



**CONVICTION INTEGRITY UNIT**  
OFFICE OF THE DISTRICT ATTORNEY  
TWENTIETH JUDICIAL DISTRICT

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## **Conviction Integrity Unit: Criteria and Procedure**

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### **PURPOSE:**

To detail the eligibility guidelines, criteria, and procedures for case reviews for the Conviction Integrity Unit at the District Attorney's Office for the 20th Judicial District of Colorado (Boulder County). The overarching goal of the 20th Judicial District Attorney's Office is to seek justice in every case. In pursuit of that goal, the District Attorney's Office ("DAO") established the Conviction Integrity Unit ("CIU") in 2018 to investigate wrongful conviction claims. The purpose of the Conviction Integrity Unit is to create a transparent, effective, and thorough review of claims for actual innocence, and to advance and uphold integrity and trust in our justice system.

Also critical to the Conviction Integrity Unit is collaboration and partnership with local defense attorneys and other partners who share commitment to this effort. This collaborative approach seeks to ensure a fair review of legitimate claims by a group of attorneys and investigators with diverse perspectives of the criminal justice system.

The CIU process is completely independent of any previously filed or ongoing post-conviction litigation or appeals and seeks to further the interest of justice by ensuring that claims of actual innocence are diligently reviewed, investigated, and when necessary, corrected.

### **SUMMARY AND MEMBERSHIP:**

The Conviction Integrity Unit and Board will thoroughly and judiciously review all claims submitted through a multi-agency, volunteer, collaborative effort led by District Attorney Michael Dougherty.

#### Conviction Integrity Unit Members:

1. District Attorney Michael Dougherty;
2. CIU Coordinator(s) who are Deputy District Attorneys and Investigators for the District Attorney's Office assigned to the unit for unit management; and
3. CIU Members who are attorneys, investigators, victim advocates, and other employees of the DAO assigned to the Unit.

Conviction Integrity Board (“CIB”):

1. The Conviction Integrity Board, which is comprised of members of outside agencies and law firms including the Colorado Public Defender’s Office, the local private bar, the University of Colorado Law School, and Alternative Defense Counsel who agree to review cases and to advance the goals and mission of the CIU.
2. Members of the DA’s Office Conviction Integrity Unit.
3. A list of current CIB members will be maintained by the DAO for case assignment and calling CIB meetings.

The outlined procedures below are completely independent of any previously filed or ongoing post-conviction litigation or appellate filings. A decision by the DAO to review and/or investigate an alleged actual innocence claim should not be construed, either by the applicant or their representative, as a determination by the DAO concerning the validity or merit of the innocence claim. Additionally, when the DAO consents to DNA testing concerning the applicant’s innocence claim, the DAO takes no position regarding the significance (or lack thereof) of any DNA results unless and until the CIU makes a final determination on the applicant’s innocence claim.

Any questions concerning the guidelines and procedures described below may be directed to the DAO CIU Coordinator(s) via [email](mailto:CIU@bouldercounty.org). (CIU@bouldercounty.org)

## **I. OVERVIEW**

The CIU is established for the review of convicted offenders’ extrajudicial post-conviction claims of actual innocence. Under the direct supervision of District Attorney Michael Dougherty, the CIU Coordinators will work collaboratively with the CIB to organize and lead all investigations of meaningful claims of actual innocence where the pursuit of truth and justice requires the CIU’s review. The CIU is not a governmental body and does not exercise judicial or quasi-judicial functions. There is no right to review or appeal of any final decision by the CIU or the District Attorney.

The DAO, CIU, and CIB are responsible for the performance of work that involves confidential, private, and sensitive information and all members are expressly prohibited from the unauthorized release or disclosure of any and all confidential information. All CIU and CIB members must immediately disclose to the CIU Coordinators and DA any potential or actual conflict of interest. Where such a conflict exists, the member may be recused from participating in the case review, investigative process, and any determination or decision on the claim.

## II. CIU APPLICATION REQUIREMENTS

Notwithstanding other statutory remedies, a criminal defendant may only apply to the CIU with a **claim of actual innocence with credible evidence**, as defined below. The application must comply with the terms and requirements set forth herein.

### A. Claims of Action Innocence

For the Conviction Integrity Unit to conduct the preliminary review of a conviction, the following prerequisites must be met:

**1. All applications must be submitted in writing through a CIU Application.**

Applications may be found at the District Attorney's [website](https://www.bouldercounty.org/district-attorney/) (https://www.bouldercounty.org/district-attorney/) or may be requested through the CIU [email](mailto:CIU@bouldercounty.org) (CIU@bouldercounty.org), or Office of the District Attorney, 20th JD, Attn: Conviction Integrity Unit, 1777 6<sup>th</sup> Street, Boulder, CO 80302.

The application must be signed by the person who was convicted or an attorney representing the applicant. If the applicant is represented by counsel, all communication will be through the applicant's attorney unless there is an express written waiver by both counsel and the applicant.

Applications must be completed in full. The application shall include the applicant's name, case number, an explanation of the claim and evidence of innocence, and, if applicable, a recommendation as to how the CIU can further investigate the applicant's claim.

**2. The conviction must have occurred in the Boulder County Courts for the 20th Judicial District of Colorado.** The DAO does not have jurisdiction to review convictions from other courts (including municipal court) or other jurisdictions.

**3. The applicant must currently be a living person.**

**4. There must be a claim of actual innocence.** This means the applicant must be asserting that they are innocent of the crime and not solely asserting legal issues or challenges to the process.

- a. The CIU will not consider legal issues previously raised or issues that were not raised but could have been raised during plea bargaining, trial, appellate, or post-conviction processes. The CIU does not review claims that are solely disagreements with defense attorney strategy.

- b. The CIU does not review strictly legal challenges such as procedural errors or judicial rulings unless there is an obvious material error or ruling that necessitates such review in light of an accompanying credible claim of actual innocence.
  - c. The CIU will not consider claims based solely on a request that a lawful sentence be amended, reduced, or reconsidered.
  - d. The CIU will not consider claims involving self-defense or defense of others that do not involve new information, were considered by the DAO, or were fully litigated at trial. A claim simply in disagreement with the outcome at trial will not be reviewed. However, self-defense claims may be reviewed where there is forensic or other evidence that was not previously considered or reviewed.
  - e. Particular attention will be given to newly discovered evidence or evidence supporting wrongful conviction due to issues concerning forensic science, misidentification, misconduct or Brady/discovery violations, jail/confidential informant, alibi, and witness recantations.
  - f. Claims made by an applicant who has pled guilty to a crime(s) are subject to a higher standard of acceptance by the CIU due to the presumption that a plea of guilty is entered knowingly, intelligently, voluntarily, and, in some instances, with the assistance of counsel. This presumption may only be overcome with credible, compelling evidence.
5. **Credible evidence of innocence must exist.** Credible evidence must be new evidence that was not fully considered by the trial jury or the parties at the time of the trial or guilty plea.
- a. Credible evidence generally means evidence, which is not speculative, but which has a basis in fact which can be investigated. The evidence must be material as to the determination of actual innocence, meaning if true and accurate it could affect the outcome of the innocence determination.
  - b. Credible evidence must be evidence not fully considered by the trial jury or the parties at the time of the guilty plea.
  - c. The credible evidence must provide a substantial basis to believe that the defendant is actually innocent, which generally means that the evidence exonerates the defendant from any criminal responsibility for the offense.

6. **The claim must not be frivolous.** The claim must have merit and be made in good faith.
7. **The applicant must sign a written “limited” waiver of certain procedural safeguards and privileges,** (see Application Waiver and Consent form included in the Application), agree to cooperate with the CIU, and agree to provide full disclosure regarding CIU requirements.

#### **B. Post-Conviction Motions**

All appeals, post-conviction relief petitions, ineffective assistance of counsel motions, motions to withdraw guilty pleas, and motions seeking a new trial will continue to be handled by the DAO’s Appellate Unit and not by the CIU. The Appeals Unit Supervisor shall notify the CIU of any of the above motions that contain a claim for actual innocence and meet the other CIU requirements.

### **III. CONVICTION INTEGRITY UNIT REVIEW PROCESS**

#### **A. Initial Screen of Application for Eligibility**

After receiving a new correspondence or application, a CIU Coordinator will assign a CIU Claim Number and index the request. The CIU Coordinator will keep a tracking system for all claims and associated applications. If a request for review is made without an application, the CIU Coordinator will reply with a letter and a blank application, indicating that the completed application is necessary for the case to be considered for review. If an application is received but is not complete, the CIU may return the application to the requesting party for completion prior to reviewing the claim.

Priority will be given to those cases where the applicant is currently incarcerated solely for the crime for which innocence is claimed. Felony convictions will be given priority over misdemeanor convictions.

The CIU Coordinator may reject an application and send a denial letter if on its face, the application does not meet requirements of the CIU such as: complete application, living person, Boulder County case, and asserting claim for actual innocence. If all initial eligibility requirements are met, the case will be assigned for further screening on the merits.

#### **B. Review for Eligibility**

If the application is complete and meets initial screening eligibility, the CIU Coordinator will assign one prosecutor who is assigned to the CIU unit and one

defense/private attorney from the CIB to review the application's claims for eligibility and merit. The Coordinator will also work with the assigned Review Team to acquire appellate and other records necessary and available for thorough review. The Review Team will review the materials and make a determination as to whether or not the claim meets the requirements for acceptance into the CIU for investigation and further review. The determination that a case has been accepted for review indicates only that the review is merited based on eligibility requirements and is not an indication that any party believes the case is a wrongful conviction. The Review Team will complete a worksheet and joint memorandum with their decision. In the event they do not agree, they may each write a memorandum for submission to the CIB.

### **C. Rejected Claims**

If the Review Team determines together that the prerequisite criteria are not met, the applicant and/or legal representative will be notified in writing that no further action will be taken, and the claim will be closed. The criteria deficiency will be documented in the tracking system. District Attorney Michael Dougherty retains final decision-making authority on accepted and rejected claims for review.

### **D. Accepted Claims**

If the Review Team determines that the claim is eligible for review by the CIU, the applicant will be notified by a CIU Coordinator that the case is "under review". If the DA's Office believes there is enough information to move forward on a decision, the case may be expedited, and the case will be sent directly to the CIU and DA Dougherty for review. In cases requiring additional follow-up investigation, the Review Team will present the application and received materials to the Conviction Integrity Board. After the claim is presented, the District Attorney, the CIU Coordinator(s), and the CIB will discuss how to proceed with investigating the claim of innocence and related evidence.

At this time, the CIU Coordinator, with the assistance of a victim advocate from DAO, will make every reasonable effort to notify and consult with the victim(s), their family member(s), or their representative if applicable, upon indication that a valid claim of innocence is present and is being investigated and prior to any determination by the District Attorney that a valid claim of actual innocence is present.

### **E. In-Depth Review and Re-Investigation**

The duration of the review and/or re-investigation process cannot be predicted due to the complexities, and extensive nature of the review and investigative process involved. Each claim will be carefully and thoroughly reviewed and, when necessary,

re-investigated. Each claim will be assessed based on its unique case-specific facts and evidence. Many post-conviction claims of actual innocence may include reviewing the entire case file, court record, and appellate files and briefs, as well as addressing any open issues with the Deputy District Attorney and Defense Attorney who handled the case. Other claims may require a more thorough examination including, but not limited to, further case investigation, interviews, review of defense counsel files, additional scientific testing, and review of existing or new evidence. Each case will be carefully and independently weighed and reviewed on its own merits.

1. The investigation procedure is unique for each case and conducted by the DAO in consultation with the CIB. This may include obtaining and reviewing additional information including the following, without limitation:
  - a) A complete review of the case file, court record, appellate record, post-conviction motions, and all relevant evidence;
  - b) Information from a cooperating defendant, and/or the defendant's counsel,
  - c) Information from cooperating witnesses, and/or confidential informants;
  - d) Brady/Giglio material (Brady v. Maryland (1963) 373 U.S. 83 and its progeny and Giglio v. United States (1971), 405 U.S. 150);
  - e) Any recantation evidence;
  - f) Transcripts of proceedings;
  - g) Attorney's file where consent is given in writing;
  - h) An identification case checklist.
  
2. A thorough review will be given to all such claims, which may include but is not limited to:
  - a) DNA test results by a certified laboratory that exonerates and/or incriminates or tends to incriminate a person other than the applicant;
  - b) Interviews of other persons claiming responsibility for committing the crime(s);

- c) Victim and/or witness recantations or additional interviews of new witnesses;
  - d) Misidentification of the applicant;
  - e) Untruthful statements made by an informant/confidential informant/cooperating witness/co-defendant;
  - f) A credible alibi that existed at the time of the trial but was not introduced through no fault of the applicant; and any evidence that bears on innocence.
3. Records shall be kept by the CIU throughout the investigation.
  4. If at any point during the review and investigation process, it is learned or determined that the case does not meet the CIU criteria, the Review Team may choose to take no further action on the claim, and will report back to the CIB with the update. The applicant will be notified that the review is closed, the reason for the closure, and that the CIU determined to take no further action on their claim.

**F. Recommendation and Presentation**

1. Following the investigation, the Review Team will prepare a recommendation and a presentation on the merits of the claim to the CIB and the District Attorney. The recommendation may include without limitation any of the following findings:
  - a) A valid claim of actual innocence is present;
  - b) A valid claim is not present; or
  - c) More information and/or investigation is needed.
2. The CIB will then vote on the recommendation and whether there is a valid claim of innocence to advance for the District Attorney's final review and decision.
  - a) The standard of review by CIB members for presentation to the District Attorney is Preponderance of the Evidence as to actual innocence defined herein by the Colorado Supreme Court committee on civil jury instructions as: "That it is more probably true than not."
  - b) The Review Team will formally submit its recommendation with the CIB vote to the District Attorney for their review and decision.



- c) Dissenting CIB members may include an individual memo to the District Attorney outlining their positions.

## **G. District Attorney Review**

If the District Attorney agrees with the CIB's recommendation that a valid claim of innocence is present, the District Attorney may receive input from the CIB and determine, in the District Attorney's sole discretion, what relief to grant, which may include without limitation a motion filed with the Court by the DAO to vacate the conviction.

If the District Attorney disagrees with the recommendation, the CIB may ask the District Attorney to re-evaluate the evidence and reconsider the applicant's claim. The CIB's request for reconsideration must be in writing and must outline the specific reasons warranting the District Attorney's reconsideration.

The District Attorney will make the final decision after reevaluating the evidence and reconsidering the claim. If the District Attorney, after reconsideration, decides that no claim of actual innocence is present, the decision is final and not subject to further review by any person or entity, including the judicial appellate process.

## **H. Ultimate Determination**

At all times during the review process, the DAO has complete discretion and authority to review an applicant's claim and to accept or reject the claim based upon the District Attorney's review of all relevant evidence. The District Attorney's decision on the merits of the claim is final and is not subject to further review by any person or entity, including without limitation appellate review by any court or administrative agency.

1. The final decision will be communicated, in writing, to the applicant or their legal representative if represented by counsel.
2. Applicable motions to the Court will be filed by the District Attorney's Office.
3. If an applicant is not represented by counsel, and the District Attorney determines, or the circumstances require that the applicant receive representation, the DAO will file the appropriate motion with the request for a hearing with the Court.
4. If exculpatory evidence is obtained during the course of the investigation, it will be provided to the applicant or to their attorney. If the court case is reopened, discovery will be made available.

5. The CIU and CIB are volunteer peer review panels only. Therefore, neither the CIB as an independent peer review panel nor any member of the CIU will be a party to or participate in any litigation of any kind other than supporting any motion filed by the DAO in a wrongful conviction claim. It is also understood that no member of the CIB represents or provides legal advice to any party, individual, or entity, and the CIB members' participation in the CIU does not create an agency or fiduciary relationship or duty between any CIB member and any person or entity. It is also understood that participation on the CIU by the District Attorney, or any lawyer, member, or staff of the DAO, does not disqualify the District Attorney or anyone at the DAO from conducting their normal duties in relation to the applicant and/or any information or individuals discussed by the CIU.

#### **I. Record Retention**

The CIU shall maintain a tracking system that records the name of the applicant and the ultimate outcome of the claim. Applications, correspondence, and related documents obtained will be maintained pursuant to the DAO's Record Retention Policy. Pending cases are kept confidential from non-CIU members and from the attorney who prosecuted the case. Once the final decision is made, the information will be added to the DA's Office case management system so that there is record of the CIU review should a new issue with the case arise.