



# QUATTRONE CENTER

for the Fair Administration of Justice

## INTRODUCTION

This tool is designed to provide a guided discussion between an elected prosecutor and senior staff interested in forming a Conviction Integrity Unit within the office. We have incorporated best practices in place within thriving units around the country based on our work helping units get started and improve their functioning. The questions fall into three main categories: **Independence, Flexibility, and Transparency**. These three characteristics separate fully functioning Conviction Integrity Units from less sincere and successful efforts.

There will be dozens of other decisions the Unit Director will have to make to function – what kind of questionnaire or information-gathering petition to use with pro se defendants, how to track data, and more. The areas covered here are those which only the Elected can decide, in keeping with the Elected’s vision of the unit’s mission and ultimate role in the broader office.

While the tool is designed to help you work through various issues, we would welcome the opportunity to work with you and provide any support and resources we can. Feel free to contact us directly with any questions you may have.

Thank you for letting us help in your important work!

## SECTION ONE: INDEPENDENCE

Independence is key to a sincere Conviction Integrity Unit. Reviewing cases of old convictions is a difficult task to undertake, and one fraught with emotion and deeply held beliefs about the outcome. A unit apart from other units within the prosecutor’s office and led by an attorney with strong experience who reports directly to the Elected are some of the hallmarks of an independent unit. These questions are issues to consider when deciding how independent your CIU will be.

Before you begin this work, consider:

**What is the mission of your CIU?**

1. One indicator of independence is having the CIU director report directly to the Elected prosecuting attorney.

- *Does/will your CIU Director report to the Elected prosecutor?*

2. CIUs should be independent entities, outside the appellate/habeas units of the DA's Office.
  - *Will your CIU exist independently outside the appellate/habeas/post-conviction unit of the Office?*
  
3. Sufficient and accurate CIU staffing is critical to a unit's success. Units should have full-time attorneys and adequate staff dedicated to your CIU.
  - *Will you have at least one full-time attorney assigned to the CIU?*
  
  - *How many full-time attorneys will be assigned to the CIU? How many part-time attorneys will be assigned for the CIU?*
  
  - *Would you like to hire more attorneys? What may be preventing your CIU from hiring additional attorneys?*
  
  - *Will you have non-attorney staff assigned to the CIU? Will those staff members be full or part time?*
  
  - *What non-attorney positions will be in the CIU?*

These are examples:

- Investigator
- Paralegal
- Administrative Assistant

## SECTION TWO: FLEXIBILITY

Conviction Integrity Units are asked to take on cases far beyond the initial challenge of cases involving actual innocence. Some units decide to review overly harsh sentences or improperly charged cases, some restrict their review to homicides, others include all cases down to misdemeanors. Further, investigations will often uncover evidence which demonstrates the conviction may lack integrity—due to constitutional, procedural, or other error—but where a strong case of innocence is absent. Deciding whether to agree to relief in such cases, and the type of relief appropriate, is difficult and should be thoroughly discussed with the Elected before the issues arise.

The following questions will provide some issues to consider with regard to the types of cases the Unit will accept, how those cases will be reviewed, and the types of relief that may be sought after an investigation is complete.

4. The broader the criteria for forwarding a case to investigation and potential review, the more cases a CIU will be able to process and provide relief where appropriate.

- *How will your unit define the funnel through which cases will pass initially?*

Think about any of the following:

- Actual innocence – that the individual convicted had no role in the crime
- Actual innocence and the individual claims there is new evidence to prove it
- Actual innocence without new evidence to prove it
- Legal innocence in that the individual’s actions were justified through mental illness, self-defense or defense of others
- Legal innocence in that the individual committed some of the acts alleged but not all
- Illegal or improper sentencing issues

5. DNA evidence can be the strongest evidence of innocence post-conviction. Yet many statutes have procedural barriers complicating a request for testing, particularly those brought pro se. Strong CIUs agree to requested DNA testing whenever feasible and do not invoke statutory defenses against doing so. Finally, so responses within a given jurisdiction are consistent, CIUs should require that all post-conviction DNA testing requests are handled within the unit and not by an appellate division.

- *Will all requests for DNA testing post-conviction be handled by your CIU regardless of where the request originates?*
- *Will your CIU (or office) agree to DNA testing in all cases where a nexus exists between the biological material and the crime?*
- *Will your CIU (or office) waive any procedural or statutory defenses available to help ensure biological evidence can be tested for potential DNA?*
- *If testing is agreed upon, will your CIU (or office) agree to a private lab if proposed by defense counsel and if defense counsel will pay for testing?*

6. CIU reviews should be conducted without respect to procedural or statutory defenses or how a given petition is worded focusing instead on viable claims of “actual innocence.”

- *Will your CIU accept petitions of actual innocence where the following are claimed or are applicable?*

Here are some categories to consider:

- Guilty pleas
- Exhausted appeals
- Active appeals
- Sentence status
- Due process claims
- Discredited Forensic sciences or methods
- Misdemeanor convictions

No, we do not reject petitions of actual innocence

7. Many CIUs initially required that a pro se applicant or submitted case already have identified “new evidence” of innocence before a case will be accepted. This is not a best practice, as many times evidence only surfaces after a concerted investigation begins.

- *Will your CIU begin reviewing a case even where the applicant does not identify “new evidence” that could prove innocence?*

8. Procedural barriers can impede the ability of a Petitioner to obtain relief in court. To the extent the prosecutor’s office can waive procedural defenses to a claim, sincere CIUs will do so.

- *Will your CIU voluntarily toll appellate proceedings while conducting a case review if allowable? Or, if that is not possible, will your CIU join a request to stay the proceedings while a case is reviewed?*

### SECTION THREE: PROTECTING AGAINST BIAS

9. Because case reviews are complex reviews should be conducted with as much of an ‘innocent eye’ as possible the leader of a CIU should have criminal defense experience.

- *Will the leader of your CIU have defense experience?*
- *If they will have defense experience, how many years of experience do you consider a minimum requirement?*

If the leader of your CIU will have no defense experience, think about the leadership skills necessary to manage your CIU.

10. Prosecutors who were involved in the underlying case—either at trial or through the appellate or post-conviction process—should not participate in a CIU case review or reinvestigation other than as a pure fact witness. As the CIU review is meant to be as independent as possible, including those who prosecuted or defended the conviction can defeat that goal.

- *Will your CIU permit individuals who participated in the underlying case to weigh in on whether a Petitioner should be granted relief?*

11. CIUs benefit from external participants when it comes to policy creation, case selection, case review, and/or recommendations for action.

- *Will your CIU work with external participants in one or more of the following areas?*

- In policy creation
- In case selection
- In case investigation/review
- In recommendations for action

12. The decision to provide relief in a given case can be an indicator of the sincerity of a CIU's efforts.

- *After investigation, will your unit agree to a new trial in the following cases?*

Consider the following categories:

- New evidence proves the individual is actually innocent
- New evidence shows the individual's trial was procedurally or constitutionally infirm
- New evidence raises questions about the individual's innocence but does not provide proof
- No new evidence exists, but the case is not one which would be prosecuted today

13. Whether to retry an individual is an area to be considered by the Elected and can be seen as an indicator of sincerity of a CIU.

- *Will your CIU have a role in determining whether an individual should be retried or not?*

Once a decision to agree to vacate a conviction has been made, will the decision whether to retry the individual be made

- By the CIU alone
- By the Elected alone
- By the CIU and Elected together
- By an outside advisory group or person
- In consultation with the appropriate trial unit (such as homicide, sexual violence, etc.)
- Only by the appropriate trial unit (such as homicide, sexual violence, etc.)
- Other

## SECTION FOUR: TRANSPARENCY

Conviction Integrity Units should not operate in secret. Because the decision to reverse a conviction carries so much weight and emotional consequences, the public deserves to be kept as abreast as possible on the Unit's operations and decision-making process. While mindful of work product, public safety, and privacy concerns, the extent to which a Unit can make publicly available its process for deciding which cases to review, how cases are reviewed, and how decisions are made helps members of the affected communities support the ultimate decision.

The following are issues to be considered when formulating policies and procedures and determining how available information will be to cooperating defense counsel, family members of the defendant, victims and their families, and the broader community you serve.

14. To establish transparency in as practicable a sense as possible, CIUs should have written policies and procedures describing their process that are available on a website or upon request.

- *Will your CIU have written policies and procedures describing your work?*
- *If you will have written policies and procedures, will you make those policies available publicly?*

15. Your CIU should provide any new evidence gathered during a case review to the Petitioner or his counsel in a timely fashion.

- *Will your CIU provide any new evidence gathered during a case review to the Petitioner in a timely fashion?*

### Involvement of Defense Counsel

16. Being able to conduct investigations jointly with defense counsel is highly recommended so all those involved can make an assessment of a witness in real time. It also eliminates miscommunication about what was said or discovered in the investigation. Moreover, often defense counsel have better access to witnesses in the community and can help make connections a prosecutor-led CIU would have difficulties achieving.

- *Will the CIU seek to involve defense counsel in investigations when possible?*
- *Will the CIU keep defense counsel or a pro se applicant updated on progress and share memoranda and investigative plans made through the investigation?*

17. Access to information is critical for evaluating a case fully and fairly. Often, information that was not provided to defense counsel during trial or active appeals has been central to overturning wrongful convictions. Providing defense counsel all available information about the case is one of the most important functions of a CIU, as defense counsel has a deep familiarity with the case and can help understand the importance of information which may have not been disclosed earlier.

- *Will the CIU provide full open file discovery—both of prosecutors' files and files from law enforcement, forensic labs or other investigative agencies—to defense counsel regardless of information previously provided or statutory or regulatory defenses against doing so?*
- *Will you withhold any of the information on a basis other than required by law? If you do, will you maintain a withholding log?*

- *If the applicant is unrepresented, how will the CIU provide information to the applicant or ensure that someone with defense background or familiarity with the case can help the CIU review the files?*

18. You should have a policy in place on how and when to report exculpatory information gathered during a case review and that such report be made as quickly as possible. This is so the defendant/petitioner will not miss statutory deadlines.

- *Will the CIU timely report exculpatory information gathered during a case review and regardless of whether it meets a “materiality” determination?*

19. A policy should be in place outlining how and when to report credible allegation of official misconduct, either related to the petition or during the case review, from law enforcement, the prosecutor’s office, or other sources.

- *Will your CIU report credible allegations of official misconduct, either related to the petition or during the case review, from law enforcement, the prosecutor’s office, or other sources?*

### Public Reporting of Activity

20. The community you serve benefits from understanding the work your Unit has done. Publishing an annual report containing information about the number of requests you have handled, how many investigations were completed, and how many cases were closed or to which relief was agreed helps increase community support for the Unit.

- *Will you publish an annual report of the Unit’s work?*
- *Will the report be made available to the public?*

### Learning From Error

21. Every exoneration or case correction identifies an error in the criminal justice system. Where an exoneration or case correction occurs, the prosecutor’s office has an opportunity to identify the factors that led to that error, learn from them, and change policies to prevent those errors from recurring. Root cause analysis involving multiple system stakeholders – community members, police, courts, defense counsel, and experts as needed – should be used to identify systemic factors that contribute to wrongful convictions and avoid single-directed blame which is counterproductive.

- *Will the CIU seek to conduct root cause analyses for cases that end in exoneration or case correction?*