

# **CONVICTION INTEGRITY UNIT PROTOCOLS**

## **PREAMBLE**

The Division of Criminal Justice (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, and they cause incalculable damage to the people who are condemned unjustly. 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. When the DCJ receives plausible and verifiable information that casts doubt on a conviction's integrity, it must launch a searching investigation that is free from ignoble concerns such as the embarrassment of past misjudgments revealed. The investigation should be transparent, open, and earnest, with evidence of official misconduct being treated with particular urgency and candor. The people entrusted with overseeing the investigative process must be resolute and act with unimpeachable independence, recognizing that there is no higher public service than righting a wrongful conviction.

By developing a Conviction Integrity Unit, the DCJ acknowledges the role of prosecutors and law enforcement in past wrongful convictions, and more importantly acknowledges its duty to rectify past harms and safeguard the integrity of the criminal justice system going forward.

## **CONVICTION INTEGRITY REVIEW PROTOCOL**

The adoption of this protocol does not foreclose or preclude any other action a state's attorney may take concerning a conviction in which information is developed that has led that state's attorney to lose confidence in that conviction.

### **Initial Screen**

The Conviction Integrity Unit (CIU) shall (1) Receive requests for review; (2) Confirm that the basic qualifications are met (See "Basic Qualifications" below); (3) If basic qualifications are met, make a recommendation to the CSA, based on priority and resources, to open an investigation; (4) Make this decision as expeditiously as possible given the complexity of the request and available resources. If those criteria prevent opening a case at this time, the CIU will indicate that to the claimant/requestor. If the criteria are not met, the CIU will respond to initial claimant/requestor. Additional information may also be requested from the claimant / requestor.

### **Basic Qualifications:**

1. Claimant/Requestor can be a convicted person, attorney for a convicted person, representative of a convicted person, the Chief State's Attorney, a State's Attorney, the Civil Litigation Bureau, the Appellate Bureau, the Superior, Appellate or Supreme Court.

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

3. The convicted person need not be currently incarcerated or serving a sentence imposed in connection with the conviction. However, the CIU will prioritize the claims of convicted persons who are currently incarcerated or serving a sentence imposed in connection with the conviction.

4. The claim must identify plausible and verifiable evidence that, if true, would reasonably support a claim of (1) actual innocence or (2) cause a reasonable person to lose confidence in the conviction due to issues of official misconduct, discredited forensic or eye witness evidence, the misapplication of forensic science, or due process violations. If the application presents evidence that was available but not presented at a previous trial (including habeas trials), the CIU may request the convicted person provide reasons why the evidence was not presented previously.

The following additional qualifications must be satisfied for any claims made by an attorney on behalf of the convicted person:

A. The convicted person's request for review will be considered in light of its consistency with any prior statements he/she made to law enforcement concerning the matter, any plea of guilty or, if applicable, his/her trial testimony, unless, in the case of prior statements, there is a legitimate reason to doubt the reliability thereof such as our greater understanding of false or coerced confessions.

B. The convicted person shall provide a written waiver/authorization which allows the CIU to contact and speak with previous attorneys regarding any non-privileged matters, and allow the CIU access to the client file as maintained by the previous attorney and view any information other than privileged communications or attorney work-product contained within the file. The CIU retains the right to request additional privileged information from the convicted person. The convicted person always retains the right to refuse to waive the privilege. However, the CIU, on a material request may presume that a waiver refusal is due to information detrimental to their position and may prevent the CIU from substantiating important material evidence. This may lead to the CIU rejection of the convicted persons claim.

C. The convicted person may agree to be interviewed under oath by the CIU. Written statements by all parties questioned by CIU will be taken under oath, under penalty of false statement. Moreover, the convicted person must agree to provide physical evidence and biological samples to the investigators upon request, and fully cooperate in their investigation. Failure to cooperate with the investigators (subject to the privilege limitations outlined above) at any time may result in the termination of the review process.

## **Cooperation and Information Sharing with Defense Counsel**

This is an independent DCJ inquiry. Given the different ethical obligations of the prosecutor and the attorney for the requestor, cooperation is required. The CIU prosecutors and investigators have an ongoing discovery obligation to defense counsel in these matters and will zealously follow those ethical guidelines.

The CIU will, at all times, attempt to conduct their inquiry in a cooperative manner with the convicted person and their counsel. The goal of the CIU will always be to find the truth and respect the rights of the victim and convicted person.

A. The CIU will provide open file discovery – of prosecutors’ files, files from law enforcement, files from forensic labs, and files from other investigative agencies – to claimant / requestor’s counsel. As necessary, the CIU will require counsel to execute confidentiality agreements or protective orders to facilitate the release of sensitive information.

B. If the CIU withholds any files from Petitioner’s Counsel, the CIU will maintain a withholding log and provide the log to counsel.

C. To the extent possible, the CIU will conduct investigations jointly with claimant/requestor’s Counsel.

D. The CIU will keep claimant/requestor’s Counsel updated on progress and share memoranda and investigative plans during the investigation.

E. The CIU will report any exculpatory information gathered during a case review without delay to claimant / requestor’s Counsel.

F. As a presumptive matter, forensic testing will be completed by the Connecticut Forensic Science Laboratory (Department of Emergency Services & Public Protection - Division of Scientific Services). If the Petitioner arranges for the testing to be done in a private lab under procedures approved by the CIU, the Petitioner must pay for the testing.

G. Once the CIU becomes aware of the existence of evidence in a case, the CIU will take the steps necessary to ensure its preservation.

H. The CIU will provide Petitioner/Petitioner’s Counsel with an updated list of all such evidence.

## **Forensic Testing**

The CIU will agree to forensic testing if recommended by the Forensic Review Panel (FRP) in all cases where a nexus exists between the biological material and the crime of conviction. The testing will presumably be done by the Connecticut Forensic Science Laboratory (Department of Emergency Services & Public Protection - Division of Scientific Services) unless there is a conflict or if the FRP recommends that another lab do the work.

The results will be made equally available to the CIU and to Petitioner/Petitioner's Counsel. In conjunction with these duties, the CIU will work as a liaison with the FRP. The FRP will be a resource available to CIU.

In cases referred to the CIU involving forensic evidence issues, that panel may evaluate the claims for scientific merit to assist the Conviction Review Panel in assessing whether evidence can be subject to new testing methodologies or re-testing. The FRP will be appointed by the CSA and consist of outside forensic experts in the particular areas in question. Selection of FRP members should be done in consultation with the CDLA and the CBA in order to foster trust in the process with the defense community. Funding should 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 and help guide the CIU and CRP in assessing whether evidence that contributed to a conviction was based on a discredited forensic method or misapplied science.

## **Conviction Integrity Unit Review**

The CIU shall receive each case accepted for investigation and prepare it for review by the Conviction Review Panel (CRP or Panel). The CIU will retrieve the disposed file, transcripts and copies of any relevant materials held by other agencies. The CIU will also attempt to make any victim of the underlying offense or their representative aware of the review. The CIU will review this material to uncover any potential issues and then provide the CSA and the Panel with a synopsis of the matter and an opinion on any of the issues presented. At the conclusion of the review, the synopsis and opinion will also be shared with Petitioner/Petitioner's Counsel. The review will be concluded as expeditiously as possible given the complexity of the request and available resources.

Any claims of improper testimony or testing of forensic evidence shall be referred by the CIU to a Forensic Review Panel (FRP). The FRP is necessary to make an initial, independent interpretation that testing particular samples is both scientifically feasible and likely to obtain a legally relevant result 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 will consist of outside experts in the particular scientific areas in question appointed by the CSA to provide unbiased opinions on the validity of the claims. The FRP will prepare a report which will be included in the CIU synopsis presented to the Panel.

### **Structure of the Conviction Review Panel:**

Members of the CRP shall be selected by the CSA 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. Permanent members of the CRP will be chosen by the CSA from among candidates nominated by the Chief Court Administrator and the CTLA/CBA after consultation with the CSA.

There shall be:

- (1) Two current or former prosecutors with no connection to the underlying conviction selected by the CSA. Appointed on a case by case basis.
- (2) One retired State of Connecticut Judge/Justice or Federal Judge as Permanent Member.
- (3) A Connecticut barred attorney nominated by the CTLA as Permanent Member.

The aforementioned group of four (4) shall be referred to as the “Conviction Review Panel” (the CRP or Panel).

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.

### **Action by the Conviction Review Panel**

The Panel will review all material provided by the Conviction Integrity Unit. The Panel may ask for further review or investigation. At the conclusion of the review, the Panel will report its findings and any recommendation for further action to the Chief State’s Attorney and the State’s Attorney for Judicial District in which the conviction occurred. The Panel will issue its conclusion and findings as expeditiously as possible given the complexity of the request and available resources. These findings, and the individual vote of each Panel member, will be made known to the claimant / requestor and their attorney, to any victim of the underlying crime and will be publicly available on the Division’s website.

The Panel 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.

The State’s Attorney for the original jurisdiction will be presented with the Panel’s findings and recommendation, including any minority opinion. After consultation with the Chief State’s Attorney, the State’s Attorney for the originating jurisdiction will decide on the appropriate action required to do justice in the matter.

## **Root-Cause Analysis**

A. In cases in which the Panel determines that there was a wrongful conviction, the CIU must conduct a root-cause analysis and draft a remedial/corrective action plan. At least one external expert must participate in the analysis and formulation of the plan.

B. The CIU must present the analysis and its plan to the Panel, the Chief State's Attorney and the JD State's Attorney where the conviction occurred.

C. The CIU must convene a "sentinel event" or "all stakeholder review" in any wrongful conviction case in which people from more than one agency were involved. If ineffective representation was a contributing factor, a representative from the Office of the Chief Public Defender or the CBA if the client had private counsel should be present.

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

## **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 Panel, Petitioner/Petitioner's Counsel, the Criminal Justice Commission, the State's Attorney for the jurisdiction where the conviction occurred and the Chief State's Attorney.

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

## **Transparency and Data Collection**

A. 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 Office and within the larger community.

B. 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.

C. The CIU should develop a case management database to serve as a log for all correspondence received from defendants, defendant's relatives, victims, interested parties, and attorneys.

D. The closure of any cases should also be marked in the case management database. In addition, any such closure should be accompanied by a written rationale that is communicated to the defendant.

Protocol Approved 12/20/21

**APPENDIX A**

WAIVER AND CONSENT

INSTRUCTIONS: Please read the limited waiver below and sign if you agree with its terms. If you are currently represented by an attorney, please discuss this matter with your attorney and have your attorney sign as well. The original copy of this form must be delivered to the Conviction Integrity Unit. Please retain a copy for your records.

I, \_\_\_\_\_, have filed an application with the Conviction Integrity Unit (CIU) of the State of Connecticut Division of Criminal Justice in which I have requested the CIU to review my conviction. I am / am not (circle one) currently represented by an attorney. I understand that, in order for the CIU to fully investigate any claims of misconduct by the State, the CIU will need to determine what information was disclosed to my previous attorney(s) by the State or other parties.

Therefore, I agree to cooperate with the CIU's review, which includes allowing the CIU to contact and speak with my previous attorney(s) about any NON-PRIVILEGED matters, and allowing the CIU to access my client file, as maintained by my previous attorney(s), to view any information, other than privileged communications or attorney work-product, contained within my file.

By signing below, I acknowledge that I have read and understood all of the above statements and that my agreement to cooperate with the CIU is made by my own free will and is given voluntarily.

My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, my inmate identifying number, if any, is \_\_\_\_\_, and my address (or place in which I am currently incarcerated) is \_\_\_\_\_.

\_\_\_\_\_. I declare under penalty of perjury that the foregoing is true and correct.

Signature of Convicted Person

Date Signed

CERTIFICATION BY ATTORNEY FOR CONVICTED PERSON (if currently represented by counsel)

I hereby certify that I have fully explained to the convicted person the above statement and that his/her signature is a result of an independent and informed decision made by him/her.

\_\_\_\_\_  
Signature of Attorney for Convicted Person

\_\_\_\_\_  
Name of Attorney for Person (Type or Print)

\_\_\_\_\_  
Date Signed