

CONVICTION INTEGRITY REVIEW DIVISION



By:

**The State Attorney's Office
Fourth Judicial Circuit**

June 21, 2018
(Amended on August 29, 2018)



**OFFICE OF THE STATE ATTORNEY
FOURTH JUDICIAL CIRCUIT
311 W. Monroe Street
Jacksonville, Florida 32202**

**CONVICTION INTEGRITY REVIEW POLICIES AND PROCEDURES
STATE ATTORNEY'S OFFICE, FOURTH JUDICIAL CIRCUIT**

I. ESTABLISHMENT

1.01 Establishment and Purpose of Conviction Integrity Review (CIR)

It is a priority of this office to maintain public trust and confidence while seeking justice for the citizens who live within the Fourth 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 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 which fosters fair and just prosecution. In recognition of the office's continuing post-conviction ethical obligations, the Conviction Integrity Review Division (CIR) is established. To that end, the purpose of the CIR is to review and investigate claims of actual innocence and provide analysis and assistance to address the prevention of errors/issues which might lead to a miscarriage of justice by punishing an innocent person. The CIR will assist prosecutors in identifying and avoiding issues that could enable errors to occur. Additionally, the CIR 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 CIR and the manner in which the CIR will handle post-conviction claims of innocence and wrongful conviction for prosecutions originated by the Fourth Judicial Circuit of Florida.

1.03 Effective Date and Applicability

These policies and procedures are effective as of June 21, 2018. The CIR will conduct an annual review of these policies and procedures to ensure that they meet the intent and needs of this division.

1.04 Scope and Reporting Chain

The CIR will be tasked with investigating and resolving claims of actual innocence arising out of felony convictions in the Fourth Judicial Circuit that are capable of being substantiated by credible, factual information/evidence previously not considered by the original finder of fact. Plausible claims of actual innocence are those which are worthy of acceptance, and provide a reasonable and probable likelihood that the petitioner did not participate in or commit the crime charged. The CIR may, however, investigate any case in which a potential miscarriage of justice impacts the integrity of a conviction. The CIR 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 CIR does not, under any circumstances, create a right of any defendant or other person to CIR review.

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

The CIR will be comprised of the following at a minimum: a director, who is a senior attorney with criminal defense experience; an administrative assistant/paralegal; and an investigator.

The CIR director shall report directly to the elected State Attorney for the Fourth Judicial Circuit and will work independently from other divisions within the office. At no time will a claim submitted to the CIR be reviewed or investigated by a prosecutor who directly participated in the underlying prosecution.¹

II. PROCESS

2.01 Acceptance of Case for Review

The CIR 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 Fourth Judicial Circuit (or arising out of prosecution by the Fourth 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 CIR by the State Attorney.

Active prosecutors shall refer all cases to the CIR 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 Florida Rules of Professional Conduct, Rule 4-3.8 (with comments).

The Legal Division of the State Attorney’s Office will continue to handle post-conviction motions and will continue to operate independently from the CIR. Section 925.11, Florida Statutes, and Florida Rules of Criminal Procedure, Rule 3.853, governs post-conviction DNA testing, and petitioners must initially comply with all of the statutory requirements for requesting post-conviction DNA testing. The Legal Division

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

will handle all motions filed under Rule 3.853 (post-conviction DNA), but the results of such testing may result in internal referral to the CIR.

Likewise, a prosecutor handling a felony case during post-conviction proceedings may refer the case information to the CIR 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 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 an agent acting on behalf of the petitioner, will be required to submit a written petition using the form generated by the CIR to initiate the review process. If the petitioner is represented by counsel, all communication from the CIR 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, SAO4th.com. Additionally, the public may communicate directly with the CIR by using email: CIRSAO4@coj.net.

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 (judgment and sentence have been rendered);³
- (3) The felony conviction was prosecuted by the State Attorney's Office for the Fourth Judicial Circuit of Florida;
- (4) The petitioner's direct appeal has become final (the mandate has issued) and there is no post-conviction litigation pending;
- (5) The Petition must present a plausible claim of actual innocence; and

² If the petitioner deceases subsequent to filing a petition for review with the CIR, the CIR may continue the review and any subsequent investigation as if the petitioner were still living.

³ The CIR 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.

- (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 CIR 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 CIR will accept petitions even if the sentence has been completed, although we may prioritize petitions from persons still in custody in situations where investigation resources are limited.

It is not the role of the CIR 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 CIR will not review claims solely alleging judicial errors, such as unfavorable court rulings 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 prior finder of fact, such as a jury or judge.

By Florida law, a petition submitted to the CIR cannot toll the time limitations set by law/statute to pursue all appellate/post-conviction remedies. All appellate and post-conviction remedies available to the petitioner must be pursued separately. Conversely, the fact that all post-conviction legal remedies have been exhausted or that the time frame within which to pursue any post-conviction legal remedy has lapsed will not preclude the CIR from reviewing and/or investigating a facially sufficient and legitimate claim. Before the CIR will initiate review of a petition, there cannot be any pending litigation and the direct appeal must be final.

2.04 Initial Review

After receiving a petition, the CIR will acknowledge receipt of the petition and will carry out a preliminary review to determine if the initial requirements for review have been met: whether the claim is non-speculative and capable of resolution by investigation, and, if substantiated, probative of ascertaining whether or not the conviction was inaccurate.

If the requirements for review have not been met, the petitioner and/or 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.

Acknowledgment of receipt of the petition does not indicate acceptance of the case for investigation, nor does the CIR's decision to review and investigate a claim infer agreement with or acceptance of the validity of the claim of innocence. If the requirements for review have been met, the CIR will initiate a more thorough review of the claim(s) made in the Petition.

2.05 Time Requirements

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

2.06 Cooperation Agreement

A CIR 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 CIR. The CIR will work in a collaborative fashion with the petitioner or legal representative, as 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.

2.07 Investigation

Investigations initiated by the CIR will not be limited to issues raised by the petitioner, and any and all relevant issues uncovered during the course of the investigation will be considered.⁴

Each case will be investigated based upon the unique circumstances of the claim. The CIR's investigation may include, but is not limited to, a review of agency files or other relevant documents, review of trial, appellate and post-conviction 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

⁴Of 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.

funds, and otherwise exploring the claims made by the petitioner. The CIR may agree to post-conviction testing, retesting or resubmission of evidence as feasible and necessary in the interest of justice⁵ given budgetary constraints.⁶

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 elected State Attorney, or a designee authorized by the elected State Attorney.

2.08 Victim Notification

This 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 CIR will potentially impact individual members of the community. The victim, or family of a victim, will be notified of a CIR investigation as soon as reasonably feasible as the facts and circumstances of the investigation dictate. Additionally, in accordance with Florida law, the victim, or family of the victim, will receive advance notice of any judicial proceedings as they relate to any CIR cases.

2.09 Evidence of misconduct

Any credible evidence of prosecutorial or law enforcement misconduct identified by the CIR will be brought to the attention of the State Attorney or other appropriate authority. The CIR 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 Florida Bar policy and procedure, and will be at the directive of the State Attorney.

III. REPORTING

⁵ The CIR will support post-conviction testing in any case in which the results will likely settle or be informative as to the issue of innocence.

⁶ The petitioner should understand that any evidence developed through CIR investigation may be used to prosecute a separate crime if appropriate.

3.01 Report and Recommendations

At the conclusion of the investigation, a report and recommendation will be generated by the CIR. 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 of the investigation 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 which will be attached to the report and recommendation generated by the CIR.

3.02 Potential Recommendations

At the conclusion of the investigation the CIR will act upon what it has learned, including, but not limited to, recommending 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 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 Independent Audit Board

An Independent Audit Board (“IAB”) will be utilized to review, evaluate, and audit CIR investigations that recommend a change in legal status/exoneration for the petitioner. The IAB is a fact-finding body whose role is to provide guidance to the State Attorney in assessing whether or not there is sufficient evidence and/or information to support the recommendation of the CIR. The IAB has no decision making authority

and will not be utilized to limit the actions available or taken by the elected State Attorney. At all times, the elected State Attorney retains ultimate decision making authority regarding what action, if any, is appropriate in each case.

The IAB empaneled to review a case will be comprised of five rotating members who reside within the Fourth Judicial Circuit and are not currently employed by the SAO. Four of the members will have a professional background or experience in legal/criminal justice matters, such as a member of the Florida Bar, a retired member of the judiciary, a former prosecutor, an attorney with criminal defense experience, criminology or law professor, a former/retired law enforcement officer, etc. The fifth member should be a well-respected, well-established member of the Jacksonville business or professional community, and might not have experience in the criminal justice profession. The IAB will be comprised of members who are willing to perform their duties pro bono for the benefit of our community.⁷

To facilitate the review process, the IAB will be provided the report generated by the CIR which sets forth the learnings from the CIR's investigation and the resulting recommendation, including any statements provided by the prosecutor who handled the case, the law enforcement officers who investigated the case, and the victim, or victim's family. The IAB may solicit additional information or investigation from the CIR, may convene meetings to hear directly from the CIR director and others with pertinent information, may meet as a body to discuss the case, and otherwise act as necessary for the IAB to evaluate the investigation and provide information to the State Attorney deemed relevant and necessary for his/her decision making.

The IAB is tasked with evaluating the investigation conducted by the CIR to determine if the evidence and information provided supports a claim of actual innocence and the recommendation of the CIR. The IAB is tasked with ensuring that the State Attorney has the information that he/she needs to make the ultimate decision with regard to resolution of the CIR investigation. Following the IAB's review of the case, a memorandum will be provided to the State Attorney, either individually or as a body, setting forth the IAB's analysis as to whether the CIR's recommendation is sufficiently supported and any additional information the IAB considers relevant to the State Attorney's ultimate decision.

⁷ The inability to convene the Independent Audit Board, for any reason, will not preclude the State Attorney from acting on the report and recommendation of the CIR.

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 CIR and the IAB, along with any statements submitted by the victim, or family of the victim, for his or her consideration. The elected State Attorney will have ultimate decision making authority and sole discretion to consider the reports and recommendations submitted by the CIR and IAB, 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 CIR'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 CIR shall produce and publish on the State Attorney's Office website an annual statement which sets forth the number of petitions received, the number of petitions reviewed, and the disposition of the investigations.

The CIR will keep internal data on the number and nature of cases reviewed, which includes the number of total petitions received, the number of cases where trial occurred verse pleas were entered, the number of cases where post-conviction 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.