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WHAT IS THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION?

- The Commission is a **neutral fact-finding state agency** charged with investigating and evaluating post-conviction claims of factual innocence.
- The Commission is an **extraordinary procedure** to investigate and determine credible claims of factual innocence that **requires a claimant to voluntarily waive rights and privileges**.
- The Commission hears innocence claims outside of the regular appeals process.
- The General Assembly established the Commission to ensure that the innocent as well as the guilty receive justice.
- The General Assembly believed that public confidence could be strengthened by a thorough and timely inquiry into these claims and that the claims could be most effectively and efficiently evaluated through a complete and independent investigation.
- The Commission is granted with broad statutory authority to obtain information necessary to its inquiry, such as subpoena power and the authority to take custody of evidence and subject it to DNA testing.
- The Commission is the **first and only neutral state agency** of its kind in the nation. Other states have created study Commissions to examine the reasons for wrongful convictions and some are considering Commissions modeled after NCIIIC.

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WHAT ARE THE HALLMARKS OF THE COMMISSION?

Neutral by statute. The legal work we do does not create an attorney-client relationship. We are not looking for a particular answer and can be curious.

Broad statutory authority that allows the Commission to gain information from a variety of sources.


Commission investigation is confidential, allowing greater transparency from witnesses or other sources.

North Carolina is the only state to have a neutral government agency dedicated to the review of all innocence claims.

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CASE CRITERIA

- Conviction was in NC state court
- Conviction was for a felony
- Applicant is living



REQUIREMENTS

- Applicant is claiming **complete** factual innocence of any criminal responsibility for the crime
- There must be **new evidence of innocence** that the jury did not hear or was not reasonably available prior to plea
- There must be **credible and verifiable** evidence of innocence

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WHO SERVES
ON THE
COMMISSION?

16 members: 8 distinct Commissioner roles with one alternate for each

Appointed for three-year terms by the North Carolina Chief Justice and Chief Judge

- Superior Court Judge/Commission Chair
- Prosecuting Attorney
- Criminal Defense Attorney
- Victim Advocate
- Sheriff
- Public Member (non-attorney, non-judicial branch employee)
- Discretionary Member I
- Discretionary Member II

Commissioners hear cases and determine whether there is sufficient evidence of factual innocence to merit judicial review.

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WHAT HAPPENS DURING
THE COMMISSION HEARING?

NCGS 15A-1468

- All relevant evidence is presented to the full Commission at a public hearing
- The Director or Director's designee presents the case to Commissioners and staff members involved in the investigation are called to testify, along with outside witnesses.
 - Hearing is non-adversarial
 - Rules of Evidence do not apply
- The standard is "sufficient evidence of innocence to merit judicial review"
 - Votes must be unanimous for a guilty plea (8 of 8 members) and majority for all others (5 of 8 members)
 - No right to appeal

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WHAT HAPPENS DURING THE THREE-JUDGE PANEL HEARING?
 NCGS 15A-1469

BEFORE A THREE-JUDGE PANEL HEARING:

NCGS 15A-1469(a)

- Three judges are appointed by the Chief Justice of the North Carolina Supreme Court.
 - Within 20 days of the filing of the Commission's opinion.
 - Cannot include any trial judge that has had substantial previous involvement in the case.
 - Convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation.
 - Senior judge of the panel presides.

NCGS 15A-1469(b)

- Senior resident superior court judge in district of original jurisdiction enters order setting case for hearing at the special session of superior court for which the three-judge panel is commissioned AND shall require the State to file a response to the Commission's opinion within 90 days of the date of the order.

NCGS 15A-1469(f)

- The Clerk SHALL provide written notification to the victim 30 days prior to any case-related hearings.

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WHAT HAPPENS DURING THE THREE-JUDGE PANEL HEARING?
 NCGS 15A-1469

BEFORE A THREE-JUDGE PANEL HEARING:

NCGS 15A-1469(b)

- The Commission's file is provided to the parties pursuant to NCGS 15A-1468(g).
- Commission seeks a consent protective order based on the types of documents in the Commission's file and pursuant to the Commission's Rules and Procedures and if there is not consent by the parties (see NCGS 14A-1469(b)(1)), requests a hearing before the senior just of the three-judge panel pursuant to NCGS 15A-1469(b)(2).

NCGS 15A-1469(e)

- The Senior Resident Superior Court Judge in the district of original jurisdiction shall determine the convicted person's indigency status, and if appropriate, enter an order for appointment of counsel by IDS. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

NCGS 15A-1469(g)

- Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

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WHAT HAPPENS DURING THE THREE-JUDGE PANEL HEARING?
 NCGS 15A-1469

DURING A THREE-JUDGE PANEL HEARING:

- Adversarial process.**
 - Defendant represented by counsel (See NCGS 15A-1469(e) and (h))
 - State represented by DA's Office or special prosecutor (See NCGS 15A-1469(f) and (c))
- An evidentiary hearing is conducted. (See NCGS 15A-1469(g))
 - The court, the defense, and the prosecution may compel the testimony of any witness, including the convicted person.
 - All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing.
 - Convicted person may not assert any privilege or prevent any witness from testifying.
 - Convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.
 - NEW: Rules of Evidence apply.
- The burden is on convicted person. (See 14A-1469(h))
- The standard is "clear and convincing evidence of innocence." (See 14A-1469(h))
 - Vote of three judges must be unanimous for innocence.
 - If vote is not unanimous, the panel shall deny relief.
 - A person who is determined to be innocent by the three-judge panel and whose charges are dismissed pursuant to this section is eligible for compensation under Article I of Chapter 166 of the General Statutes without obtaining a pardon of innocence from the Governor.

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WHAT HAPPENS AFTER THE
THREE-JUDGE PANEL
HEARING?

NCGS 15A-1470

AFTER A THREE-JUDGE PANEL HEARING:

- No right to further review by appeal, certification, writ, motion or otherwise.
- A claim of factual innocence asserted through the IIC **SHALL NOT** adversely affect the convicted person's rights to other postconviction relief.
- **NOTE:** If there is later determined to be **ADDITIONAL NEW** evidence that was not heard at a Commission hearing or three-judge panel hearing, a convicted person is **not** barred from bringing a claim to the Commission again on a case-by-case basis.

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OTHER
INTERACTIONS
WITH THE
COMMISSION

- Appointment as a Commissioner
- Case referrals
- Biological evidence/searches/post-conviction DNA testing

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APPOINTMENT
AS A
COMMISSIONER

Superior Court Judge/Commission Chair

- Appointed for three-year terms by the North Carolina Chief Justice and Chief Judge of the COA on a rotating basis.
- May serve two consecutive three-year terms plus any partial term.
- Commissioners hear cases and determine whether there is sufficient evidence of factual innocence to merit judicial review.
- All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission's Chair in the Chair's judicial capacity, including any in camera review required by NCGS 15A-908.
- Serves as the hiring authority for the Commission's Director.

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- ISA-1467(a): A claim of factual innocence may be referred to the Commission by any court, a State or local agency, or claimant's counsel.
 - NOTE: Even if a court refers a case to the Commission, in order for the Commission to review the case, the convicted person must agree to participate in the process by signing the consent form and at the appropriate time filling out the waiver of procedural safeguards and privileges.
- ISA-1417: Relief Available.
 - (b) The following relief is available when the court grants a motion for appropriate relief:
 - (3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.
- Also had courts hold MARs in abeyance to refer cases to NCIIIC for review and reserve ruling on MAR until review by NCIIIC is complete or order portion of file turned over (i.e. DNA testing results).

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PHYSICAL EVIDENCE IS OFFERED OR ADMITTED IN COURT:
15A-268(a3)&(a4)

- Presiding judge asks State and Defendant the identity of the collecting agency of the evidence.
- Presiding judge asks if the evidence is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator.
- If either State or Defendant says the evidence has biological evidentiary value, and the Court so finds, the evidence must be preserved pursuant to statute.
- Clerk **shall preserve** biological evidence while in possession and return to collecting agency in a manner that ensures proper chain of custody.

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The Search: "FOUND" Evidence (Broad Statutory Authority)

- In **29** cases, the Commission staff was told evidence or files were lost or destroyed but a subsequent search by Commission staff found the evidence/files.
- **28** of those cases involved evidence or evidence and files while one was files only found.
- **7** of those cases ultimately resulted in the exoneration of **12** individuals (though testing was not necessarily dispositive).
 - **80%** of Commission's exonerations involved missing evidence that the Commission located.
- In **7** of those cases, DNA testing confirmed that the convicted person committed the crime.
 - **12** total cases where DNA testing conducted at the request of the Commission supported the convicted person's guilt.
- The Commission has the right to search and the training to make those searches effective

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Case Studies - Exonerations

- 🔍 Kagonyera, Wilcoxson, Isbell, Mills, Williams – 2000 Murder – Buncombe County – Exonerated 2011 and 2015 – Evidence could not be located, but later located when Commission arrived to discuss search by Commission staff
- 🔍 Ormes – 1985 Rape – Catawba County – Exonerated 2012 – latent print evidence located in case file after multiple evidence searches requested by other organizations
- 🔍 McCollum and Brown – 1983 Rape and Murder – Robeson County – Exonerated 2014 – Missing evidence located years after court order to preserve and produce and prior searches conducted
- 🔍 Sledge – 1975 Murder (x2) – Bladen County – Exonerated 2015 – Evidence declared missing after searches by agency and SBI, but located during 5-day, multi-site search by Commission staff
- 🔍 McInnis – 1988 Rape, Burglary and Armed Robbery – Scotland County – Exonerated 2015 – Evidence declared missing but located after Commission requested access to search
- 🔍 K. Brown – 2008 Rape – Edgecombe County – Exonerated 2016 – Missing evidence located at former detective's storage unit in VA
- 🔍 Blackmon – 1979 Murder – Wake County – Exonerated 2019 – Latent prints located after declared missing/destroyed

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Case Studies – DNA testing confirms guilt

- 🔍 Case 1 – Previous Motion for Postconviction DNA testing. State responded to Motion with Order for Destruction indicating that all evidence had been destroyed. Judge denied motion based on Order for Destruction. Commission determined that Order for Destruction did not cover all items entered into evidence at trial and requested search. Evidence located at Clerk's office, including rape kit. DNA testing conducted. Confirmed guilt.
- 🔍 Case 2 – Commission told by LEA that they had searched and had no file or evidence in case. LEA produced an evidence log that purported to show that evidence was destroyed but was vague as to what was actually destroyed. Commission staff went to LEA to conduct a search. Evidence stored by officer name. Despite being told that the agency had previously searched for the evidence, Commission was able to quickly locate a box containing the rape kit during the search. DNA testing conducted. Confirmed guilt.
- 🔍 Case 3 – Previous MAR resulted in judge ruling that evidence no longer existed after searches were conducted by agencies. Commission made request to search and rape kit was located by LEA prior to Commission's search. DNA testing conducted. Confirmed guilt.

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POST-CONVICTION MOTIONS FOR DNA TESTING

- In 9 of the 28 cases where the Commission found previously unfound evidence, claimants had filed a post-conviction motion for DNA testing.
- 8 of those motions were denied.
- 1 case was granted that testing, but the Commission did testing beyond the testing provided by that motion.
- In 2 of the 8 denials, the denial was based on the fact that evidence could not be located or was believed to have been destroyed and the Commission confirmed guilt after locating this evidence and testing it. The tested evidence provided a conclusive result in the case; a confirmation of guilt.
- In 4 of these cases where there was a motion (3 denied, 1 granted but the Commission did further testing), the case resulted in an exoneration. Forensic analysis played a role in all four of those exonerations.
 - A gap was exposed in our system and filled by the Commission process.

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WHERE ARE WE GOING?

THE COMMISSION'S OPERATIONS

- Continued improvement in efficiency of case review
- Robust Victim Services Program on being trauma informed, accessible, and informative
- Continued use of trauma-informed interviewing practices with all witnesses
- Restorative Justice in Exonerations
- Exoneree Support Program

A CALL TO IMPROVE CRIMINAL JUSTICE

- Database improvements and additional employees will allow us to capture better data. Researchers volunteering to assist with data projects.
- Ability to work alongside other states and countries to create similar Commissions and/or discuss what we've learned
- Training in our state to justice system partners related to what we've learned in our cases and in our victim program

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OUTCOMES

20 Cases Presented at Commission Hearing

3 Cases Not Referred to Trial Court (Three vacated cases)

- Case v. Tony White
- Case v. Tony White, Steven Mills, and Anthony White (all vacated)

17 Cases Sent to Trial Court

8 Cases Resolved by Settlement

- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]

5 Cases Resolved by Trial Court

- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]

3 Cases Resolved by Appeal

- Case v. [Name]
- Case v. [Name]
- Case v. [Name]

1 Case Pending

6 Individuals have had their convictions vacated through Habeas Corpus

- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]
- Case v. [Name]

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RESOURCES

Website
www.innocencecommission-nc.gov

NCIIC Governing Statute
https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_15A/Article_92.html

NCIIC Rules and Procedures
<https://innocencecommission-nc.gov/wp-content/uploads/2022/01/rules-and-procedures.pdf>

NCIIC 2022 Annual Report
<https://innocencecommission-nc.gov/wp-content/uploads/2023/02/2022-annual-report.pdf>

NCIIC Case Progression Flow Chart
<https://innocencecommission-nc.gov/wp-content/uploads/2017/06/case-progression-flowchart.pdf>

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RESOURCES

Podcast: All Things Judicial

Part 1 – Commissioners: <https://innocencecommission-nc.gov/innocence-inquiry-commission-features-and-all-things-judicial-podcast/>

Part 2 – Victim Services: <https://innocencecommission-nc.gov/innocence-inquiry-commission-features-and-all-things-judicial-podcast-part-2/>

Part 3 – Commission Staff: <https://innocencecommission-nc.gov/innocence-inquiry-commission-features-and-all-things-judicial-podcast-part-3/>

Commission Videos

Hallmarks of the Commission: <https://youtu.be/7E6ed31E8>

Tools That Matter: <https://youtu.be/7E6ed31E8>

Animated Short: <https://youtu.be/7E6ed31E8>

Commission Staff: <https://www.youtube.com/watch?v=3tUw92zRmE8>

Commissioners: <https://www.youtube.com/watch?v=1X8E1-7x30I>

Victim Services Program: <https://www.youtube.com/watch?v=3149T1D1M3M>

Website
www.innocencecommission-nc.gov

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THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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