



**OFFICE OF THE STATE ATTORNEY
FIFTEENTH JUDICIAL CIRCUIT
401 N. Dixie Highway
West Palm Beach, FL 33401**

CONVICTION REVIEW UNIT POLICIES AND PROCEDURES

I. ESTABLISHMENT

1.01 Establishment and Purpose of Conviction Review Unit

It is a priority of this office to maintain public trust and confidence while seeking justice for the citizens of the Fifteenth Judicial Circuit. Justice encompasses seeing that the correct result occurs, ensuring that the guilty are convicted and the innocent are not. Given the evolution of forensic sciences, ever-changing legislation and court opinions, and new insight regarding the errors in criminal justice, this office must remain on the forefront of administering equal and fair justice. The obligation to do justice is continual and does not end when a conviction is secured. Part of this obligation is a willingness to consider and review cases in which credible information is provided suggesting that a conviction that was legally obtained by this office in the past may nonetheless be inaccurate.

No one in this office seeks to convict an innocent person. With that in mind, we desire to promote a culture that fosters fair and just prosecution. In recognition of the office's continuing postconviction ethical obligations, the Conviction Review Unit (CRU) is established. The purpose of the CRU is to review and investigate claims of actual innocence and provide analysis and assistance to address the prevention of errors/issues that might lead to a miscarriage of justice by punishing an innocent person. The CRU will assist prosecutors in identifying and avoiding issues that could enable errors to occur. Additionally, the CRU may make policy suggestions to the administration regarding quality improvement initiatives to help prevent wrongful convictions.

1.02 Purpose for Written Policies

These policies and procedures outline the establishment of the CRU and the manner in which the CRU will handle postconviction claims of innocence and wrongful conviction for prosecutions that originated in the Fifteenth Judicial Circuit of Florida.

1.03 Effective Date and Applicability

The policies and procedures are effective as of February 24, 2020. The CRU will conduct an annual review of these policies and procedures to ensure that they meet the intent and needs of this unit.

1.04 Scope and Reporting Chain

The CRU will be tasked with investigating and resolving claims of actual innocence arising out of felony convictions in the Fifteenth Judicial Circuit that are capable of being substantiated by credible, factual information or evidence previously not considered by the original finder of fact. Plausible claims of actual innocence are deemed worthy of acceptance, and provide a reasonable and probable likelihood that the petitioner did not commit, or participate in, the crime charged. The CRU may, however, investigate any case in which a potential miscarriage of justice impacts the integrity of a conviction. The CRU will prioritize plausible claims of actual innocence where the petitioner is currently serving a prison sentence over claims in which the petitioner is not incarcerated. Creation of the CRU does not create a right of any defendant or other person to CRU review.

Secondly, the CRU will engage in root cause analysis of wrongful convictions, provide analysis and assistance to address the prevention of errors/issues that might lead to a miscarriage of justice by punishing an innocent person. The CRU will be a resource for prosecutors in identifying and avoiding issues that could enable errors to occur. Additionally, the CRU may make policy suggestions to the administration regarding quality improvement initiatives to help prevent wrongful convictions.

The CRU will be comprised of the following at a minimum: 3 felony-level Assistant State Attorneys; a legal assistant and an investigator.

The CRU will report directly to the elected State Attorney for the Fifteenth Judicial Circuit, and will work independently from other divisions within the office. At no time will a

claim submitted to the CRU be reviewed or investigated by a prosecutor who directly participated in the underlying prosecution.¹

II. PROCESS

2.01 Acceptance of a Case for Review

The CRU will accept cases from the following sources: (1) those cases initiated by a Petition for Review (“Petition”) from an individual or an agent (attorney, family member, innocence organization, etc.) acting on behalf of the individual who has been convicted of a felony offense in the Fifteenth Judicial Circuit; (2) those cases resulting from referral from prosecutors, the judiciary, law enforcement, or others with an interest in seeking review of a prior felony conviction; (3) those cases resulting from internal audit of cases based upon finding of previous errors or instances of misconduct; and (4) any case, without limitation, directly referred to the CRU by the State Attorney.

Active prosecutors shall refer all cases to the CRU for review when they learn of “new, credible and material evidence” that creates a reasonable likelihood that a convicted defendant did not commit the offense for which the defendant was convicted. *See* ABA Model Rules of Professional Conduct, Rule 3-8.3, and the Florida Rules of Professional Conduct, Rule 4-3.8 (with comments).

The Legal Affairs Division of the Office of the State Attorney will continue to handle postconviction motions and will operate independently from the CRU. Section 925.11, *Florida Statutes*, and Florida Rule of Criminal Procedure 3.853, governs postconviction DNA testing, and petitioners must initially comply with all of the statutory requirements for requesting postconviction DNA testing. The Legal Affairs Division will handle all motions filed under Rule 3.853 (postconviction DNA), but the results of such testing may result in internal referral to the CRU.

Likewise, a prosecutor handling a felony case during postconviction proceedings may refer the case information to the CRU if the prosecutor discovers a plausible claim of actual innocence that is supported by objectively credible evidence such that a reasonable person might have doubt that the conviction is accurate and legitimate. Regardless, the policy of this office is

¹ It is anticipated that the original prosecutor may have relevant information pertinent to the CRU’s investigation. In such instances, the original prosecutor may support the investigation by providing such information, but will not be involved in the CRU investigation itself.

that when a determination is made that a particular person did not commit a particular offense, the office will take whatever steps are necessary to remedy the conviction.

2.02 The Petition

The petitioner, or the petitioner's agent, will be required to submit a written petition using the form generated by the CRU to initiate the review process. If the petitioner is represented by counsel, all communication from the CRU will be directed to counsel and not the petitioner. The petition form shall be readily available and will be posted on the office's official website, www.sa15.state.fl.us. Additionally, the public may communicate directly with the CRU by using email: CRU@sa15.org.

2.03 Criteria for Review

The following requirements govern acceptance for review of any Petition:

- (1) The petitioner must be living and not deceased;²
- (2) The petitioner was convicted of a felony offense (*i.e.*, the judgment and sentence have been rendered);³
- (3) The felony conviction was prosecuted by the Office of the State Attorney for the Fifteenth Judicial Circuit of Florida;
- (4) The petitioner's direct appeal has become final;⁴ there is no post-conviction litigation pending; and all postconviction remedies have been exhausted;
- (5) The petition must present a plausible claim of actual innocence; and
- (6) The allegations contained in the petition must be capable of being investigated and resolved, and if substantiated, would bear directly on the issue of innocence.

The CRU will accept petitions for all felony convictions, including those that resulted from a guilty or no contest plea if the petition otherwise meets the criteria for review.

² If the petitioner dies after filing a petition for review with the CRU, the CRU may continue the review and any subsequent investigation as if the petitioner were still living.

³ The CRU will not review claims on behalf of individuals for whom adjudication was withheld, unless the withhold of adjudication is treated statutorily as a conviction and/or triggers statutorily mandated collateral consequences, such as sexual offender designation/registration.

⁴ A direct appeal is considered final 30 days after issuance of the mandate.

The CRU will accept petitions even if the sentence has been completed, although it may prioritize petitions from persons still in custody in situations where investigative resources are limited.

It is not the role of the CRU to substitute its judgment for that of the original finder of fact given the same, previously considered information, or to substitute its judgment for the appellate process on matters of law. The CRU will not review claims solely alleging judicial errors, such as unfavorable court ruling or procedural errors; those alleging lawful sentences are excessive/harsh; or those seeking to re-litigate affirmative defense, evidence or information previously considered by a prior finder of facts, such as a jury or judge. The CRU will also not investigate claims of newly discovered evidence that supports an affirmative defense, such as consent, self-defense or lack of intent.

By Florida law, a petition submitted to the CRU cannot toll the time limitations set by law to pursue all appellate and postconviction remedies. All appellate and postconviction remedies available to the petitioner must be pursued separately. Conversely, the fact that all postconviction legal remedies have been exhausted, or that the time frame to pursue any postconviction legal remedy has lapsed, will not preclude the CRU from reviewing or investigating a facially sufficient and legitimate claim. Before the CRU will initiate review of a petition, the direct appeal must be final, all postconviction remedies must be exhausted, and there must be no pending litigation.

2.04 Initial Review

After receiving a petition, the CRU will acknowledge receipt of the petition and will carry out a preliminary review to determine if the initial requirements have been met: whether the claim is non-speculative and capable of resolution by investigation, and, if substantiated, probative of ascertaining whether the conviction was inaccurate.

If the requirements for review have not been met, the petitioner and/or the petitioner's legal representative will be notified that the petition does not provide sufficient credible information to warrant further review and that no further action will be taken. Petitioner may resubmit a petition if additional information can be provided that may warrant further review.

Acknowledgement of receipt of the petition does not indicate acceptance of the case for investigation, nor does the CRU's decision to review and investigate a claim infer agreement

with, or acceptance of, the validity of the innocence claim. If the requirements for review have been met, the CRU will initiate more thorough review of the claim(s) made in the petition.

2.05 Time Requirements

The CRU will review initial petitions and substantive claims as soon as available resources permit.

2.06 Cooperation Agreement

A CRU investigation will be handled in a non-adversarial manner, and at this stage of the review, the petitioner will be required to sign a cooperation agreement with the CRU. The CRU will work in a collaborative fashion with the petitioner or the petitioner's legal representative, so long as the petitioner abides by the terms of the agreement and the disclosure of information does not pose a legitimate safety concern for a witness or individual with pertinent information. To fully investigate a claim of innocence, the petitioner must agree to waive any attorney-client privilege with the attorney who handled the case resulting in conviction.

2.07 Investigation

Investigations initiated by the CRU will not be limited to issues raised by the petitioner. Any and all relevant issues uncovered during the course of the investigation will be considered.⁵

Each case will be investigated based upon the unique circumstances of the claim. The CRU's investigation may include, but is not limited to, a review of agency files or other relevant documents, along with trial, appellate and postconviction legal briefs and transcripts; conducting witness interviews and sworn statements; submitting evidence for testing or retesting at the discretion of the office and based upon the availability of funds; and otherwise exploring the claims made by the petitioner. The CRU may agree to postconviction testing, retesting or resubmission of evidence as feasible and necessary in the interest of justice⁶ given budgetary constraints.⁷

⁵ Of particular interest are issues of misidentification, untruthful statements made by an informant, alibi, witness recantation, newly discovered evidence that bears on innocence, advancements in forensic science, and misconduct or *Brady* violations which have a bearing on the petitioner's innocence.

⁶ The CRU will support postconviction testing in any case where the results will likely assist the issue of innocence.

⁷ The petitioner should understand that any evidence developed through the CRU investigation may be used to prosecute a separate crime, if appropriate.

Additionally, it may be informative to solicit information from the original prosecutor who handled the case. The original prosecutor will not investigate the claims made in the petition, but may provide input or information relevant to the investigation.

Decisions regarding whether to further review a claim, how the claim will be investigated, or the resolution of the claim are at the sole discretion of the State Attorney, or a designee authorized by the State Attorney.

2.08 Victim Notification

The office recognizes the significant role that victims of crimes, the families of victims of crimes, and those impacted by crime deserve in our pursuit of justice. This office is mindful that the investigations conducted by the CRU will potentially impact individual members of the community. The victim, or family of a victim, will be notified of a CRU investigation as soon as reasonably feasible as the facts and circumstances of the investigation dictate. Additionally, in accordance with Florida law, the victim, or the family of the victim, will receive advance notice of any judicial proceedings as they relate to any CRU cases.

2.09 Evidence of Misconduct

Any credible evidence of prosecutorial or law enforcement misconduct identified by the CRU will be brought to the attention of the State Attorney or other appropriate authority. The CRU is not a disciplinary body and will not investigate, handle disciplinary actions, or refer attorneys for disciplinary action. Any referral of a lawyer for ethical misconduct shall be done pursuant to the Florida Bar policy and procedure, and will be at the directive of the State Attorney.

III. Reporting

3.01 Report and Recommendations

At the conclusion of the investigation, a report and recommendation will be generated by the CRU. Prior to the submission of a report that recommends anything other than denial of the petition: (1) attempts will be made to notify the prosecutor who originally prosecuted the case; (2) attempts will be made to notify the lead law enforcement officer(s) who originally investigated the matter; and (3) the victim, or family of the victim, if any, will be notified

regarding the nature and findings of the investigation. The original prosecutor, the original law enforcement officer(s) who investigated the matter, and the victim, or family on behalf of the victim, will be provided an opportunity to submit a written statement that will be attached to the report and recommendation generated by the CRU.

3.02 Potential Recommendations

At the conclusion of the investigation, the CRU will make a recommendation of one of the following:

- (1) Denial of the petition;
- (2) *Vacatur* of the judgment of conviction and dismissal of the indictment/information;
- (3) *Vacatur* of the judgment of conviction and further prosecutorial action on the indictment/information.

The report may recommend *vacatur* of the judgment of conviction and dismissal of the indictment/information if the reinvestigation of the case establishes factual innocence based upon substantial, credible evidence, or may recommend *vacatur* of the conviction in the interest of justice and further prosecutorial action based upon a substantiated lack of faith in the original conviction when substantial, credible evidence calls into question the integrity of the manner in which the conviction was secured.

3.03 Review Process

Upon completion of an investigation, the CRU will present its findings and recommendations to a committee composed of three chief or deputy chief assistant state attorneys. The committee shall review the CRU's findings, as well as any other pertinent information, and make its own independent recommendation. If the committee finds it necessary, the committee may direct the CRU to conduct further investigation before making its final recommendation. Following the committee's review of the case, a memorandum will be provided to the State Attorney, either individually or as a body, setting forth the committee's recommendation and any information they feel relevant to the State Attorney's final decision.

IV. CONCLUSION OF THE INVESTIGATION

4.01 Outcome of the Investigation

The elected State Attorney will be provided the reports and information from both the CRU and the committee, along with any statements submitted by the victim, or family of the victim, for his consideration. The State Attorney will have ultimate decision-making authority and sole discretion to consider the reports and recommendations submitted by the CRU and committee, along with any statements made by or on behalf of the victim, to make the final decision to conclude the matter as appropriate. A letter will be sent to the petitioner at the conclusion of the matter setting forth the final decision, along with a copy of the CRU's report. If required, the State Attorney will appoint a prosecutor to calendar the matter, file the appropriate pleadings to change or modify the legal status of the petitioner, or initiate further litigation. The State Attorney's decision is not appealable.

4.02 Annual Statement

The CRU shall produce and publish on the State Attorney's Office website an annual statement that sets forth the number of petitions received, the number of petitions reviewed and the disposition of the investigations.

The CRU will keep internal data on the number and nature of cases reviewed, which includes the number of total petitions received, the number of cases originally resolved by plea rather than trial, the number of cases where postconviction applications had been filed and adjudicated, and the source of the referrals. Data will also be kept on the outcome of the reviews, which includes the number of cases where a decision was made not to initiate an investigation, the number of cases where an investigation occurred, the number of cases where relief was granted and the nature of the relief, and the number of cases where there was credible and substantial evidence of misconduct.