCCAI
  - Nonprofit, Founded in 2000
  - Supervises student-led Innocence Projects at four NC law schools.
  - Screens cases from the four schools and Duke Law School
  - Criminal Justice Policy work
  - Education
  - Funded through foundation funding and personal donations.
- Duke Law Wrongful Convictions Clinic
- Wake Forest Law Innocence and Justice Clinic

## Actual Innocence Commission/ Chief Justice's Criminal Justice Study Commission

- Established in 2002 by Chief Justice I. Beverly Lake
- Formalized by Supreme Court Order in 2004
- 32 member study commission focused on wrongful conviction causation issues
- No casework, only policy
- Name changed in 2007
- Inactive under Chief Justice Parker

## North Carolina Innocence Inquiry Commission (NCIIC)

- Established in 2006 through legislation proposed by the Actual Innocence Commission
- State Agency
- Funded through State and Federal funding
- Only casework

# Why it's Important

- Nationally there have been 337 DNA Exonerations.
- The average sentence is 14 years and the longest is 37.
- The actual perpetrator has been identified in 43% of cases. Over 130 additional violent crimes were committed.
- North Carolina has 41 exonerations listed in the National Registry of Exonerations – 30 are uncontroverted.
- 20 were exonerated with forensic evidence.
- 17 true perpetrators have been identified.

# Wrongful Conviction Causation Issues

- Eyewitness Identification (72%)
  - Article 14A - Eyewitness Identification Reform Act (2007)
- False Confessions/Admissions (27%)
  - Article 8 – Electronic Recording of Interrogations (2007)
- Informant Testimony (15%)
  - House Bill 700
- Ineffective Assistance of Counsel/Official Misconduct
  - Indigent Defense Services Act of 2000
- Invalidated “Science” (47%)
  - National Academy of Sciences Forensic Sciences Report of 2009
  - North Carolina Forensic Sciences Reform Act of 2011

# Other Reforms Resulting From the Chief Justice's Study Commission

- Improvement to the statutory requirements for the preservation of the biological evidence. Much work remains to be done.
- Establishment of the N.C. Association for Property and Evidence.
- Increased statutory compensation and services for the exonerated.
- Increased education and awareness of the causation issues that can result in conviction of the innocent and lack of justice for the victim.
- Establishment of the Country's first State agency with the mission of investigating claims of actual innocence.

# Limitations of the Post-Conviction Process

- Not designed for innocence - Darryl Hunt (11), Terence Garner (3), Greg Taylor (2), Joseph Sledge (23)
- Volume
- Credibility of Claims
- Finality of Convictions
- Procedural Default
- Adversarial System
- Access

# Impact of Delayed Relief

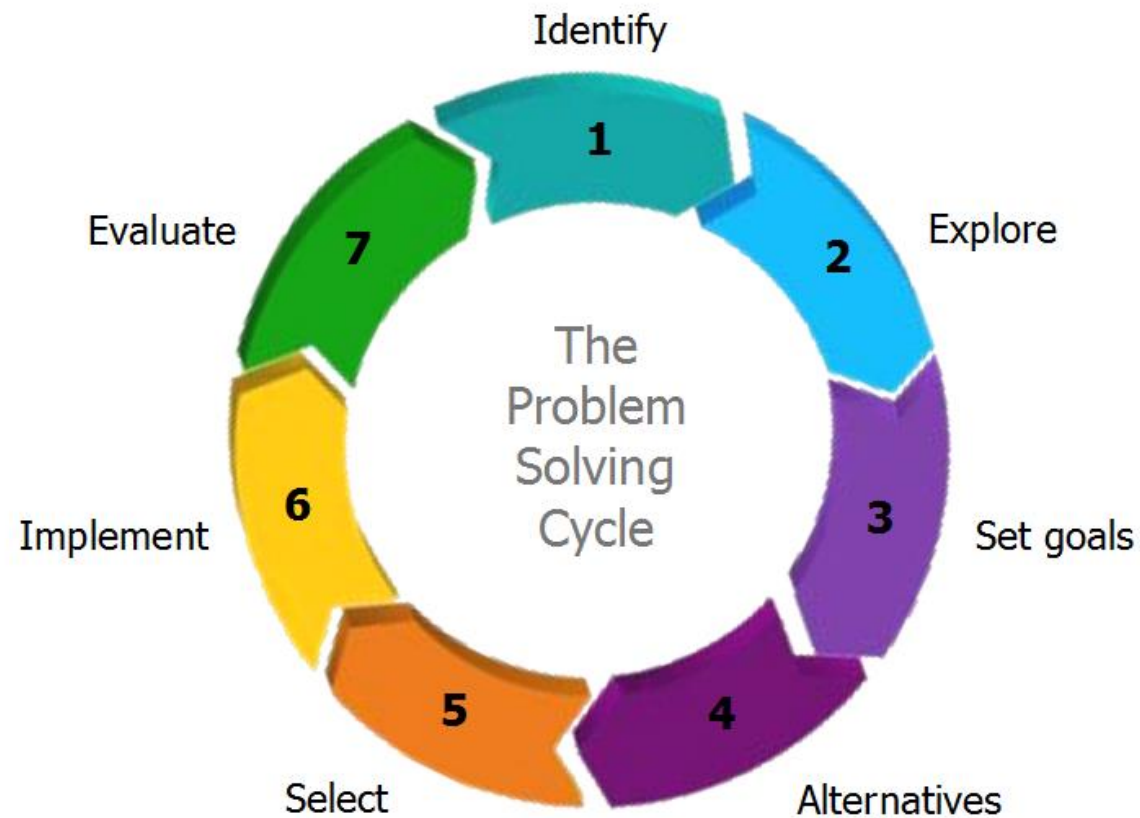
- Prolonged incarceration of the innocent
- Continued victimization by true perpetrator
- Lack of justice and closure for the victim(s)
- Decreased public confidence
- Costs associated with future motions and incarceration
- Cost of statutory compensation and civil suits - \$7.6M in statutory compensation and \$25M in civil damages

# Establishment of NC Innocence Inquiry Commission (NCIIC)

- NC Actual Innocence Commission study began January 2004
- UK Criminal Case Review Commission consultation
- Commission member constituency feedback
- National Conference of Chief Justices
- Passed vote of the AIC in May 2005
- Passed Senate 46-2 and House 86-28, July 2006
- Signed into law by Governor Easley in August 2006
- The first Commission of its kind in the United States
- Other States are working towards establishing similar commissions
  - 22 Conviction Integrity Units established



# Continuous Improvement



## Case Backlog

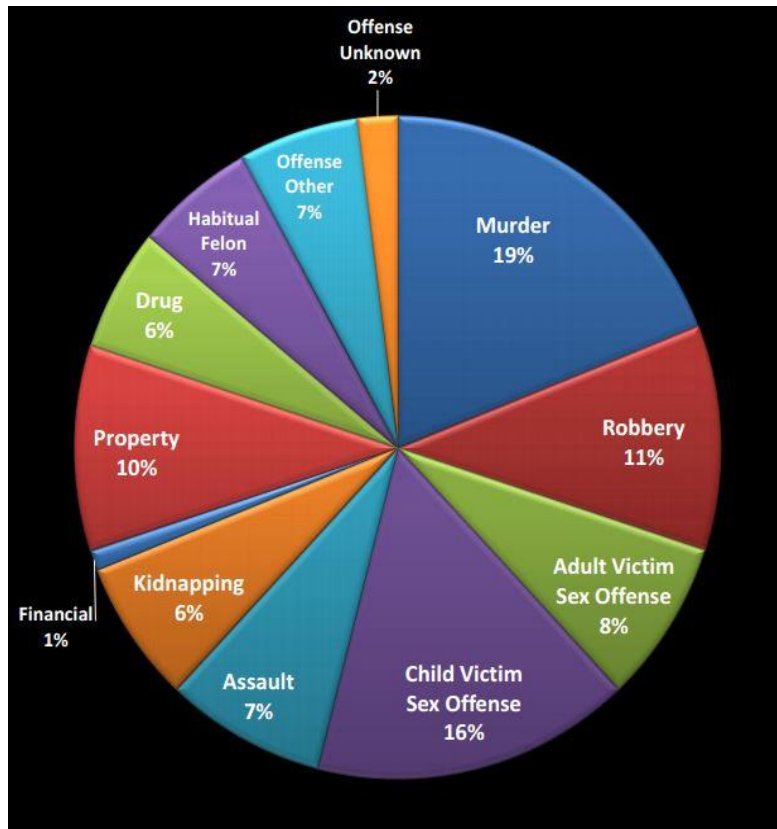
**Concern:** The NCIIC has a backlog of cases. Some cases have been in investigation or formal inquiry for over four years.

**Solution:** Limiting applications to homicide, robbery, or sex offenses would cut applications in half. Allow referral from counsel for all other felonies.

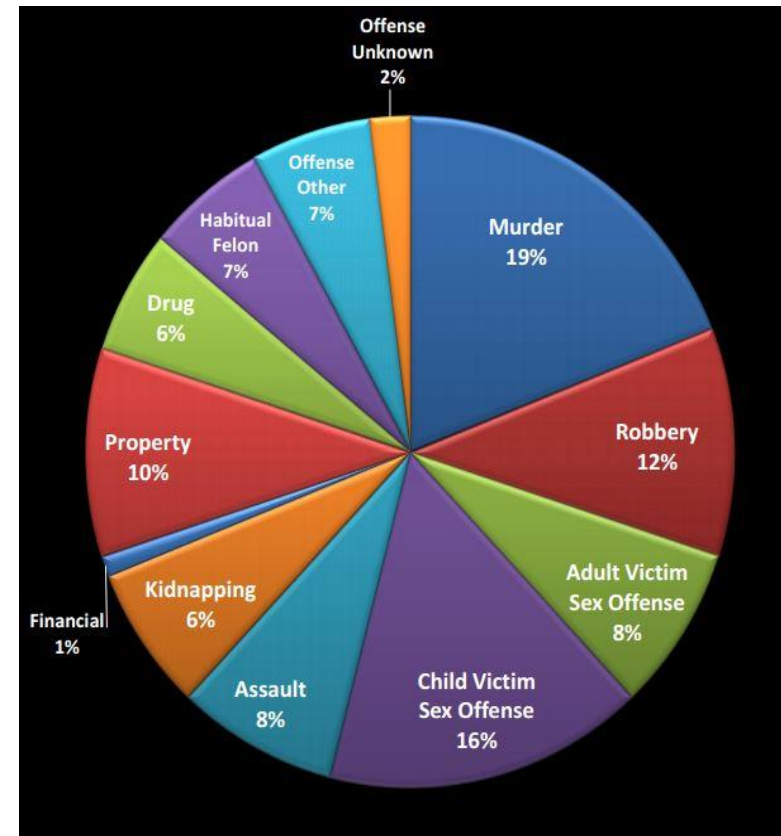
# Applicant Convictions

All NCIIC Exonerations Have Been For Homicide or Sexual Assaults

2014 Report



2015 Report



# Transparency and Accountability

**Concern:** Some cases have been with the NCIIC for four years or more. The district attorneys and the defense attorneys are not being advised of the progress of cases. Defendants are risking procedural bar for any claims they may have and cases that can be resolved through more traditional court procedures are being denied that opportunity.

**Solution:** Provide appointed counsel, the district attorney, and referring counsel with confidential case updates every six months. Updates should include enough information for parties to make informed decisions about proceeding with the NCIIC or pursuing an MAR.

# Efficiency Through Consent

**Concern:** If the District Attorney and the defense agree that there is “sufficient evidence to merit judicial review” at any time during investigation of a case, the defendant should not remain in prison while the NCIIC prepares for an eight-member panel hearing.

**Solution:** Allow for the District Attorney and the defense to consent to a finding of “sufficient evidence to merit judicial review” which bypasses the eight-member panel hearing and puts the case directly before a three-judge panel.

# Appointment of Counsel

## **Concern:**

- Defendants are being interviewed for the purposes of a criminal investigation and asked to consent to giving a DNA sample before they are appointed counsel and advised of their waiver of rights and the risks and obligations of proceeding with the NCIIC process.
- The NCIIC is giving labs permission to consume evidence without the defendant being given notice, in violation of Gen. Stat. §15A-268.
- Biological evidence is being destroyed or altered without the defendant being given notice, in violation of Gen. Stat. §15A-268.
- Once a defendant is appointed counsel, if the defendant does not agree to sign the waiver of rights, the NCIIC has wasted valuable time and resources.

**Solution:** Change the right to appointed counsel from the “formal inquiry” stage to the “investigation” stage. The defendant should not be interviewed or requested to give a DNA sample without the waiver of rights, which requires the advice of counsel. If there is concern regarding the statutory requirement to notify the victim or next of kin at this stage, change the NCIIC statute to provide for the same victim notification that is required by Articles 45 and 46 of the Criminal Procedures Act.

## Testing of Alternate Suspects

**Concern:** The burden of proof for the NCIIC eight-member panel is “sufficient evidence of innocence to merit judicial review.” The exclusion of alternate suspects through DNA testing should not be part of the process at the eight-member panel. It results in delay of case resolution and excessive NCIIC expense. Solving the case if there has been a wrongful conviction is the State’s job after exoneration.

**Solution:** Limit NCIIC forensic testing to that which is necessary to establish the guilt or innocence of the defendant. Only test evidence against alternate suspects if the Chair finds good cause shown.

## Use of Protective Orders

**Concern:** Protective orders are being overused by the NCIIC. Defendants who have been exonerated after spending decades behind bars can not use materials from their own cases. One of the primary objectives in the establishment of the NCIIC process was transparency. The excessive use of protective orders is counter to that objective. Confidentiality of records was only intended for cases which did not pass the three-judge panel.

**Solution:** Limit the use of protective orders and provide the defendant and the district attorney an opportunity to be heard for all protective orders.



## Transparency and Efficiency

**Concern:** The district attorney and the defendant are not given the benefit of years of investigation and thousands of dollars in testing if a case does not go forward to hearing or if a case goes to hearing and does not pass the eight-member panel.

**Solution:** Provide a confidential copy of the full Commission file, including a full transcript of any hearings before the Commission, but excluding all documents covered by a protective order, for all cases that are investigated but do not pass formal inquiry.

## Reporting Structure

**Concern:** The NCIIC Commission was not intended to be an administrative oversight Commission. It is an adjudicative Commission. Currently, the Chair of the Commission is responsible for addressing both administrative matters and adjudicating cases. Administrative issues can involve parties to the case.

**Solution:** The Director should report to the Director of the Administrative Office of the Courts who can address administrative issues.

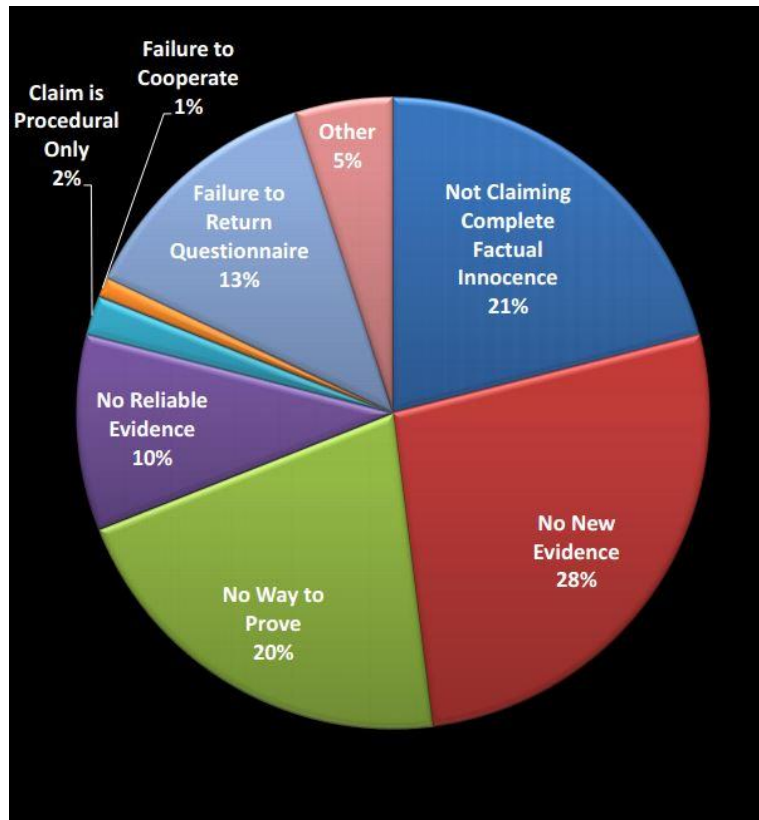
## Maximizing Efficiency

**Concern:** Between November 2008 and September 2015, the NCIIC and the NCCAI exchanged case lists in order to avoid duplication of efforts. This practice added efficiency for the agencies and the justice system, but discontinued by vote of the NCIIC in September 2015. NCCAI has continued to provide its case list to the NCIIC.

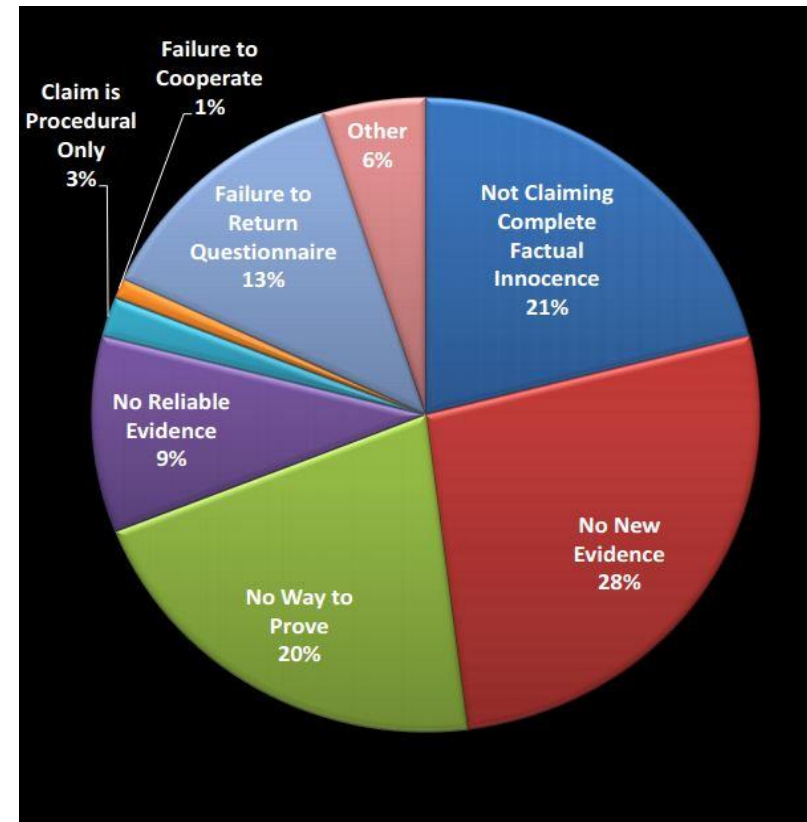
**Solution:** Re-establish the exchange of confidential case lists between NCIIC and NCCAI. If there are concerns that resulted in the discontinuation of this practice, they should be addressed.

# NCIIC Reasons for Rejection

2014 Report



2015 Report



# Other Suggestions for NCIIC Operations

- Change name of NC Innocence Inquiry Commission to NC Criminal Case Review Commission (NCCCRC) to avoid confusion with NC Center on Actual Innocence.
- Require each co-defendant to have his or her case simultaneously investigated with the pending claim. Allow exceptions with good cause shown.
- Reduce the number of judges for final determination panel from three to two.
- Amendments to the Rules of Operation:
  - Amend Article 3 (c) so the requirements for referral of a case are the same for all referring agencies, whether State, local, or nonprofit.
  - Amend Article 5 to reflect that if a defendant requests specific counsel, NCIIC will inform the requested attorney and IDS of that request.
  - Add a process for consideration of comments regarding the Rules and Procedures of Operations.

## Other Suggestions for Continuous Improvement

- Reinststate the Joint Select Study Commission on the Preservation of Biological Evidence established in 2009 through H1190.
- Modify § 15A-268 (a6) to require notice prior to destruction of biological evidence in plea cases.
- Resurrect the Jailhouse Informant Testimony bill (H700) for discussion.
- Modify § 148-82, Provision for Compensation, to allow for compensation when charges are dismissed on the basis of innocence.

# Continue the Continuous Improvement Cycle

