



**Timothy J. McGinty**  
CUYAHOGA COUNTY PROSECUTOR

TO: All Assistant County Prosecutors and Administrative Personnel  
FROM: Timothy J. McGinty, Cuyahoga County Prosecutor  
DATE: April 17, 2014  
SUBJECT: CCPO Conviction Integrity Unit  
Effective: Immediately

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This Memorandum details the procedure for presenting a post-conviction claim of innocence to the Cuyahoga County Prosecuting Attorney outside of court proceedings. It provides for the careful and expeditious handling of wrongful conviction allegations.

The decision to review and investigate a claim does not infer acceptance of the validity of the alleged innocence claim. Moreover, in consenting to allow DNA testing, the State of Ohio takes no position on the significance (or lack thereof) of any DNA results that may be obtained.

Regional Supervisor Jose A. Torres has been designated as the Conviction Integrity Coordinator. Any questions concerning the procedures described below should be directed to:

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**CUYAHOGA COUNTY PROSECUTOR'S OFFICE**  
**CONVICTION INTEGRITY UNIT PROTOCOL**

**I. OVERVIEW**

The Conviction Integrity Unit (CIU) shall be established for the review of convicted offenders' legitimate extrajudicial post-conviction claims of innocence. The CIU is comprised of a Conviction Integrity Coordinator, an Administrative Assistant, a Conviction Integrity Committee and a Conviction Integrity Policy Advisory Panel.

The Conviction Integrity Coordinator organizes the work of the Committee and leads all re-investigations of any cases that present a meaningful claim of actual innocence.

The Conviction Integrity Committee is comprised of nine senior members of the Cuyahoga County Prosecutor's Office including the Criminal Division Chief, the Appeals Unit Supervisor, the Conviction Integrity Unit Coordinator and six other senior Assistant County Prosecutors.

An Administrative Assistant will be designated to receive all requests, prepare case files for the Conviction Integrity Unit, and track responses and outcomes to all cases.

The Conviction Integrity Policy Advisory Panel is comprised of at least three leading criminal justice experts, including legal scholars and former prosecutors, who advise the Office on national best practices and evolving issues in the area of wrongful convictions.

Notwithstanding other statutory remedies, a criminal defendant may only submit a request for review of a conviction based on a claim of actual innocence to the CIU.

**II. CASE INTAKE**

The following types of submissions will be accepted:

**A. Non-motion claims of actual innocence**

1. All requests must be submitted in writing. In order for the Conviction Integrity Unit to carry out a preliminary review of a conviction, the following prerequisites must be met:

a. The conviction must have been in Cuyahoga County Common Pleas Court,

- b. The convicted offender must be a living person,
  - c. There must be a claim of actual innocence, not a legal issue,
  - d. New and credible evidence of innocence must exist,
  - e. The claim must not be frivolous, and
  - f. The convicted offender waives his or her procedural safeguards and privileges, agrees to cooperate with the Unit, and agrees to provide full disclosure regarding all inquiry requirements of the CIU. (See Waiver).
2. The request must be in writing and shall include the offender's name, case number, evidence of innocence and, if applicable, how the CIU would be able to look further into that evidence.
  3. The CIU does not review non-innocence related claims such as those concerning procedural errors at trial, trial court rulings or ineffective assistance of counsel. Such cases may be screened and summarily dismissed by the CIU.
  4. Priority will be given to those cases in which the convicted defendant is currently incarcerated solely for the crime for which he or she claims actual innocence.
  5. A convicted offender can submit a request on his/her own or by counsel. If the convicted offender is represented by counsel, all communication with the Conviction Integrity Unit must be through the attorney.

#### B. Post-Conviction Motions

All post-conviction relief petitions (R.C. 2953.21), applications for DNA testing (R.C. 2953.72) and new trial motions (Crim. R. 33) will be handled by the Appeals Unit. The Appeals Unit Supervisor may notify the CIU of any of the above motions claiming actual innocence that contain newly discovered evidence bearing on innocence or issues including, but not limited to, one of the following:

1. Misidentification by the victim(s) or witness(es),
2. Recantation by the credible witness,
3. A criminal defendant's meaningful claims of an alibi, and/or

4. Information provided by new witnesses not locatable at the time of trial.

### III. CONVICTION INTEGRITY UNIT REVIEW

#### A. Initial Review

1. After receiving a request, the Conviction Integrity Coordinator will carry out a preliminary review. If the Conviction Integrity Coordinator determines that Section II-A-1 prerequisites were not met, the convicted offender and/or legal representative will be notified that no further action will be taken.
2. If Section II-A-1 prerequisites are met, the Conviction Integrity Coordinator will designate CIU member(s) or another senior Assistant County Prosecutor to review the claim as soon as administratively possible and prepare for the CIU a brief memorandum outlining the merits of the claim of innocence. Particular scrutiny will be given to claims of actual innocence based upon the following grounds: Misidentification, untruthful statements made by informant/CI, alibi, witness recantation and any newly discovered evidence that bears on innocence.
3. The Conviction Integrity Committee shall review the memorandum and determine, by a majority vote, whether there is strong indicium that the convicted offender is actually innocent.
4. If a majority of the CIU Members determines that the request lacks sufficient reasons to further consider the merits, the Conviction Integrity Coordinator will notify the convicted offender and/or legal representative that no further action will be taken. The determination of whether to further review a claim is at the sole discretion of the CIU.
5. Claims made by convicted offenders who plead guilty will have a high standard to meet for review by the CIU. Only in rare and extraordinary circumstances will the CIU initiate an in-depth review of an innocence claim by a convicted offender who has plead guilty.
6. The CIU will not review claims where a convicted offender recants his trial testimony and offers a new theory of innocence.

#### B. In-Depth Review and Re-Investigation

1. The Conviction Integrity Coordinator will supervise the review of those cases that warrant further consideration of the merits.

2. Many post-conviction claims of innocence may be resolved by reviewing the file, appellate briefs, or addressing any open issues with the Assistant Prosecuting Attorney that handled the case. Others may require a more thorough examination. Each case will be sui generis.
3. Once the in-depth review is completed, the designated CIU member(s) or another senior Assistant Prosecuting Attorney conducting the review will submit a final report to the CIU.
4. The Conviction Integrity Committee shall review the additional information received and determine by a majority vote whether a valid claim of innocence is present. The final report, vote and recommendation shall be sent to the Cuyahoga County Prosecutor. Dissenting CIU members will be able to include their position.
5. The final decision is solely that of the Cuyahoga County Prosecutor. This final decision will be communicated in writing to the convicted offender and/or legal representative by the Conviction Integrity Coordinator. There is no timeframe by which the Cuyahoga County Prosecutor must decide on the claim.
6. Each case shall be maintained according to the following procedure:
  - a. The CIU shall create and maintain a tracking system that will record the name of the convicted offender and the ultimate outcome of the claim.
  - b. Completed files will be maintained pursuant to the Cuyahoga County Prosecutor's Office record retention policy
7. If an in-depth review and investigation regarding a claim of factual innocence is granted, the Conviction Integrity Coordinator will notify the victim(s) or survivor(s) in the case, if any. The Conviction Integrity Coordinator will provide the victim(s) or survivor(s) notice that he or she has the right to present his or her views and concerns throughout the investigation.
8. Innocence Claim Investigation Process
  - a. The investigation procedure may be unique to each case and can include:
    - Information from a cooperating defendant,

- A checklist to be completed by the police officers involved in the case,
  - A Brady/Giglio checklist,
  - An identification case checklist.
- b. Detailed records shall be kept by the CIU throughout the investigation.
- c. The case will then be presented to the CIU, which will make a determination as to the merits of the claim of innocence.
9. If at any point during the review of an innocence claim, the case does not meet the criteria set out in the initial request for review, the claim shall be rejected.

#### 10. Extrajudicial Requests for Post-Conviction DNA Testing

- a. All extrajudicial requests for post-conviction DNA testing on behalf of the convicted offender that meet the submission criteria will be forwarded to the CIU. The Conviction Integrity Coordinator will designate the Appellate Unit to review the claim as soon as administratively possible upon receiving the request. Once the review is complete, the Appellate Unit will prepare a brief memorandum outlining the merits. In evaluating the request, the Appellate Unit will do the following:
- Verify the existence of DNA evidence,
  - Verify if evidence is lost or destroyed, and if so, a CIU Committee Member will notify the defendant via letter.
  - If the evidence is located, the CIU will examine the nature of the evidence and its suitability for testing.
  - If the evidence is unsuitable for testing, the CIU will determine whether the evidence has been properly handled and stored and will determine if the storage or handling procedure has reduced the likelihood of meaningful results. If the evidence is unsuitable or testing, the CIU will notify the criminal offender by letter.

- If the evidence is suitable for testing, the CIU will review the evidence depending on its significance in relation to the case.
  - b. The CIU will consent to post-conviction DNA testing in any case in which the results will likely settle or be informative as to the issue of guilt or innocence.
  - c. If the CIU does not consent to testing located DNA evidence, the convicted offender can file a motion and request that the Court order the testing.
  - d. DNA testing will be performed by the Office of the Cuyahoga County Medical Examiner or any accredited lab per RC 2901.07(C). Under no circumstances will the CIU consent to DNA testing at an unaccredited lab.
11. In cases where the offender's conviction resulted from a plea of guilty, the CIU will consent to DNA testing where the results would prove actual innocence.
12. The CIU will consent to DNA testing in cases where the convicted offender did not request DNA testing at trial because:
- a. DNA testing was unavailable,
  - b. The existence of the DNA was unknown to the convicted offender, or
  - c. There is reason to believe that the testing conducted at the time of trial is now unreliable.
13. Outcome Determinative DNA Non-Suspect Matches - Upon receipt of DNA test results that indicate a DNA match between evidence that was submitted at the time of the crime and an individual who is not the convicted offender, the CIU will notify the Cuyahoga County Prosecutor of the DNA test results.