

Prosecutor Conviction Review Units

A prosecutor's responsibility for pursuing justice extends beyond the date of conviction. Today, the role of prosecuting attorneys has never been more significant or more meaningful as reports of wrongful convictions and police misconduct erode the public's faith in the criminal justice system. Because Prosecutors have a duty to advance the fair administration of justice, Ohio's Prosecuting Attorneys should, when feasible, establish independent internal Conviction Review Units. With clearly defined procedures and objectives, these independent units have the ability to assess claims, provide additional investigation when warranted, and ensure that concerns regarding the validity of a conviction are addressed and reported. Establishing written procedures for these Units serves to restore and bolster the public's trust in the criminal justice system.

Best Practice: Establish Independent Conviction Review Units

An independent review process requires the involvement of experienced prosecutors and investigators who were not involved with an offender's case at the trial level or on appeal.

The case for an independent unit:

- Because the public may perceive that trial prosecutors have a vested interest in defending a conviction, the prosecutors who were involved with the case at the trial level should not work on the case as a reviewing prosecutor in a Conviction Review Unit. Such a policy promotes public confidence in the integrity of the State's review process.
- Separating the post-conviction review process from the existing procedures governing post-conviction litigation, such as petitions for post-conviction relief and motions for new trial, ensures that questions regarding the validity of a conviction are properly vetted. Post-conviction litigation in appellate units often relies on the Criminal Rules, Ohio post-conviction statutes, and precedent that may present legal bars to evaluating or investigating the merits of post-conviction claims. Additionally, appellate divisions may not have dedicated investigators or other resources needed to fully vet claims in the post-conviction setting.
- The creation of a separate unit dedicates staff to time-intensive historical case review and allows staff to address possible additional forensic analysis and other investigatory steps that may be required to respond to a claimant's concerns.
- Independent review requires the recruitment of experienced prosecutors who have the ability to research and understand new scientific techniques, communicate with leading experts, and evaluate the impact of new or improved technology on a conviction.
- Units must have the authority and autonomy to evaluate claims, thoroughly review cases, and conduct investigations. The director of the Unit should report directly to the elected County Prosecutor.

Written Policies and Procedures:

Each Conviction Review Unit should create specific policies and procedures governing the application process, acceptance criteria, investigatory procedures, and documenting program goals. At a minimum, the policies and procedures should encompass the following:

- Clearly define the purpose of a Conviction Review process; define what qualifies as a wrongful conviction; define the review process; and set standards of review for applications that are accepted for investigation.
- Formalize an application procedure for requesting review by the Unit.
 - ✓ Cases may be referred to the Unit for consideration by external and internal sources, including but not limited to *pro se* defendants, defense attorneys, state or local public defenders, innocence project organizations, legal aid societies, the media, other prosecuting attorneys or assistant prosecutors, judges, court personnel and law enforcement agencies.
 - ✓ In the application, defendants agree to waive attorney client confidentiality to allow defense attorneys to provide defense investigatory material to the Conviction Review Unit for review. Such a requirement shows an offender's good faith in submitting an application for review. The defense file would be considered confidential by the Unit.
 - ✓ Defendants should also agree to additional forensic analysis if their cases are accepted and if scientific analysis is warranted under the facts of the case. (Such a requirement exists for applications for DNA testing under R.C. 2953.72(A)(10))
- Disclose criteria for evaluating cases.
 - ✓ The Unit should not reject applications based exclusively on delay or procedural defaults. If an application is accepted, that delay should be investigated.
 - ✓ The Unit should have written guidelines governing the evaluation of claims and cases. These procedures should be disclosed to applicants.
 - ✓ The rationale for acceptance or rejection of an application must be documented and disclosed to the applicant.
- Victim notification
 - ✓ Victim rights must be acknowledged and victims should be notified on a case-by-case basis of case referrals to the conviction integrity unit. It may be best to notify victims only when notification is necessary to investigate a claim or when it appears that a defendant may have a legitimate claim that could impact a verdict. Alternatively,

victims could be notified when the Unit accepts a case for investigation. Notification should provide information to the victim regarding the review process.

- Identify investigatory procedures following acceptance of an application
 - ✓ Where an offender is represented by counsel, Conviction Review Unit personnel should work cooperatively with defense counsel and the parties should engage in open, reciprocal discovery.
 - ✓ Reviewing prosecutors should identify confidential material and any disclosure of that material, or portions thereof, should be raised and reviewed with the elected Prosecuting Attorney.
 - ✓ Pro se applicants should be notified of the progress of pending investigations.
- Reporting
 - ✓ The Prosecuting Attorney and Director of the Conviction Review Unit should establish program evaluation goals and criteria to document the efforts of the Unit. Reports should be made at least annually.
 - ✓ Quantifiable criteria in a specified time frame may include, but are not limited to: the number of applications received, the number of applications related to convictions following trial or plea; the number of applications where the applicant pursued appellate and post-conviction remedies and/or where those remedies have expired; the average number of claims per application; the number of applications by type of applicant (pro se, defense attorney, innocence project organizations, etc.); the number of applications accepted for additional investigation; the number of and types of claims accepted for review (forensic analysis, newly discovered evidence, etc.); the number of cases where investigation did not or could not support an applicant's claim; the number of cases where additional investigation revealed evidence supporting a conviction; the number of cases where investigation supported a conclusion of wrongful conviction.
 - ✓ Documenting and reporting these criteria quantifies the significant work conducted by Conviction Review Units and promotes faith in the criminal justice system.

Alternative to Best Practice: Establish multi-jurisdictional agreements

Where the creation of an independent unit is not feasible in a specific jurisdiction, the Prosecuting Attorney may enter into an agreement to enlist the aid of an established Conviction Review Unit in a different jurisdiction. The attorneys in the established Units, acting as special prosecutors, could then review applications and perform any additional investigation as is warranted in a specific case.

