

CONVICTION REVIEW PANEL PROCEDURE¹

It is a prosecutor's duty to protect the innocent before, during, and after trial. The Conviction Integrity Unit (CIU) reviews and investigates post-conviction claims of innocence and makes recommendations to the County Attorney about the disposition of those claims. The CIU is comprised of a Conviction Unit Chief and a Conviction Review Panel. The Conviction Unit Chief leads all re-investigations of any cases that present a meaningful claim of actual innocence. The Conviction Review Panel is comprised of leading criminal justice experts outside of the Davis County Attorney's Office, who participate in the review of past convictions and make recommendations to the County Attorney. The CIU is an independent body brought together at the invitation of the County Attorney. The County Attorney may appoint *pro tem* members to the CIU as needed to address conflicts of interest or unavailability of members.

The Conviction Unit Chief will review all applications to determine whether the prerequisites for review have been met. The Davis County Conviction Integrity Unit utilizes the following criteria to initiate a review by the Conviction Review Panel:

Application Criteria

- a. The conviction must have occurred in Second District Court and the case must have been prosecuted by the Davis County Attorney's Office; **OR** the conviction occurred in another jurisdiction and the head of the prosecuting agency in that jurisdiction requests a review by the Davis County CIU based on a conflict of interest or because they have not established a Conviction Integrity Unit and the Davis County Attorney and the Davis County CIU consent;
- b. The conviction should be for a felony offense. See section i.;

¹ To the extent this Procedure is inconsistent in any way with Utah Code § 78B-9-501 et seq., the Utah Code is controlling.

- c. The convicted offender must be a living person;
- d. The direct appeal process must be completed. There must be no further opportunities for post-conviction remedy act (PCRA) filings under applicable law;²
- e. Priority will be given to those cases in which the convicted offender is currently incarcerated solely for the crime for which he or she claims actual innocence;
- f. The application for review must be based on credible and verifiable evidence of innocence, or new technologies that exist to test or retest remaining relevant evidence;
- g. The applicant must agree to fully cooperate with the CIU, which includes waiving all procedural safeguards and privileges, as well as agreeing to provide full disclosure regarding all inquiry requirements of the CIU.
- h. A convicted offender can submit a request on his or her own or through counsel. If the convicted offender is represented by counsel, all communication with the CIU must be through counsel; and
- i. The CIU retains the discretion to review any case if it is in the interest of justice to do so.

If an application meets the criteria, the Unit Chief will alert the applicant and conduct further investigation. The Unit Chief will review the facts and legal issues of the case by reviewing the case file, trial transcript, discovery, other materials contained in the case management system and physical file, and any other information readily available and necessary to make an initial assessment of the claim. The case shall then be presented to the Review Panel.³ The function of the Review Panel is not to determine whether an applicant is factually innocent, but rather, to determine whether a valid claim has been established. The decision to review and further investigate a claim cannot be inferred as an acceptance of the validity of the alleged claim. The

² Applying for a Conviction Integrity Unit Review is not a substitute for the post-conviction remedy act process.

³ The Panel may conduct business with three members present in person or virtually. A quorum of three members is required to conduct an initial vote on whether to accept an application and move the application to the entire Panel. However, all final votes on accepted applications will require seven members present in person or virtually.

CIU does not act as legal counsel for any applicant. Decisions as to whether the CIU will re-open the case investigation, how the claim will be investigated, and how the applicant will be resolved are made in the exercise of the County Attorney's discretion and are not reviewable by any court. The CIU is not a judicial, administrative, or other public body, but an advisory body the only function of which is to provide an internal review and recommendation to the County Attorney to inform his or her work.⁴ There is not a timeframe by which claims presented to the CIU will be resolved, but the CIU will make every effort to expedite resolution of each application.

In each case that comes before the Review Panel, there will be an initial review of the facts of the case and the grounds being alleged. The Review Panel will determine whether, by a preponderance of the evidence, the application presents: (a) bona fide and compelling evidence that the convicted person is significantly likely to be factually innocent; (b) bona fide and compelling newly discovered material evidence; or (c) bona fide and compelling information discovered or received by the petitioning prosecution agency after the trial, judgment of conviction, and sentencing that: (i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the results would have been different; or (ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence. Many of these terms are defined in Utah Code Ann. §78B-9-502.

After the initial review, the Review Panel will take whatever additional actions are reasonably necessary to resolve the claim. Such actions may include:

- a. Finding that no further action need be taken;

⁴ Because the CIU is not judicial, administrative, or other public bodies, the meetings of the CIU are not subject to the requirements of the Utah Open and Public Meetings Act, Utah Code § 52-4-101 et seq.

- b. Requesting that the original prosecutor, if still employed by the Attorney's Office, appear before the Review Panel to answer questions that have arisen;
- c. Requesting that the original police agency or an Office Investigator collect supplemental information necessary to resolve the claim; and/or
- d. Requesting that a full re-investigation be initiated by the Unit Chief and an assigned Investigator.

Once the Review Panel has the information it needs to make a recommendation, it shall determine by a majority vote whether a valid claim is present.

The Review Panel shall prepare a report⁵ summarizing the case facts, the issues presented by the application, and any investigative findings. The report will contain the determination on whether a valid claim has been established and the recommendation of the Review Panel. The County Attorney will review the report from the Review Panel. The ultimate decision to grant or not grant the requested relief rests with the County Attorney.

The Conviction Unit Chief will notify the applicant, his or her attorney, the victim(s) or victim's family, the original prosecutor, and the affected law enforcement agencies of the Review Panel recommendation and the County Attorney's final decision.

⁵ All documents produced by the CIU are protected documents and subject to the Government Records Access and Management Act. The CIU will maintain the following statistics:

- a. Number of total applications;
- b. Number of applications denied;
- c. Number of applications where an investigation was undertaken;
- d. Number of ongoing applications;
- e. Number of applications where relief was granted and the nature of the relief;
- f. Source of referrals;
- g. Number of applications where the conviction under review was a result of trial or plea;
- h. Number of applications where the applicant previously filed a petition under the Post-Conviction Remedies Act.