



**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 wrongful convictions. 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 wrongful convictions 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.

Additionally, the CRU will engage in an analysis of wrongful convictions, and provide 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 wrongful convictions. 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, as needed.

The CRU will report directly to the Chief Assistant 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.<sup>1</sup>

## **II. PROCESS**

### **2.01 Submitting a Case for Review**

The CRU will accept a petition for review from the following sources: (1) an individual convicted of a felony offense in the Fifteenth Judicial Circuit or an agent acting on the individual's behalf (attorney, family member, innocence organization, etc.) (2) a referral from prosecutors, the judiciary or law enforcement (3) an 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.

Prosecutors currently employed by the Fifteenth Judicial Circuit shall refer all cases to the CRU for review if they learn of “new, credible, and material evidence” that creates a reasonable likelihood that a defendant did not commit the offense for which they were 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, govern 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 an 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

<sup>1</sup> 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.

might have doubt that the conviction is accurate and legitimate. Regardless, the policy of this office is 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**

Any Source listed under section 2.01 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 shall be readily available and posted on the office's official website, [www.sa15.org](http://www.sa15.org). Additionally, the public may communicate directly with the CRU by using email: [CRU@sa15.org](mailto:CRU@sa15.org).

## **2.03 Criteria for Review**

The following requirements govern the review of all Petitions:

1. The Petitioner must have been convicted by [the office of the State Attorney](#) for the Fifteenth Judicial Circuit (Palm Beach County).
2. The Petitioner was convicted of a felony offense (the judgment and sentence have been rendered)<sup>2</sup>.
3. The Petitioner cannot be deceased.
4. The Petitioner's direct appeal has become final<sup>3</sup>, the mandate has been issued, all collateral and postconviction remedies have been exhausted and there is no pending litigation.
5. The petition must present a plausible claim of [actual innocence](#).
6. The claim must be supported by information or evidence not previously litigated before the original trier of fact (jury or judge).
7. 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.
8. By submitting the petition, the petitioner agrees to waive any attorney-client privilege with the attorney who handled the case resulting in the conviction.

<sup>2</sup> 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.

<sup>3</sup> A direct appeal is considered final after issuance of the mandate or 30 days after sentence is imposed if no appeal has been filed.

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.

The CRU will accept petitions even if the sentence has been completed, although it will prioritize petitions from persons still in custody.

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 defenses, evidence or information previously considered by a jury or judge.

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. To fully investigate a claim of innocence, the petitioner must agree to waive any attorney-client privilege with the attorney(s) who handled the case resulting in conviction.

## **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.

If the requirements for review have not been met, the petitioner will be notified 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 a 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 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.<sup>4</sup>

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 justice given budgetary constraints.

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.

<sup>4</sup>The petitioner should understand that any evidence developed through the CRU investigation may be used to prosecute a separate crime, if appropriate.

## **2.07 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 next of kin, 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.

## **2.08 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 attempts will be made to notify (1) the prosecutor who originally prosecuted the case; (2) the lead law enforcement officer(s) who originally investigated the matter; and (3) the victim, or next of kin, if any, 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 next of kin, 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 the State Attorney. The State Attorney may direct the CRU to conduct further investigation before making its final recommendation.

## **IV. CONCLUSION OF THE INVESTIGATION**

### **4.01 Outcome of the Investigation**

The elected State Attorney will be provided all reports and information from the CRU, along with any statements submitted by the victim, or next of kin. The State Attorney will have ultimate decision-making authority and sole discretion to consider the reports and recommendations submitted by the CRU 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. 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, and the source of the petitions.