

## **Re-introducing: the North Carolina Innocence Inquiry Commission<sup>i</sup>**

In the early 2000s, in the wake of several high-profile exonerations across the state of North Carolina, Chief Justice I. Beverly Lake sought to address the causes of wrongful convictions and the processes that made those convictions so difficult to resolve.

In 2002, Chief Justice Lake convened a group of stakeholders representing a broad cross section of the criminal justice system to discuss wrongful convictions. In 2003, the North Carolina Actual Innocence Commission was established. The group was dedicated to addressing the issues that prevented the resolution of wrongful convictions, such as the large volume of post-conviction motions, the difficulty in identifying credible claims of innocence, and the procedural and political challenges involved with the resolution of claims.

In May 2004, the Actual Innocence Commission began to discuss the creation of a formal system of innocence claim review. By March 2005, the Actual Innocence Commission agreed to submit the draft bill creating the North Carolina Innocence Inquiry Commission [hereinafter, “the Commission”] to the General Assembly for consideration.

The Commission began operating in 2007. The initial annual state budget was just \$310,000 and included funding for three staff members: an executive director, an administrative assistant, and a staff attorney. By October 2007, all three positions had been filled. This small team began the work of reviewing claims of actual innocence. Over the course of that first year, the Commission received 243 claims of innocence.

In 2010, Greg Taylor became the first person exonerated through the Commission process. On February 17<sup>th</sup>, the three-judge panel ruled that Greg Taylor had proven his innocence by clear and convincing evidence.

As of FY2025, the Commission receives approximately \$1.6 million in the state budget and an additional \$796,309 in grant funding from the BJA Post-Conviction DNA Testing Program. This funding supports thirteen total positions, including an Executive Director, an Assistant Director, an Associate Counsel, six Staff Attorneys, a Victim Services Program Manager, two Paralegals, and an Administrative Assistant. The staff work falls into three broad categories. The largest is case work. The Director, Assistant Director, Staff Attorneys, and Paralegals all play a role in reviewing cases. The Assistant Director provides support, structure, and feedback for all Staff Attorneys’ investigations. The Executive Director determines whether the case should move forward to another investigative stage or be closed. The Case Managers guide a case through its first stages of review and play a crucial role in managing the incoming claims. Most cases come to the Commission directly from the claimant, the person claiming innocence. Staff review and investigate an average of 230+ claims of innocence per year. Sixteen (16) individuals have been exonerated, and an additional 3 claimants accepted an Alford Plea and were released in lieu of their cases being heard by a three-judge panel.

A claim is initiated by letter, phone, email or directly through the Commission's website, where it is received by the Case Managers. The claimant will then be asked to complete a questionnaire detailing their conviction and outlining their claim of innocence. If the claim of innocence meets the statutory requirements to be reviewed, the Case Manager will complete an Initial Review. From there, the case will be reviewed by the Director who will determine whether new evidence could be uncovered through investigation. The case will then move to Further Review. At all stages of the process, the claimant must be claiming **complete factual innocence**: that is denying any participation whatsoever to any extent and as to all potential victims involved. Claims involving any excuse or acknowledging partial culpability will not be accepted. Furthermore, the Commission requires that there be **new** evidence that was not previously heard by a Judge or jury, or, in the case of a guilty or *Alford* plea, not reasonably available at the time of the plea.

During Further Review, all files associated with the case will be collected and reviewed. The case may be assigned to a Staff Attorney or remain with the Case Manager or Assistant Director until the Assistant Director is able to assign it.

When a case moves into Investigation, it is assigned to a Staff Attorney. The Staff Attorney will facilitate testing of the evidence, conduct field work, and interview or depose witnesses, law enforcement, and attorneys. Typically, a staff attorney will be managing 4 to 7 investigations concurrently. If new evidence of innocence is uncovered, the case then moves into Formal Inquiry, the final review stage before a Commission hearing.

During Formal Inquiry, the Staff Attorney assigned to the case will continue investigating the case and will gather all information and context needed to understand the new evidence. The Staff Attorney will then be responsible for testifying about the investigation during the Commission hearing.

From the beginning of the Actual Innocence Commission through the creation of the Innocence Inquiry Commission, the Commission model has always been built around the power of convening diverse perspectives. In the early 2000s, high-profile exonerations of individuals who failed to appeal their convictions demonstrated that the traditional adversarial model was letting cases of actual innocence fall through the cracks. Members of the Actual Innocence Commission believed that a careful examination of claims of actual innocence by appointed Commissioners would lead to a more robust, comprehensive inquiry.

Commissioners represent roles that typically have power in the criminal justice system; judges, prosecutors, and criminal defense attorneys are all represented. But the Commissioners also include victim advocates, members of the public, sheriffs, and discretionary members. Including these additional perspectives widens the inquiry itself. Together, the Commissioners become an

incredibly informed jury, empowered to question all the evidence presented before them. Commissioners are not only reviewing the case presented by the Commission Director at a hearing; they are creating a record of questioning all the evidence presented, a record of examining a case from all angles, and a record of stakeholders working together to determine the credibility of the new evidence presented.

The crime victims are also a part of the Commission process. In 2019, Commission leadership sought grant funding to build a victim services program for crime victims and their loved ones impacted by Commission investigations. Leadership saw that victims who participated in the hearing and exoneration process were left to navigate the complex and often retraumatizing post-conviction space with few resources tailored to assist them. The victim services program now consists of several crucial pieces. The Victim Services Program Manager provides information and support to crime victims and their loved ones and consults with investigative staff on trauma-informed practices and best approaches when engaging with vulnerable populations. Every staff member receives extensive training in understanding trauma and how it may impact investigations. In addition to covering the cost of victims' travel to Commission hearings and three-judge panels, the program provides funding for safety planning and counseling if the case results in the release or exoneration of a claimant. The work of the program is supported through a network of relationships the Commission has built with leading victim services organizations, ensuring that we can provide the best referrals for victims of crime.

At the close of a Commission hearing, the Commissioners may hear from the victim or their family. A Victim Impact Statement is used differently at a Commission hearing than at sentencing or a parole hearing. The statement is not meant to be weighed with the evidence presented, rather it is an affirmation of the victim and their family's experience and their right to play a role in the process.

Deliberation is a confidential space where Commissioners determine whether a case has sufficient credible and verifiable evidence to merit judicial review. Commissioners are tasked with either voting the case forward to the three-judge panel, voting to close it, or requesting Commission staff to continue their investigation.

Part of the Commission's founding preamble is to increase the public's confidence in the criminal justice system. Commission staff fulfill this portion of the mission by educating criminal justice stakeholders and members of the public on the Commission process. As a state agency, we take seriously the importance of sharing our work with North Carolina and collaborating with the stakeholders whose responsibilities intersect with ours.

One of the most common areas in which the Commission fields referrals stem from yet filed or failed Motions for Appropriate Relief [hereinafter, "MAR" or "MARs"]. Recently, the North Carolina Legislature made changes to the law that codifies MARs<sup>ii</sup>. The law and its changes are

outlined in NCGS §15A-141.<sup>iii</sup> Notably, § 15A-1415 (a1) now sets a seven (7) year time limit on non-capital cases that fall within § 15A-1415 (a)(1)-(5). But there are exceptions. For example, notwithstanding the time limitations set forth in (a1), § 15A-1415 (c)(1) provides that a defendant *at any time after verdict* may:

by a [MAR], raise the claim that there is evidence available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence.

A MAR based upon such newly discovered evidence must be filed within a reasonable time of its discovery. Practitioners should be guided by the same case law and experience they have relied upon to date regarding the standard of what constitutes “a reasonable time.”

Additionally, § 15A-1415 (c1) allows a defendant to file a MAR based on any of the grounds enumerated in this section, regardless of timing, if the district attorney consents to the filing. Nevertheless, private or appointed attorneys oftentimes find it difficult to gain the consent of the District Attorney or convince the Court of the authenticity of the new evidence. This is where the Commission may be particularly helpful. Recall that pursuant to the Commission’s statute, we can only accept cases where the evidence has not already been heard by the Judge or jury or wasn’t reasonably available at the time of the plea. *See*, N.C.G.S. § 15A-1460(1). Importantly then, any “new” evidence argued to the Court pursuant to a MAR and rejected, would necessarily no longer be qualifying “new” evidence and the Commission would have to reject the claim. Therefore, Private or appointed attorneys should consider referring such cases to the Commission to engage in a thorough and objective investigation before filing a MAR. During that investigation we engage in formal interviews, sworn depositions, review of files, and, if necessary, evidence testing. Our staff is trained in the collection and preservation of evidence, and we have an ongoing relationship with both the state and private laboratories for testing. Most significantly, the Commission is empowered by statute to conduct our own searches for evidence that is both within the control of other state agencies as well as outside its reach; thus, we don’t encounter the same roadblocks that the private bar or innocence projects struggle with. Finally, as our investigations are neutral, we approach these claims with an open mind, never having to stifle our curiosities or questions, because we only seek the truth, rather than a particular answer.

As the Commission embarks on its 18<sup>th</sup> year, we wish to “re-introduce” us to the stakeholders and remind them of our mission, our purpose and our process. We hope that just as we have engaged with the local District Attorneys through their network as well as the innocence projects and clinics, this newsletter will prove fruitful in the defense bar considering the Commission for assistance with the MARs that fall into the scope of the Commission’s work. We also recently sat down with the Judicial Fellows to make inroads regarding Superior Court

referrals for MARs in which there is a claim of factual innocence so that they too were aware of the resources we could provide.

Should you have any questions or wish any further information, please do not hesitate to reach out to us at [nciic@nccourts.org](mailto:nciic@nccourts.org) or by visiting our website at [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

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<sup>i</sup> The North Carolina Legislature is in the process of considering a name change to the North Carolina Post-conviction Review Commission upon approval of its state budget.

<sup>ii</sup> The law applies to convictions on or after December 1, 2025.

<sup>iii</sup> **SET LIMITS ON MOTIONS FOR APPROPRIATE RELIEF IN NONCAPITAL CASES**

**SECTION 15.(a)** G.S. 15A-1415 reads as rewritten:

**"§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.**

(a) ~~At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section.~~ In a capital case, a defendant may file a postconviction motion for appropriate relief shall be filed based on any of the grounds enumerated in this section within 120 days from the latest of any of the following:

- (1) The court's judgment has been filed, but the defendant failed to perfect a timely ~~appeal;~~appeal.
- (2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being ~~filed;~~filed.
- (3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North ~~Carolina;~~Carolina.
- (4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of ~~Appeals;~~Appeals.
- (5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence ~~undisturbed;~~ undisturbed.
- (6) The appointment of postconviction counsel for an indigent capital defendant.

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(a1) In a noncapital case, a defendant may file a postconviction motion for appropriate relief based on any of the grounds enumerated in this section within seven years from the latest of any of the events listed in subdivisions (1) through (5) of subsection (a) of this section.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

- (1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.
- (2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.
- (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
- (4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.
- (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 719, s. 1, effective June 21, 1996.
- (7) ~~There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.~~
- (8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.
- (9) ~~The defendant is in confinement and is entitled to release because his sentence has been fully served.~~
- (10) The defendant was convicted of a nonviolent offense as defined in G.S. 15A-145.9; the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise ~~the ground that evidence~~ any of the following claims:

- (1) Evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

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- (2) In a noncapital case, the defendant can demonstrate pursuant to G.S. 15A-1419(c) that one of the following exists:
- a. Good cause for excusing the grounds for denial listed in subsection (a) of G.S. 15A-1419 and actual prejudice resulting from the defendant's claim.
  - b. Failure to consider the defendant's claim will result in a fundamental miscarriage of justice.
- (3) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- (4) The defendant is in confinement and is entitled to release because his sentence has been fully served.

(c1) Notwithstanding the time limitations otherwise provided in this section, a defendant may file a motion for appropriate relief based on any of the grounds enumerated in this section at any time if the district attorney for the prosecutorial district where the case originated consents to the filing of the motion.

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**SECTION 15.(b)** G.S. 15A-1419(a)(4) reads as rewritten:

"(4) The defendant failed to file a timely motion for appropriate relief as required by ~~G.S. 15A-1415(a)~~ subsection (a) or (a1) of G.S. 15A-1415."

**SECTION 15.(c)** This section becomes effective December 1, 2025, and applies to verdicts entered on or after that date.