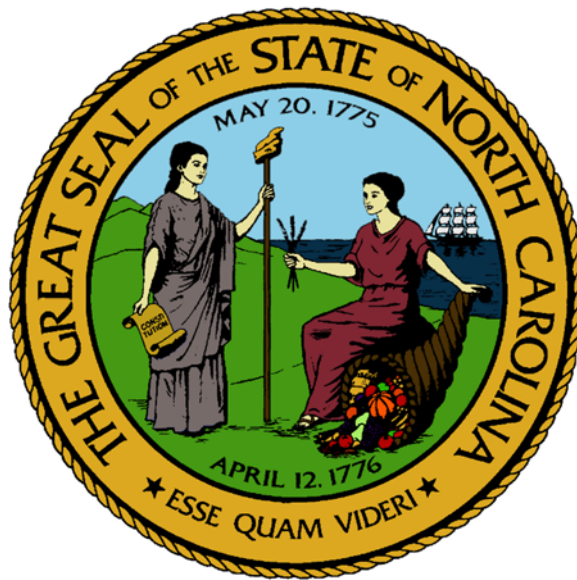


THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION



2018 ANNUAL REPORT

Lindsey Guice Smith
Executive Director
February 1, 2019

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	iii
PREFACE	1
2018 ANNUAL REPORT	2
I. LEADERSHIP AT THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION	2
II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION	7
A. CASE MANAGEMENT	7
B. POSTCONVICTION DNA TESTING PROGRAM	8
C. CASE STATISTICS	10
D. RESULTS OF INVESTIGATIONS	17
E. OTHER 2018 ACTIVITIES AND ACCOMPLISHMENTS	18
III. AUDIT OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION	21
IV. IMPACT OF 2016 LEGISLATIVE CHANGES	22
V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2019	25
A. PLANS FOR 2019	25
B. FUTURE NEEDS OF THE COMMISSION	27
CONCLUSION	29

LETTER OF TRANSMITTAL

TO THE MEMBERS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
JUSTICE AND PUBLIC SAFETY OF THE 2019-2020 LONG SESSION OF THE GENERAL
ASSEMBLY OF NORTH CAROLINA AND THE MEMBERS OF THE STATE JUDICIAL
COUNCIL:

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

Respectfully Submitted,

A handwritten signature in blue ink, reading "Lindsey Guice Smith", is written over a horizontal line.

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 and the State Judicial Council by February 1 of each year.

2018 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 2018 and the Commission's plans for 2019. Included are statistics for 2018 as well as cumulative case statistics detailing case data since the Commission began operating in 2007.

I. LEADERSHIP AT THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

The Commission's Executive Director is Lindsey Guice Smith. Ms. Guice Smith graduated *summa cum laude* from Elon University in 2005 with a Bachelor of Arts in Political Science. She graduated with Honors from the University of North Carolina School of Law in May 2008 and is admitted to practice law in North Carolina. Ms. Guice Smith has worked for the Commission since January 2010 and has been its Director since October 2015.

In July 2018, Ms. Guice Smith was appointed by NCDPS Secretary Erik A. Hooks to serve as a member of the Sexual Assault Evidence Collection Kit (SAECK) Working Group which developed a strategic plan for testing sexual assault kits in North Carolina. In March 2018, Ms. Guice Smith was elected to a three-year term as the President of the North Carolina Association for Property and Evidence. This organization provides training and support to evidence technicians across the state. In February 2018, Ms. Guice Smith was selected to serve on the National Institute for Standard and Technology/National Institute of Justice (NIST/NIJ) Evidence Management Executive Steering Committee. This national committee is identifying guidance needs for the preservation, storage, and tracking of evidence; revising existing

standards to reflect current best practices in storage, tracking, and preservation; and promoting awareness of challenges and solutions in evidence management.

In her first three years as 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.

Donna Elizabeth “Beth” Tanner is the Commission’s Associate Director. Ms. Tanner graduated from UNC-Chapel Hill in 2005 with a Bachelor of Arts in both Romance Languages and English. She graduated from Campbell University Norman Adrian Wiggins School of Law in 2008 and is admitted to practice law in North Carolina. Ms. Tanner is also admitted to practice in each federal district in North Carolina and before the 4th Circuit Court of Appeals. Ms. Tanner started her career doing civil defense litigation with Cranfill Sumner & Hartzog, LLC. Ms. Tanner then represented the Department of Public Safety in both federal and state court as an Assistant Attorney General. Just prior to joining the Commission, Ms. Tanner was Assistant General Counsel with the North Carolina Department of Public Safety where she supported the Division of Adult Correction, including Prisons and Community Corrections, as well as Juvenile Justice and the Governor’s Crime Commission. Ms. Tanner’s role at the Commission includes representing the Commission in litigation.

The Commission’s Chair is Senior Resident Superior Court Judge Anna Mills Wagoner. Judge Wagoner graduated from Agnes Scott College and is a *cum laude* graduate of Wake Forest University School of Law. Judge Wagoner is admitted to the North Carolina State Bar and the District of Columbia Bar. Judge Wagoner is the Senior Resident Superior Court Judge for

Judicial District 19C, serving Rowan County. Prior to being elected to the Superior Court bench in 2010, Judge Wagoner served 11 years as a District Court Judge and nine years as the United States Attorney for the Middle District of N.C.

Judge Wagoner serves on the State Crime Lab Working Group, the Legislative Committee of the Conference of Superior Court Judges, the Pattern Jury Instruction Committee, and is a member of the Board of Governors of the Conference of Superior Court Judges.

Photographs of Commission staff and Commissioners can be found on the following pages. Biographies for the Commission staff and Commissioners can be found on the Commission's webpage at www.innocencecommission-nc.gov.

Innocence Commission Staff



Lindsey Guice Smith – Executive Director



Beth Tanner – Associate Director



Brian Ziegler – Staff Attorney



Julie Bridenstine – Staff Attorney



Catherine Matoian – Grant Staff Attorney



Mackenzie Myers – Grant Legal Investigator



Jason Fitts – Case Coordinator



Donna Rowe – Administrative Secretary

Commissioners



**The Honorable
Anna Mills Wagoner
Commission Chair**



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



**Seth Edwards
Prosecuting Attorney**



**Michael A. Grace
Criminal Defense
Attorney**



**Sheriff Kevin Frye
Sheriff**



**John Boswell
Discretionary Member I**



**Ashley Welch
Alternate Prosecuting
Attorney**



**Vacant
Victim Advocate**



**Vacant
Public Member**



**Deborah Newton
Alternate Discretionary
Member II**



**David W. Long
Alternate Criminal
Defense Lawyer**



**Vacant
Alternate Victim
Advocate**



**Rick Glazier
Discretionary Member
II**



**Melissa Essary
Alternate Discretionary
Member I**



**Immanuel Jarvis
Alternate Public
Member**



**Vacant
Alternate Sheriff**

*Commission staff is currently awaiting appointment letters from Chief Justice Mark Martin and Chief Judge Linda McGee for these vacancies.

II. ACTIVITIES OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

A. CASE MANAGEMENT

The Commission received a total of 228 new claims in 2018, bringing the Commission's yearly average to 211 claims per year. During 2018, the Commission completed its review/investigation and closed all but 35 of those new claims. At the end of 2018, the Commission had a total of 49 active cases in various stages of review/investigation and 18 cases where claims have been made, but claimants had not yet returned the Commission's questionnaire.¹

Beginning in 2016, through a concentrated effort to increase efficiency and streamline processes at the Commission, the Director and Commission staff worked to reduce the amount of time between when the Commission receives a questionnaire from a claimant and when the Director or Associate Director makes a determination on whether the case meets the statutory case criteria for further review or closes the case. This effort continued throughout 2017 and 2018. In 2017, the average length of time for this process was 19 days per claim. In 2018, the average length of time for this process was 18 days per claim. 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 in 2018.

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

As mentioned above, after reducing and stabilizing the amount of time for the Commission's initial review process, 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. At the end of 2018, only one case remained that had been at the Commission for more than five years. That case is expected to be completed prior to the end of 2019.

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 an efficient manner. Although each case is different and the circumstances of a case may affect the amount of time a case takes to be fully investigated by Commission staff, the Director is confident that the Commission is in a position to effectively and efficiently evaluate innocence claims as was the intent of the General Assembly when it created the Commission in 2006.

B. POSTCONVICTION DNA TESTING PROGRAM

In September 2015, the Commission was awarded a two-year grant in the amount of \$565,639 through the National Institute of Justice's (NIJ) FY 15 Postconviction Testing of DNA Evidence to Exonerate the Innocent Program. This funding began on January 1, 2016 and initially ran through December 31, 2017. For violent felony convictions where the 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, DNA experts, and DNA testing. In October 2017, the Commission received a one-year no-cost extension of its

grant from NIJ, allowing the Commission to use remaining funding through December 31, 2018. During 2018, the Director worked to ensure that grant funds would be exhausted and can report that as of the conclusion of the 2015 grant period, all of the \$565,639 was obligated.

In September 2018, the Commission was awarded a two-year grant in the amount of \$531,894 through the National Institute of Justice's (NIJ) FY 18 Postconviction Testing of DNA Evidence Program. This funding began on January 1, 2019 and runs through December 31, 2020. For violent felony convictions where the 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 since 2010, receiving four grants, totaling over \$2.4 million, for post-conviction DNA related cases. Since that time, eight individuals have been exonerated or had their convictions vacated through Motions for Appropriate Relief based on investigations, evidence searches and/or DNA testing conducted by the Commission under these grants. There are currently three cases pending before post-commission three-judge panels that were investigated under these grants. Furthermore, the Commission has also had DNA testing in eight cases that supported the conviction, and located files and/or evidence which had previously been declared missing, lost or destroyed in 28 cases. In 2018, 11 searches for evidence were conducted under the grant and 112 pieces of evidence analyzed for DNA testing.

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

working relationship with the NC State Crime Laboratory (NCSCL) and uses NCSCL, when possible for DNA and other forensic testing, as well as to upload DNA profiles to 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.

C. CASE STATISTICS

In 2018, the Commission received a total of 228 new innocence claims. Since it began operating in 2007, the Commission has received 2,534 claims of actual innocence. As of December 31, 2018, 2,465 cases had been reviewed and closed.

Since the Commission's creation, the Commission has held 13 hearings. Ten individuals have been exonerated by a post-Commission three-judge panel or had their convictions vacated through a Motion for Appropriate Relief based on the Commission's investigation of their claim.² 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

² Of the thirteen cases that have been presented at Commission hearings, 11 were sent forward to a three-judge panel and 2 were not. Of the 11 sent forward to a three-judge panel, 6 resulted in the exonerations of 7 individuals (one co-defendant case). Two cases sent forward to a three-judge panel resulted in a denial of relief by the three-judge panel. Two cases sent forward to a three-judge panel are still pending a hearing before the panel. **One case sent forward to a three-judge panel was heard by the three-judge panel on January 18, 2019. Relief was granted and an eleventh individual was exonerated based on investigations conducted by the Commission.** Additionally, three individuals have had their convictions vacated through Motions for Appropriate Relief that were based on the Commission's investigation of their innocence claim. These three individuals chose to pursue a Motion for Appropriate Relief after the Commission's investigation of their claim but before the Commission could move forward with a hearing on their claim. Three other individuals (one case; 3 co-defendants) have had their convictions vacated through Motions for Appropriate Relief after denial of relief by the Commission at a Commission hearing.

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 already heard by the jury or available at the time of plea. The Commission can only consider cases in which new evidence of innocence is now available. Included on the following five pages is a compilation of statistical data for the Commission. Further statistical data is available from the Commission's Director upon request.

CASE STATISTICS

The Commission began operation in 2007

2534

TOTAL NUMBER OF CLAIMS RECEIVED SINCE COMMISSION'S CREATION

2465

TOTAL NUMBER OF CASES CLOSED SINCE COMMISSION'S CREATION

228

NUMBER OF CLAIMS RECEIVED IN 2017

13

NUMBER OF HEARINGS CONDUCTED SINCE COMMISSION'S CREATION*

10

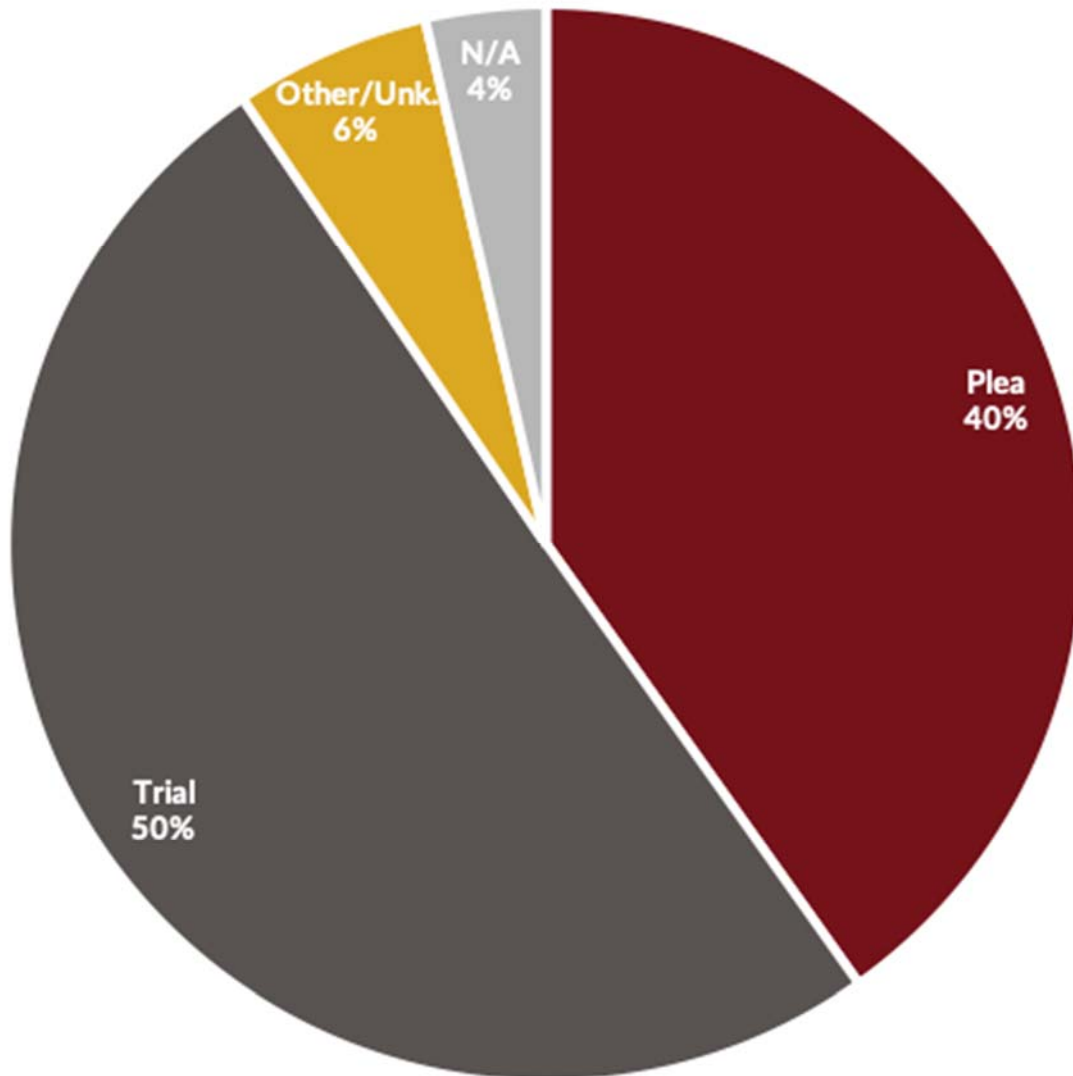
EXONERATIONS**

Data compiled December 31, 2018

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

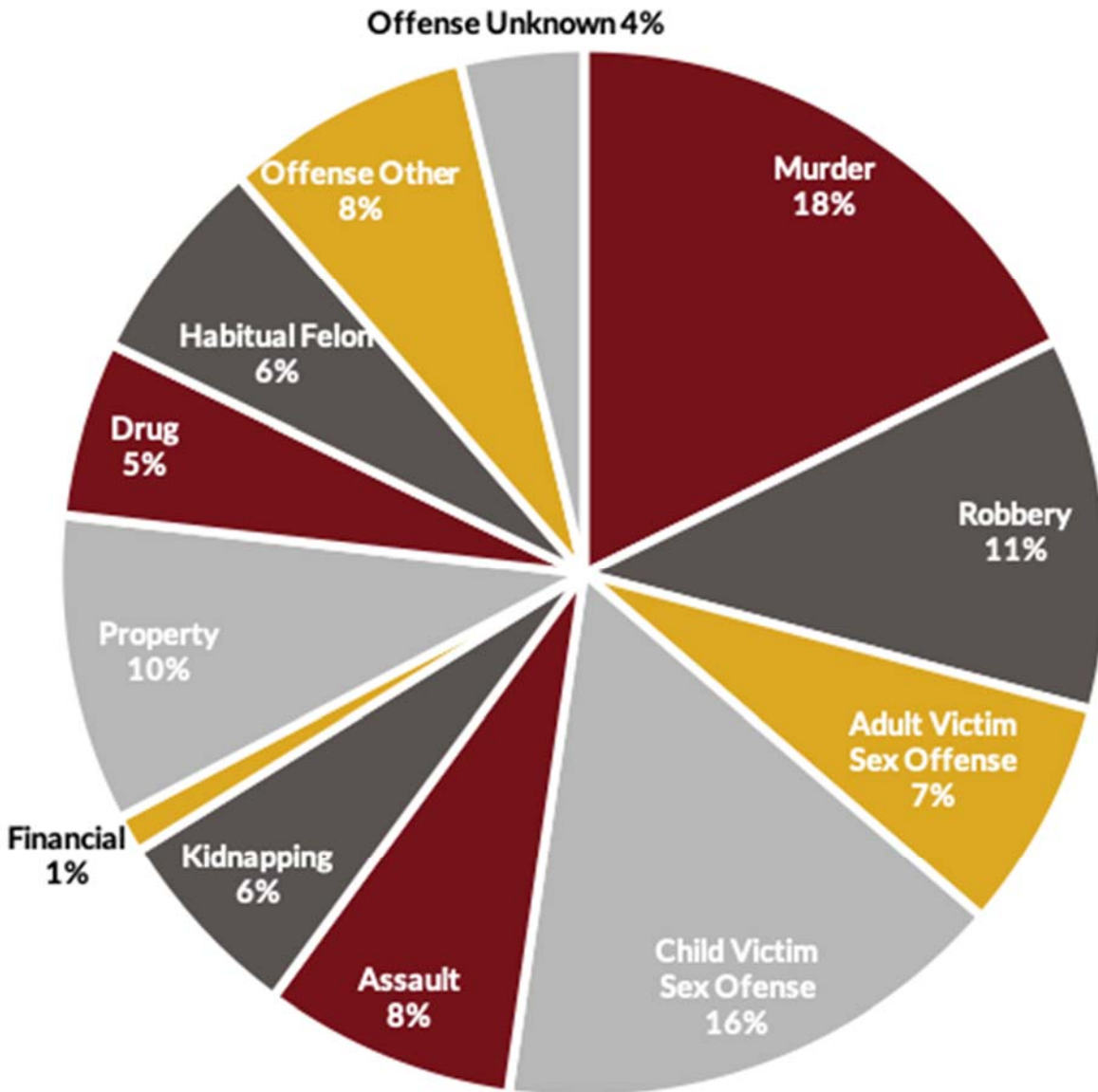
**Ten individuals have been exonerated as a result of the Commission's investigations. On January 18, 2019, a three-judge panel convened in the case of *State v. Grant* and granted relief, bringing the total number of exonerations as a result of the Commission's investigations to 11. Currently, there are two cases that have been heard by the Commission that are pending a three judge panel: *State v. Spruill/Jones* and *State v. Blackmon*.

Convictions Resulting from Trial or Plea



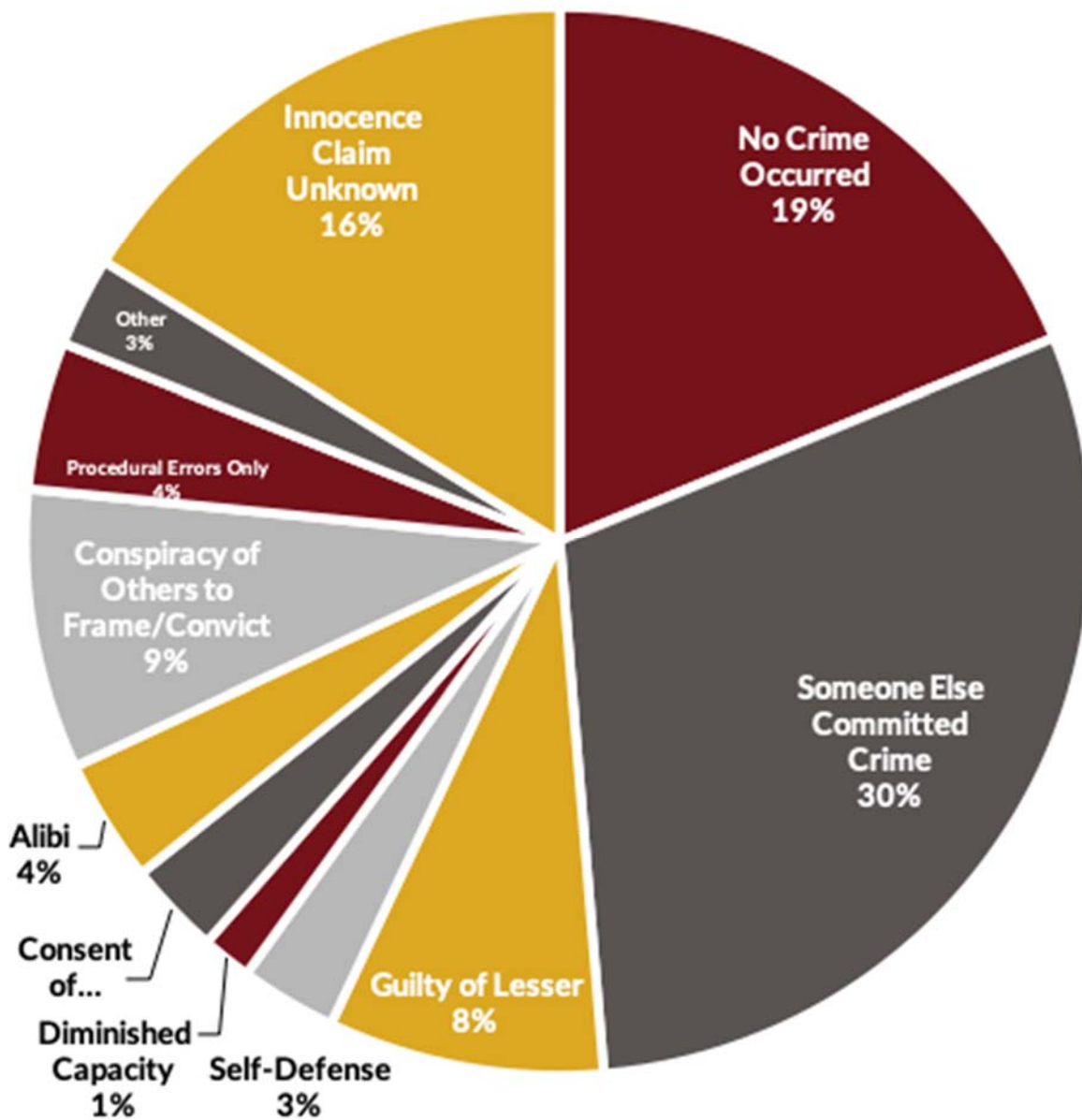
- Alford and no contest pleas are included in plea category.
- N/A is for individuals who apply but have not been convicted.

Applicants' Convictions



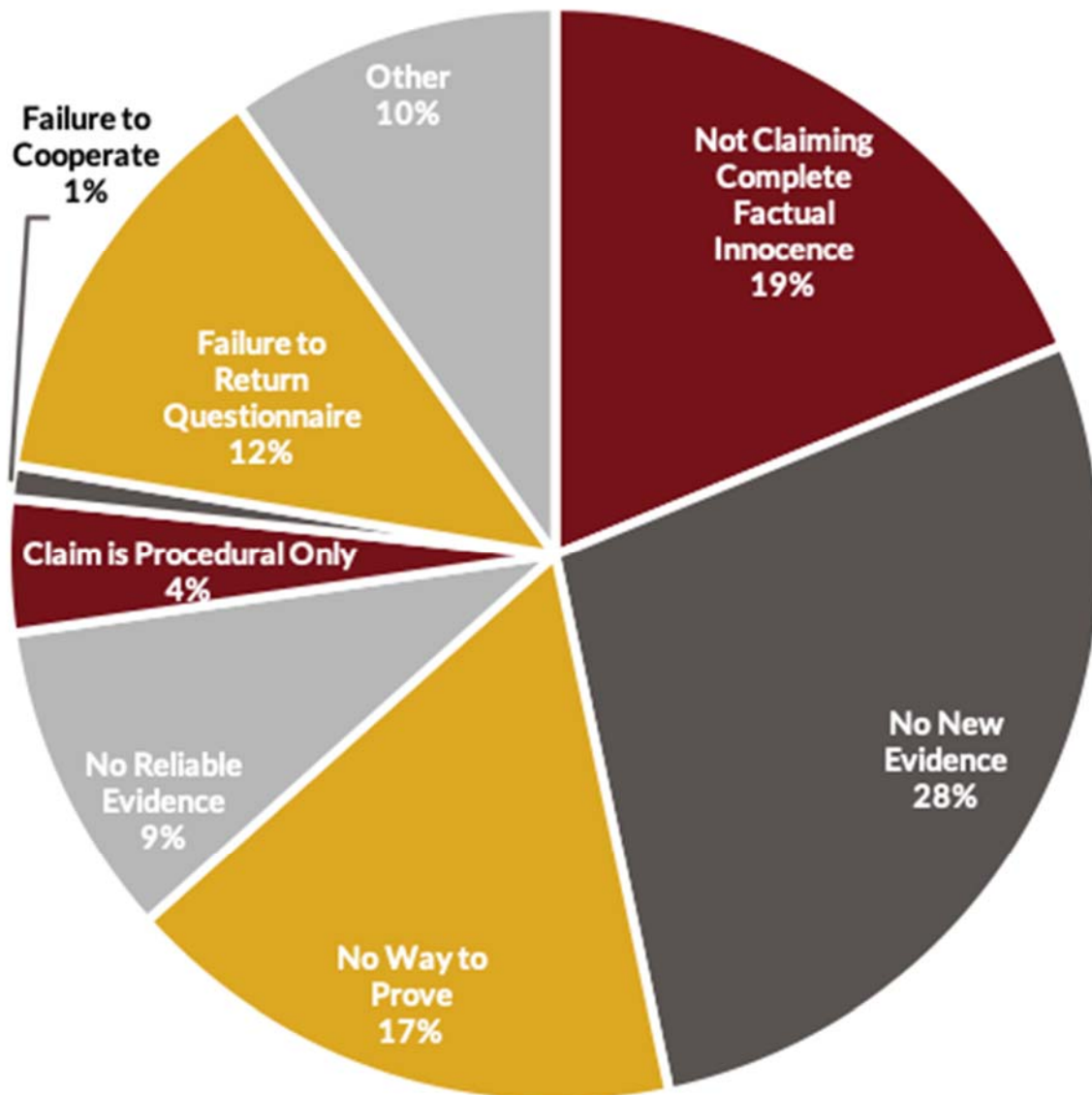
- Some applicants were convicted of multiple offenses.

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 2018, the Commission had 70 cases that were actively being reviewed in the further review, investigation, or Formal Inquiry phases. These cases included the review of over 90,000 pages of files and trial transcripts, over 110 interviews, 13 depositions, 11 requests/searches for evidence, and 112 pieces of evidence submitted for DNA analysis.

The Commission has been granted the authority to request that agencies search for physical evidence and the Commission staff may request to conduct their own searches when necessary. By working with law enforcement, district attorneys, and clerk's offices throughout the state, the Commission has located evidence in dozens of cases. These conversations and searches have given the Commission, and the agencies the Commission is working with, the opportunity to address the best practices for handling evidence. Moreover, the Commission has successfully located physical evidence and/or files in 28 cases when previous efforts by other agencies had resulted in conclusions that the evidence or files had been destroyed or lost. In some of those cases, the prior searches had been court ordered with findings of fact made regarding the missing evidence. In 2018, the Commission continued to successfully locate files and evidence.

On October 1-5, 2018, the Commission held a hearing in the cases of *State v. Leroy Spruill* and *State v. Wallace Brandon Jones*. At the conclusion of all evidence, the Commissioners voted unanimously that there was sufficient evidence of factual innocence to merit judicial review and referred both cases to a three-judge panel. The three-judge panel has been appointed by Chief Justice Martin, and a three-judge panel hearing is pending.³

³ State v. Spruill and State v. Jones is a co-defendant case. Public records documents available for this case can be found at: <http://innocencecommission-nc.gov/cases/state-v-spruill-jones/>.

On November 14-16, 2018, the Commission held a hearing in the case of *State v. James Blackmon*. At the conclusion of all evidence, the Commissioners voted unanimously that there was sufficient evidence of factual innocence to merit judicial review and referred the case to a three-judge panel. The three-judge panel has been appointed by Chief Justice Martin, and a three-judge panel hearing is pending.⁴

Keeping with the Commission's commitment to efficiency, the Commission filed with the Clerk of Court, in both cases, 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 hearings.

E. OTHER 2018 ACTIVITIES AND ACCOMPLISHMENTS

In 2018, the Commission was able to move through a large volume of cases and complete many investigations resulting in closure of the cases or presentation at a hearing. The Commission staff continues to review and investigate cases in a neutral and thorough manner.

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

⁴ Public records documents available for this case can be found at: <http://innocencecommission-nc.gov/cases/state-v-blackmon/>.

Notably, the Director provided information to agencies and individuals in other states and nations who are considering creating a commission modeled after North Carolina's. For the third year, the Commission's Director was invited to speak to scholars at the US-Asia Law Institute of NYU Law School who were studying wrongful convictions and the various models for handling wrongful convictions. Additionally, the Commission's Director and Associate Director spoke at the Ohio Summit on Wrongful Convictions where leaders in innocence work from across the nation convened to discuss best practices in wrongful convictions. The Commission was invited to participate in panel discussion about how innocence work should be done.

The Commission's Director and Associate Director also gave presentations to and met with governmental agencies, civic groups, educational institutions, and the public. In 2018, presentations were given to: Members of the North Carolina General Assembly, NC Conference of District Attorneys (elected district attorneys spring conference), Elon University, UNC School of Law, the Conference of District Attorneys (summer conference), and the North Carolina Attorney General's Office. Additionally, the Commission's Director and Associate Director routinely participated in meetings and interviews and answered questions about the Commission process with members of the General Assembly, the Governor's office, media outlets, writers, legal scholars, students, chiefs of police, and various other organizations and agencies. The Commission's Director wrote an article that appeared in "Now Comes the State," a publication of the North Carolina Conference of District Attorneys. 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 and staff continued to make information about the Commission publicly available. One way that the Director does this is by publishing public information on the Commission's website. In 2017, the Commission launched a new website that provides information in a concise and visually appealing format. The website also allows the Commission to run analytics that show information on website traffic. Review of this data between 2017 and 2018 shows an increase in traffic to the Commission's website. The updated website also allows visitors to make inquiries to the Commission directly through the website. The website can be viewed at: <http://innocencecommission-nc.gov/>. In 2018, the Commission launched its Facebook page. Commission staff post daily on the Facebook page information about the Commission, public interest pieces related to innocence work, and other information related to criminal justice and the courts.

In 2017, the Commission also worked with the North Carolina Department of Natural and Cultural Resources to include Commission documents, including the Commission's confidential investigation files, on the State's Retention Schedule. Once finalized, in 2018, the Commission worked with NC DNCR to establish a confidential storage area for the Commission's files in order to best utilize the Commission's physical space. The Commission then began a comprehensive file scanning project, utilizing temporary employees to scan the Commission's files so that files can be moved offsite in 2019, as the Commission is out of on-site physical storage space. As AOC is still in the process of procuring an electronic storage system that meets the state's documentation requirements for files to be stored solely electronically, the Commission will continue to maintain a hard copy of its files, though many will be relocated off-site.

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 late 2018, the Commission's third 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 December 13, 2018. The Commission was evaluated in several risk categories, including evidence, accounting, and confidentiality. With respect to evidence, the audit states: "Our assessment in this area concludes that controls surrounding evidence have been intricately designed to reduce risks and are functioning extremely well. It is clear from our tests and observations that all employees handle evidence with the utmost care, respect, and attention, with the understanding that evidence integrity is critical to the organization meeting its objectives." With respect to accounting, the audit states: "These tests revealed an appropriate segregation of duties between the NCAOC employees who make disbursements and record transactions, and Commission staff who authorize payment of invoices and analyze financial statements to ensure accuracy." With respect to confidentiality, the audit states: "Our attempts failed as we were denied any case-specific information, which provided assurance that controls are in place to protect confidential information."⁵

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

⁵ The Commission's governing statute provides very specific and limited times when portions of the Commission's file become public record. At all other times, the Commission's files remain confidential. While most agencies and attorneys working with the Commission understand the confidentiality of the Commission's files, some do not. This confidentiality is of utmost importance; and in fact, concerns of how confidentiality could be breached led to a lengthy and time consuming dispute with another state agency about the Commission's access to evidence. Any change to the standard of confidentiality would prove difficult for the day to day operations of the Commission.

Improvement Needed. The Effective rating was given to only 48% of those audited by AOC since 2015. The Commission will undergo another audit in 2019 and anticipates that the results will be similar.

IV. IMPACT OF 2016 LEGISLATIVE CHANGES

In January 2016, the Joint Legislative Oversight Subcommittee on Justice and Public Safety (Subcommittee) conducted a study of the Commission. Several legislative changes were proposed by a member of the public and opposed by the Commission. Many of those recommendations were adopted by the Subcommittee and ultimately became law, which took effect August 1, 2016. Throughout 2017 and 2018, the Commission assessed the impact of these changes.

During a presentation to the Subcommittee on January 26, 2016, it was suggested that reducing the type of crimes for which the Commission could receive cases directly from claimants would reduce the Commission's caseload by approximately 50%, thereby decreasing the Commission's caseload and reducing the amount of time the Commission spent on cases. In response, the Commission estimated that at most, this change would reduce the Commission's caseload by 28%, but indicated that the percentage would likely be much smaller. After a recommendation by the Subcommittee, a provision limiting the Commission's direct applies to certain felonies was passed and became law. Rather than allow the Commission to review all felony convictions as direct applies, the statute now limits direct applies to homicides, robberies, offenses requiring registry in the sex offender database, and all A-E felonies.

Between January 1, 2017 and December 31, 2018, the Commission received 29 claims (18 in 2017 and 11 in 2018) directly from claimants which the Commission had to reject as a

result of this law. The Commission received 311 claims between January 1, 2017 and December 31, 2017 and 228 claims between January 1, 2018 and December 31, 2018, for a total of 539 claims. This is a 5.4% reduction in the number of claims the Commission receives that it can review. This change did not have a significant impact in reducing the Commission's caseload. Further, through increased efficiencies in streamlining the process by which cases are reviewed, the Commission has been able to reduce the amount of time it takes for a decision to be made as to whether a case will be closed or will be moved forward for further review. The Commission will continue to monitor this law to determine whether any additional impact can be noted.

An additional change made to the Commission's statute was the requirement that prior to the Commission interviewing a claimant or conducting any DNA testing in a claimant's case, the claimant must waive his or her procedural safeguards and privileges. Prior to the change, and since the Commission's creation in 2006, the waiver of procedural safeguards and privileges was only required before a case entered Formal Inquiry. Both claimant interviews and DNA testing typically take place prior to Formal Inquiry.

For the process of signing the waiver, the claimant is statutorily entitled to an attorney. If a claimant does not already have an attorney, he or she may choose to waive his or her right to an attorney, hire an attorney, or submit an affidavit of indigency. If the claimant chooses to waive his or her right to an attorney, a hearing before the Commission's Chair may be required to ensure that the claimant understands the rights he or she is waiving. If the claimant submits an affidavit of indigency and an Order for Appointment of Counsel is granted by the Commission Chair, the claimant is then appointed counsel by Indigent Defense Services (IDS). The process of sending the documents to the claimant, followed by the judge, followed by IDS, awaiting

appointment of counsel, attorneys scheduling meetings with claimants, and awaiting receipt of the signed waivers has proven to be lengthy, thereby slowing the work of the Commission.

Between August 1, 2016, when the law went into effect, and December 31, 2018, the Commission has had 17 cases that were affected by this process.⁶ Five involved cases where the claimant already had counsel who was able to advise the claimant regarding the waiver. This process took, on average, 28 days from the time the Commission provided the waiver to the attorney until the Commission received the waiver from the attorney or learned that the claimant wished to have the Commission discontinue review of the claim. In one of the five cases, the Commission was informed by the claimant's attorney that the claimant did not wish for the Commission to proceed with his case.

As of December 31, 2018, waivers had been returned in the 12 remaining cases. On average, this process took 90 days. The cases ranged in length from 47 days to 175 days. As described above, waivers are now required prior to the Commission conducting an interview with a claimant and/or conducting DNA testing in a case. When the Commission makes the decision to interview a claimant or conduct DNA testing, the waiver is sent out and the Commission can do very little, if any, work on the case during this time period. The delay caused by this change is significant. Although this change is only two years old, because the process is largely unable to be controlled by the Commission, the Commission does not anticipate that we will see any meaningful decrease in the length of time this process takes based on the data over the last two years.⁷

⁶ Prior to August 1, 2016, the Commission limited the waiver process to cases moving into Formal Inquiry and had only obtained waivers 21 times since the Commission began operation in 2007.

⁷ Between August 1, 2016 and December 31, 2017, the average number of days for this process when the claimant already had an attorney was 27 days. Between August 1, 2016 and December 31, 2018, the average number of days for this process when the claimant already had an attorney was 28 days. Between August 1, 2016 and December 31, 2017, the average number of days for this process when the claimant had to be appointed an attorney was 91 days.

During the study, the reason cited for this change was that if the Commission expended money on these interviews and DNA testing and the claimant later refused to sign the waiver, the Commission would have wasted money and resources. Since the Commission began operating in 2007, it has had one claimant⁸ who chose to have the Commission discontinue its review of his claim and choose not to sign the waiver. While the Commission recognizes that this is a possibility, we are challenged with balancing the goals of a reduction in caseload and the time it takes to review a case against this provision, which lengthens the time that it takes to review a case by essentially putting a case on hold while this process is undertaken.

As the process continues to be used going forward, the Commission will continue to monitor this to determine whether any additional impact can be noted or whether the impact lessens over time.

V. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION IN 2019

A. PLANS FOR 2019

In 2019, the North Carolina Innocence Inquiry Commission plans to continue to focus on reviewing and investigating innocence claims in the most neutral, detailed and efficient manner possible. The Commission anticipates holding at least two hearings in 2019.

The Commission remains available to assist other agencies and will continue to provide education and presentations throughout the state and country, to as broad an audience as possible, in an effort to further educate the criminal justice community, agencies, attorneys, and members of the public on the Commission and its role in the criminal justice community. The

Between August 1, 2016 and December 31, 2018, the average number of days for this process when the claimant had to be appointed an attorney was 90 days. To date, the process has not seen a meaningful increase in efficiency.

⁸ As noted above on page 24 of this report.

Commission serves as a resource for other agencies and elected officials who receive innocence claims, but lack the resources to investigate and evaluate them. 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 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 2019 Session should any legislation be proposed.

In 2019, the Commission will apply for a Victims of Crime Act (VOCA) grant through the NC Governor's Crime Commission. This grant will assist the Commission in providing additional Victim services to both primary and secondary Victims with which 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 Commission also plans to discuss with the Governor's Crime Commission about additional grant funding that may be available to the Commission to further enhance its work.

Should the National Institute for Justice release a solicitation for a 2019 DNA Testing Assistance grant as it has in past years, the Commission plans to apply for this grant again. Although the Commission has a 2018 Grant that runs through December 31, 2020, the Commission is committed to seeking additional funding for DNA testing, specifically for untested rape kits that have been identified as part of the 2017 Untested Sexual Assault Evidence Collection Kit (SAECK) survey. The Commission's Director served on the SAECK Working Group that released recommendations to the General Assembly in a report issued by NCDPS

Secretary Erik A. Hooks on December 1, 2018. The report recommends that the Multi-Disciplinary Teams who are assessing the untested rape kits to determine which priority kits should be given for testing should engage the North Carolina Innocence Inquiry Commission to assist with SAECK testing decisions related to post-conviction cases.⁹ The Commission plans to work with others in the criminal justice community to assess whether any partnerships can be made when applying for these funds.

B. FUTURE NEEDS OF THE COMMISSION

Pursuant to N.C.G.S. § 15A-1475, the Commission's Annual Report shall recommend the funding needed by the Commission. Although the Commission is an independent agency, the Commission is housed under the Administrative Office of the Courts for administrative purposes. The Commission's FY 2018 Certified Appropriation from the General Assembly is \$584,029. In addition to its state appropriation, the Commission has received a federal grant. This grant ensures that the Commission is able to conduct DNA testing and evidence searches in cases where DNA testing may show innocence.

During 2018, the Commission assessed its budget and determined that additional funding should be requested from the General Assembly in 2019 in order to meet its statutory mandate to investigate and determine credible claims of factual innocence. Over the last few years, the Commission has seen an increase in the costs associated with carrying out its statutory mandate. For example, although the Commission historically had one hearing each year, that increased to two hearings per year last year and an anticipated two (or more) hearings in 2019. The costs

⁹ See Page 9 of the SAECK Working Group Strategic Plan, Findings and Recommendations report submitted to the NC General Assembly Joint Legislative Oversight Committee on Justice and Public Safety on December 1, 2018 pursuant to Session Law 2018-70.

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

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

Although the Commission continues to receive grant funding from NIJ and hopes to secure additional grant funding from NIJ and/or the Governor's Crime Commission, the needs outlined above cannot fully be addressed with these grant funds. The Commission's budget request is being submitted by AOC, along with the AOC budget request. The Commission respectfully requests that the General Assembly consider this request as the requested increase in

recurring funds will ensure that the Commission can carry out its duties and ensure that post-conviction innocence claims are reviewed in a timely and efficient manner. Should members have any questions about the budget request, the Commission Director and Associate Director are available to discuss it further and in more detail. The Commission is not seeking any substantive legislative changes to its governing statute this year.

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 Commission continues to receive over 200 claims per year and continues to investigate cases that ultimately result in the exoneration of innocent individuals. The steady flow of cases and hearings demonstrate the need for the continued existence and additional funding of the Commission.

As described above, the Commission maintains a website that provides the public with general information about the Commission. The website may be viewed at:

<http://innocencecommission-nc.gov/>.

The Commission's Director is available to meet with any member of the General Assembly to further discuss the work of the Commission. The Director can be reached at (919)

890-1580 or NCIIC@nccourts.org. The Commissioners and staff are pleased to serve the people of North Carolina and look forward to continuing that service each year.