



State of Connecticut

DIVISION OF CRIMINAL JUSTICE
OFFICE OF THE CHIEF STATE'S ATTORNEY
CONVICTION INTEGRITY UNIT

PATRICK J. GRIFFIN
CHIEF STATE'S ATTORNEY

300 CORPORATE PLACE
ROCKY HILL, CT 06067
PHONE: 860-258-5800
FAX: 860-258-5858

CONVICTION INTEGRITY UNIT PROTOCOLS

I. PREAMBLE

The Division of Criminal Justice (hereinafter, the "Division" or "DCJ") has no more important obligation than ensuring the integrity of the convictions it has secured. Wrongful convictions are a blight on the moral authority of the criminal justice system. They cause incalculable damage to the people who are condemned unjustly and erode public trust in our criminal process. A single wrongful conviction is too much for any honorable system to bear.

Mistakes and missteps are inevitable features of any project as complicated as the system for arresting and prosecuting criminal defendants. The Division acknowledges the role of prosecutors and law enforcement in past wrongful convictions, and its duty to rectify past harms and safeguard the integrity of the criminal justice system going forward. In recognition of the foregoing, DCJ has created and will implement and direct a statewide Conviction Integrity Unit (CIU). The CIU shall conduct an independent extrajudicial review of criminal convictions in cases in which DCJ receives plausible and verifiable information that casts doubt on a conviction's integrity.

The CIU shall conduct strategically collaborative, good-faith case reviews to ensure the integrity of challenged convictions, remedy wrongful convictions, and take any remedial measures necessary to correct injustices uncovered, within the bounds of the law. The CIU investigation must be free from ignoble concerns such as the embarrassment of past misjudgments revealed. It shall be transparent, open, and earnest, and evidence of official misconduct will be treated with particular urgency and candor. The people entrusted with overseeing the investigative process must be resolute and act with unimpugnable independence, recognizing that there is no higher public service than righting a wrongful conviction.

To fulfill this mission, the CIU will operate independently from DCJ's trial, appellate, and post-conviction litigation units, and will, when possible, conduct collaborative investigations with the convicted person's counsel. When collaborative investigation is not feasible, the CIU will approach its review and investigation in a non-adversarial manner, always with the goal of ensuring that justice prevails in each and every case.

Conviction review is an internal Division process; it is an independent extrajudicial review of criminal cases in which the CIU receives plausible and verifiable information that casts doubt on a conviction's integrity. There is no right to CIU review.

II. CONVICTION INTEGRITY UNIT REVIEW

A. Initial Screening

Upon receipt of an application seeking conviction review, the CIU will confirm that the basic qualifications set forth in Section II.B., infra, are met.

If all applicable qualifications are met, the CIU will open a review to make an initial determination regarding the claims. This review may or may not result in an investigation. See Section II.D.5., infra. The decision to open a review will be made as expeditiously as possible given the complexity of the request and available resources. CIU will notify the applicant and the State's Attorney for the Judicial District in which the conviction was obtained (hereinafter, "the State's Attorney for the originating jurisdiction") of its decision to open a review.

In the event that the qualifications set forth in Section II.B. are not met, and the CIU concludes that it will not open a review, the CIU will notify the applicant and the State's Attorney for the originating jurisdiction of its decision. This does not foreclose or preclude review and/or action by the State's Attorney for the originating jurisdiction. Additional information may also be requested from the applicant.

During the initial screening process, the CIU will ascertain whether the State's Attorney for the originating jurisdiction has a conflict (i.e., the State's Attorney prosecuted the underlying criminal matter). In the event such conflict exists, another State's Attorney (hereinafter, "the alternate State's Attorney") will be appointed for the purpose of making any decision(s) required under Sections II.D.5. & II.E.2.b., infra. The Chief State's Attorney or his or her designee may assist in resolving any conflict(s) and identifying and appointing a State's Attorney. The facts and circumstances surrounding the conflict, including the names of the State's Attorneys involved and their Judicial Districts, shall be memorialized in a memorandum retained in the CIU case management database.

B. Basic Qualifications

1. Applications for conviction review may be submitted by a convicted person, an attorney for a convicted person, a representative of a convicted person, or any other interested party including a state's attorney. The application must be submitted on behalf of a convicted person who is still living. The adoption of these protocols does not foreclose or preclude review and/or action by the State's Attorney for the originating jurisdiction.

2. Any request for conviction review will require the completion of a CIU Application Seeking Conviction Review.

3. The convicted person must have been convicted in state court in Connecticut by trial or guilty plea.

4. The convicted person need not be currently incarcerated or serving a sentence imposed in connection with the conviction.

5. The claim(s) asserted in the application must pertain to the applicant's conviction. The CIU does not review claims challenging the applicant's sentence or claims challenging the performance of the applicant's attorney at prior proceedings (i.e., criminal trial, appellate, or habeas). Such claims are more properly litigated in the habeas court.

6. The claim(s) must identify plausible and verifiable evidence that, if true, would:

(1) reasonably support a claim of actual innocence; or

(2) cause a reasonable person to lose confidence in the conviction due to issues of official misconduct, discredited forensic or eyewitness evidence, the misapplication of forensic science, or due process violations.

If the application presents evidence that was available but not presented at a previous criminal or civil proceeding (e.g., direct appeal, habeas corpus, petition for new trial, etc.), the CIU may request the convicted person to provide reasons why the evidence was not presented previously.

C. Prioritization of Review

1. The CIU will prioritize the claims of convicted persons who, in connection with the conviction(s) at issue, are currently incarcerated or serving a sentence. While exhaustion of other remedies is not required in order to obtain conviction review, CIU will prioritize review of convictions when: (1) there are no active criminal or civil matters pending in a court of this state challenging the same conviction(s); and/or (2) if the convicted person has challenged the conviction(s) by way of direct appeal, petition for new trial, or any other criminal or civil action, those matters are finally resolved.

2. The filing of a CIU application does not stay any other pending litigation. It is an internal Division process that provides an independent extrajudicial review of criminal cases in which the CIU receives plausible and verifiable information that casts doubt on a conviction's integrity.

3. If, during the initial screening process or at any point thereafter prior to closing out a CIU matter, the CIU determines that the convicted person has another active criminal or civil matter or matters pending in a court of this state challenging the same conviction(s) that serve as the basis for the CIU application, the Chief State's Attorney has the discretion to direct the CIU to move forward with, or suspend, its review. Such decisions will be made on a case-by-case basis after consultation with the appropriate State's Attorney(s).

4. There is no right to CIU review.

D. Conviction Review

1. Preparing for review

Once a CIU review has been opened, the CIU will prepare the case for review. The CIU will retrieve only the material that is necessary to resolve the claims presented in the application. This may include, but is not limited to, the disposed criminal file(s) or portions of the disposed file(s), transcripts,

and copies of any relevant materials held by other agencies. The CIU has discretion to examine all relevant portions of the underlying criminal trial file(s).

2. Transparency, cooperation, and information sharing

The CIU will, at all times, attempt to conduct its review and/or investigation in a cooperative manner with the convicted person, if unrepresented, or the convicted person's counsel. The goal of the CIU will always be to find the truth and respect the rights of the victim(s) and convicted person.

a. General

1. It is recognized that the traditional rules of pretrial discovery have no application in the CIU review process. Nonetheless, in the interest of transparency and cooperation, in the event an investigation is commenced the CIU will provide open file discovery of the information it has obtained from prosecutors' file(s), law enforcement file(s), forensic laboratory material(s), and files from other investigative agencies to the convicted person, if unrepresented, or the convicted person's counsel. Consistent with the principles underlying Practice Book §§ 40-10, 40-14, and 40-41, the CIU may withhold items not disclosed at trial or in connection with any other prior proceeding and establish terms, conditions, or restrictions reasonably necessary to protect the integrity of the criminal process and safety of others. The CIU will require counsel to execute confidentiality agreements or protective orders to facilitate the release of sensitive information, as necessary and allowed by law.

2. If the CIU withholds any files from the convicted person, if unrepresented, or the convicted person's counsel, the CIU will maintain a withholding log and provide the log to the convicted person or the convicted person's counsel.

3. To the extent possible, the CIU will conduct collaborative investigations with the convicted person's counsel.

4. The CIU will keep the convicted person's counsel updated on progress and share final investigative reports produced in accordance with these protocols during the investigation with the convicted person, if unrepresented, or the convicted person's counsel.

5. The CIU will report any exculpatory information gathered during a case review without delay to the convicted person, if unrepresented, or the convicted person's counsel and the State's Attorney for the originating jurisdiction or alternate State's Attorney.

6. As a presumptive matter, forensic testing will be completed by the Connecticut Forensic Science Laboratory, which is part of the Department of Emergency Services & Public Protection Division of Scientific Services. If the

convicted person or the convicted person's counsel arranges for the testing to be performed in a private laboratory under procedures approved by the CIU, the convicted person must pay for the testing.

7. Once the CIU becomes aware of the existence of evidence in a case that was not previously known or available to the parties, the CIU will take the steps necessary to ensure its preservation and notify the convicted person, if unrepresented, or the convicted person's counsel of such action.

b. Cooperation with the convicted person

1. Communication between a convicted person and the CIU is not protected by attorney-client privilege, and the CIU will not provide legal advice. Any statements made by a convicted person to the CIU are voluntary and are being made to a prosecutor's office. Any information provided may be used by the CIU or the Division.

2. When necessary, the convicted person shall provide a written waiver and/or authorization permitting the CIU personnel to contact and speak with the convicted person's previous attorney(s) regarding any non-privileged matters, and allow the CIU access to the client file(s) maintained by the previous attorney(s) and view any information other than privileged communications or attorney work-product contained with the file(s). The CIU retains the right to request privileged information from the convicted person. The convicted person always retains the right to refuse to waive a privilege belonging to him or her. Such refusal, however, may prevent the CIU from completing its investigation and result in the termination of the review process.

3. In the event that the CIU determines that an interview with the convicted person would assist in the investigation, the CIU will communicate with the convicted person, if unrepresented, or the convicted person's counsel regarding such interview and obtain any appropriate waivers. Any counsel presently representing the convicted person in any other pending criminal or civil matter, if known, will be notified of the date and time of any such interview.

4. The convicted person must agree to provide physical evidence and biological samples to the CIU inspectors upon request for use only in connection with the CIU investigation, and fully cooperate in the investigation. Failure to cooperate with the investigators at any time may result in the termination of the review process.

3. Forensic testing

When the CIU determines that there exists a nexus between biological material and the crime of conviction such that it is reasonably likely the outcome of forensic testing would support a convicted person's claim of actual innocence or cause a reasonable person to lose confidence in the conviction, the

CIU shall request that the Connecticut Forensic Science Laboratory conduct forensic testing, unless there is a conflict or the state forensic laboratory determines that it is unable to conduct the testing. In the event that the state forensic laboratory is unable to conduct the forensic testing due to a conflict or other reason, the forensic testing shall be conducted by another laboratory agreed upon by the parties. Funding for forensic testing in such circumstances will be determined by the parties.

In the event it is unclear to the CIU that forensic testing would be reasonably likely to support a convicted person's claim, the CIU may refer the matter to the Forensic Review Panel ("FRP"). The FRP may evaluate the claims for scientific merit to assist the CIU, Chief State's Attorney, State's Attorney for the originating jurisdiction or alternate State's Attorney, and/or Conviction Review Panel ("CRP"); see Section II.E., infra; in assessing whether evidence can be subject to new testing methodologies or re-testing and whether the state forensic laboratory or another laboratory should conduct any testing.

The FRP will consist of an outside expert or experts in the particular scientific area(s) in question appointed by the Chief State's Attorney to provide unbiased opinions on the validity of the claims and viability of testing. The number of experts to serve on the FRP rests in the discretion of the Chief State's Attorney after consultation with the CIU. The Chief State's Attorney is encouraged, but not required, to consult with the Connecticut Criminal Defense Lawyer's Association, the Office of the Chief Public Defender, or the Connecticut Bar Association in selecting an expert or experts in order to foster trust in the process with the defense community. Funding will be allocated to members of the FRP for consultation on matters under investigation.

The FRP should ensure that testing or re-testing decisions are based on the most up-to-date science. Such decisions should help guide the CIU, Chief State's Attorney, State's Attorney for the originating jurisdiction or alternate State's Attorney, and/or CRP in assessing whether evidence that contributed to a conviction was based on a discredited forensic method or misapplied science and whether new testing methodologies have developed or evolved since the time of the criminal trial such that there is an increased likelihood of obtaining a result or more accurate result. The FRP will prepare a report that will be presented to the CIU, the Chief State's Attorney, State's Attorney for the originating jurisdiction or alternate State's Attorney, and/or CRP. The FRP will provide an independent interpretation that testing particular samples is both scientifically feasible and likely to obtain a result that is legally relevant to the matter before the CIU. This decision will be made with an understanding that testing is preferred unless it would lead to confusing or irrelevant results.

The FRP report will be made equally available to the CIU and to the convicted person, if unrepresented, or the convicted person's counsel.

4. Victim contact

The CIU recognizes both a professional responsibility to victims of crime and an ethical obligation to ensure that they remain informed throughout the criminal process. See Conn. Const. art I., § 8.b, as amended. Nevertheless, there is no bright-line rule dictating when or whether it is appropriate to make contact during the CIU review. The CIU will evaluate when and whether to contact victims on a case-by-case basis. In doing so, the CIU will consider numerous factors, including victim safety, the extent of the victim's or family members' prior involvement in the case, and the nature of the issue(s) involved in the CIU review. The CIU may enlist the assistance of the Office of Victim Services Victim Advocate for the

Judicial District in which the conviction was obtained. If and when the CIU determines that victim contact is appropriate, the CIU will inform the State's Attorney for the originating jurisdiction or alternate State's Attorney of such contact. In the event that the matter is referred to a CRP, victims will be notified of that panel's findings and vote, as set forth in Section II.E.2., infra.

5. Review and investigation; subsequent actions

The CIU will review all the material it has gathered to uncover any potential issues. The convicted person's claims will be considered in light of their consistency with any prior statements the convicted person made to law enforcement concerning the matter, any guilty plea, or, if applicable, any prior testimony by the convicted person unless, in the case of prior statements, there is a legitimate reason to doubt the reliability of such statements (e.g., coerced confession). The review will be concluded as expeditiously as possible given the complexity of the claims and available resources. There is no right to appeal the CIU's decision.

a. Limited Review

Many of the convictions the CIU reviews can be resolved after limited review involving little or no investigation. In these circumstances, the CIU will send the convicted person, if unrepresented, or the convicted person's counsel a letter briefly setting forth the results of the review and reasoning for the CIU outcome or decision. There is no right to appeal the CIU outcome or decision.

b. Enhanced Review

Convictions involving more extensive review and investigation will result in a written report (hereinafter, the "CIU Investigative Report"). At the conclusion of an enhanced review and investigation, the CIU will provide the Chief State's Attorney, the State's Attorney for the originating jurisdiction or alternate State's Attorney, and the convicted person, if unrepresented, or the convicted person's counsel with the CIU Investigative Report that includes the results of any forensic testing and a statement as to whether additional review by a CRP may be beneficial and is warranted. In cases in which the CIU determines that additional review by a CRP may be beneficial and is warranted, the Chief State's Attorney shall impanel the CRP and refer the matter to it for further review. The CIU Investigative Report shall not include any opinions, credibility determinations, or ultimate conclusions relating to the disposition of the case.

Following receipt of the CIU Investigative Report, the State's Attorney for the originating jurisdiction or alternate State's Attorney shall determine, within 90 days of receiving such report, whether remedial action is warranted or, in the event that CIU has not referred the matter to the CRP, to request further review by the CRP. If the State's Attorney determines that remedial action is warranted, no referral to a CRP is necessary. See Section II.E., infra. The State's Attorney shall take steps to effectuate any remedial action not later than 120 days from receipt of the CIU Investigative Report or 30 days from his or her determination that remedial action is warranted, whichever is sooner.

Should the State's Attorney determine that additional investigation or review is necessary, he or she may request that the Chief State's Attorney or his or her designee assemble a CRP for the purposes of conducting review of the matter in accordance with the procedures set forth in Section II.E., infra. The

convicted person or the convicted person's attorney, within 90 days of receiving the CIU Investigative Report, also may make a request of the Chief State's Attorney to impanel a CRP to conduct further review.

There is no right to CRP review. The Chief State's Attorney's decision on any request to impanel a CRP is final and not appealable.

6. Posting of Conviction Integrity Review Reports

The CIU will post on the Division's website any final report(s) that it, the FRP, and CRP produces in accordance with these protocols. The CIU will also post on the Division website any motion or other document filed by a State's Attorney in connection with a matter reviewed by CIU and any related court decision. All other information contained in the CIU case file is operational and will not be made publicly available.

7. Closing out the investigation

At the conclusion of the investigation, the CIU will notify in writing the convicted person, if unrepresented, or the convicted person's counsel and the State's Attorney for the originating jurisdiction or alternate State's Attorney of the results of the investigation.

E. Conviction Review Panel ("CRP")

The CRP shall review matters referred to it by the Chief State's Attorney pursuant to Section II.D.5., supra.

1. Structure of the CRP

The composition of the CRP shall include:

- (1) Two State's Attorneys with no connection to the underlying conviction to be selected by the Chief State's Attorney.
- (2) One retired State of Connecticut Judge or Justice or Federal Judge.
- (3) One Connecticut barred attorney nominated by the Connecticut Trial Lawyer's Association or Connecticut Criminal Defense Lawyers Association.

Non-prosecutor members of the CRP shall be selected by the Chief State's Attorney in consultation with the Chief Public Defender and the Chief Justice of the Connecticut Supreme Court in a manner that fosters confidence in the review process.

Prosecutorial members of the CRP will be selected by the Chief State's Attorney. State's Attorneys will be designated to serve on the CRP on a rotating basis in alphabetical order. If a State's Attorney so designated is disqualified, or otherwise unavailable, the next State's Attorney in the order listed above will be designated to the panel.

The Chief State's Attorney shall document, in writing, the names of those selected to serve on the CRP and set the term of service for each panel member.

CRP members who are not currently employed as full time members of the DCJ shall be compensated for their work on the panel based on available funding.

2. The CRP Process

Prior to the CRP review, the CIU will forward to the CRP a copy of the CIU Investigative Report and any other materials the CIU determines would assist the CRP in conducting its review. The convicted person, if unrepresented, or the convicted person's counsel will be provided the opportunity to present written material to the CRP in advance of its review. The CRP shall decide the form, manner, timing, and scope of material(s) the convicted person or the convicted person's counsel may submit.

The parties may request from the CRP an additional opportunity to present argument and/or material(s). The CRP retains ultimate discretion to grant or deny such a request and to define the specific parameters relating to any such request, if granted. It bears noting that the CRP process is not intended to be used to relitigate issues previously decided or serve as a substitute for a new trial; rather, it is a limited extrajudicial review of criminal convictions based on the CIU review and investigation. The CRP process should be conducted as expeditiously as possible given the complexity of the claims and available resources.

a. The CRP Review

The CRP will review all material provided by the CIU and the convicted person or convicted person's counsel. All material reviewed by the panel in connection with the CRP review shall be marked and retained in the CIU case management database. The CRP may ask for further review or investigation as it deems proper.

Following the conclusion of the review, the CRP will report its findings and any recommendation for further action to the Chief State's Attorney, the State's Attorney for the originating jurisdiction or alternate State's Attorney, and the CIU.

b. The CRP report

The CRP will issue a final written report which shall include the findings of fact, conclusions of law and recommendation(s) separately stated. Dissenting and concurring conclusions and findings are permitted. The CRP shall issue its report not later than 120 days from receipt of the CIU report and any other materials submitted by the CIU or the convicted person or convicted person's counsel. If the report cannot be completed within 120 days, the CRP shall notify the Chief State's Attorney of the reasons the report has not been completed and provide the Chief State's Attorney with an estimate as to how much additional time will be required for the preparation of the report. The report and the individual vote of each CRP member will be made known to the CIU, the convicted person, if unrepresented, or the convicted person's counsel, and to any victim of the underlying crime. The CRP's report and vote will also be publicly available on the Division's website.

The CRP shall be empowered to recommend or support all available and appropriate remedies, including recommending dismissal or expungement of the case, supporting a petition for the restoration

of rights, moving for a reduction of sentence, or supporting a request for clemency, parole, or pardon when appropriate. There is no right to appeal the CRP review or report.

The State's Attorney for the originating jurisdiction or alternate State's Attorney will be presented with the CRP's final report, including any minority conclusions and findings. The State's Attorney for the originating jurisdiction or alternate State's Attorney will decide on the appropriate action required to do justice in the matter. The State's Attorney shall take steps to effectuate any remedial action within 90 days of receiving the CRP's report.

F. Root-Cause Analysis

1. When a State's Attorney determines that relief should be granted to a convicted person following CIU review, the CIU must conduct a root-cause analysis and draft a remedial/corrective action plan. An external expert may participate in the analysis and formulation of the plan.

2. The CIU must present the analysis and its plan to the CRP, the Chief State's Attorney, and the State's Attorney for the originating jurisdiction.

3. The CIU must convene an "all stakeholder review" in any case in which the State's Attorney determines that relief should be granted and the actions of individuals from other agencies outside DCJ contributed to the State's Attorney's determination. If ineffective representation was a contributing factor, a representative from the Office of the Chief Public Defender or the Connecticut Bar Association, if the client had private counsel, may be present.

4. The lessons learned from the root-cause analysis shall be the subject of ongoing DCJ trainings and policy development.

G. Evidence of Official Misconduct

The CIU must thoroughly investigate all plausible and verifiable allegations of official misconduct presented in an application.

If the CIU finds credible evidence of official misconduct during its investigation, it must report the evidence to the convicted person's counsel, the Criminal Justice Commission, the State's Attorney for the originating jurisdiction or alternate State's Attorney, the Chief State's Attorney, and the CRP, if a CRP has been impaneled.

Allegations of official misconduct reported out by the CIU will be investigated according to procedures established by DCJ.

H. Transparency and Data Collection

1. Due deference to the need for confidentiality of case records and safety for potential witnesses is paramount. In addition, it is essential that the CIU implement reasonable measures to ensure transparency of CIU activity and to publicize the CIU's impact within the Division of Criminal Justice and larger community.

2. The CIU's policies and procedures that assist participants in case submissions and review, and what to expect from the CIU, shall be committed to writing and made available to the public on the Division's website.

3. The CIU should develop a case management database to serve as a log for all correspondence received from convicted persons, their relatives, victims, interested parties, and attorneys.

4. The closure of any cases should be documented in the CIU case management database.

I. Other Action by State's Attorneys

The adoption of these protocols does not foreclose or preclude any other action a State's Attorney may take, pursuant to the authority vested by Article IV, Section 27 of the Connecticut Constitution, concerning a conviction in which information is developed that has led a State's Attorney to lose confidence in a conviction.