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CONVICTION REVIEW POLICY

It is a prosecutor's duty to protect the innocent before, during, and after a trial. When confronted with a specific claim of innocence in an open case, Deputy District Attorneys must notify their supervisor to address any concerns about the integrity of the case promptly.

The Conviction Review Unit (CRU) reviews and investigates post-conviction claims of innocence and makes recommendations to the District Attorney about the disposition of those claims. When confronted with a claim of innocence in a closed case, Deputy District Attorneys must notify the CRU. The CRU handles all applications for conviction review from members of the public.

The CRU consists of a Conviction Review Unit Chief and a Conviction Review Committee. The CRU consults with a Conviction Review Panel, which reviews qualifying applications and makes recommendations.

The Conviction Review Unit Chief organizes the work of the CRU and leads all re-investigations of cases as necessary.

The Conviction Review Committee is comprised of senior members of the District Attorney's Office.

The Conviction Review Panel consists of five leading criminal justice experts outside of the Office, who participate in the review of past convictions and make recommendations to the District Attorney.

1. Application Criteria

- a. The conviction must have occurred in the Third District Court and the Salt Lake County District Attorney's Office must have prosecuted the case;
- b. The conviction must be for a felony offense;
- c. The convicted offender must be a living person;
- d. The direct appeal process must be completed;
- 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 CRU, which includes waiving all procedural safeguards and privileges, as well as agreeing to provide full disclosure regarding

all inquiry requirements of the CRU; and

- h. If the convicted offender is represented by counsel, all communication with the CRU must be through counsel.
2. **Application Review:** The Unit Chief will review all applications to determine whether they meet the prerequisites for review. If an application meets the criteria, the Unit Chief will alert the applicant and conduct further investigation. It is vital to maintain a cooperative relationship with individuals and organizations seeking conviction review. The Unit Chief should request additional information from the applicant, if needed, and should provide information unless there is a legal and ethical duty not to disclose. The CRU retains the discretion to review any case if it is in the interest of justice to do so.
3. **Initial Case Review:** If an application meets the criteria, the Unit Chief will review the facts and legal issues of the case by examining the case file, trial transcript, discovery, other materials contained in the case management system and physical file, and any additional information readily available and necessary to make an initial assessment of the claim. The Unit Chief shall then present the case to the Review Panel.
4. **Victim Notification:** The CRU will attempt to notify the victim or the victim's representative in every case it chooses to review. A victim may, in his or her discretion, offer any statement, presentation, or evidence the victim wishes to introduce to the CRU and the Review Panel.
5. **Discovery:** The CRU shall comply with all Constitutional, statutory, and ongoing ethical obligations to promptly and fully disclose information uncovered by the post-conviction review process in addition to any preexisting information not previously disclosed. The CRU has the legal and ethical obligation to prevent disclosure of information subject to an official privilege or that which is otherwise confidential.
6. **Additional Parties Involved in Case Review:** If the Unit Chief determines after the initial case review that the application meets the requirements for review, the Unit Chief will notify and consult with the trial prosecutor if that attorney is still employed with the office. The Unit Chief will attempt to inform the trial prosecutor if that attorney is no longer employed with the office. The Unit Chief will present the case to the Review Panel. The Review Panel will determine whether further investigation is needed or whether there is sufficient information to determine whether there is clear and convincing evidence of a valid claim of innocence. Once the Review Panel has the information it needs to make a recommendation, it shall determine by a majority vote whether a valid claim of innocence is present.
7. **Report and Recommendation:** The Review Panel shall prepare a report summarizing the case facts, the issues presented by the application, and any investigative findings. The report will contain the voting results, a determination of whether a valid claim of innocence has been presented by clear and convincing evidence, and any dissents. The District Attorney will review the report from the Review Committee. The ultimate decision to grant or not grant the requested relief rests with the District Attorney. The CRU will notify the applicant or their representative about the decision in writing. The Unit Chief will document the report, recommendation, and the decision in the case management system.
8. **Standard of Review:** The District Attorney shall consider the evidence known at the time of conviction and all additional information learned after conviction review. If the District Attorney no longer has confidence in the integrity of a conviction, the District Attorney will take whatever action is reasonably necessary to achieve justice, including, but not limited to, petitioning the

court to vacate the conviction. The District Attorney will not consent to the vacation of a conviction on the grounds of actual innocence unless the reinvestigation of the case clearly and convincingly establishes the claimant's actual innocence based on the existence of credible evidence.

9. Testing of Forensic Evidence:

- a. Initial Investigation:** If the applicant requests DNA testing or any other testing of forensic evidence, the CRU shall first determine whether the evidence is still available and in a condition adequate for testing. The CRU shall contemporaneously document the location and condition of found evidence.
- b. Authorization for Testing:** The District Attorney or Chief Deputy shall determine whether to approve requested DNA testing or other forensic testing of remaining evidence. Decisions to test will be made on a case by case basis, based on an examination of the facts and circumstances of the case, relevance, and materiality of the further testing.
- c. Case Review:** Once DNA or forensic testing is complete, the CRU will examine the claim of innocence in light of the results and any other evidence, and may conduct further investigation, if needed.
- d. CODIS Hit:** The CRU will monitor and assist trial prosecutors with CODIS hits in closed cases to ensure each hit correlates with any conviction.
- e. Agreement to Test:** In consenting to allow DNA or other forensic testing, the CRU does not concede and takes no position on the significance of any DNA or other forensic testing results.

10. Decisions not Reviewable in Court: The decision to review and further investigate a claim cannot be inferred as an acceptance of the validity of the alleged innocence claim. Also, the CRU does not act as legal counsel for any person whose case is being reviewed. Decisions as to whether the CRU will re-open the case investigation, how the claim will be investigated, and how the application will be resolved are made in the exercise of the District Attorney's discretion and are not reviewable by any court. There is no timeframe by which claims presented to the CRU will be resolved, but the CRU will make every effort to expedite resolution of each application.



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CONVICTION REVIEW PANEL PROCEDURE

The Conviction Review Unit Chief will review all applications to determine whether they meet prerequisites for review. If an application meets the requirements, the Unit Chief will alert the applicant and conduct further investigation. If an application meets the criteria, the Unit Chief will review the facts and legal issues of the case by examining the case file, trial transcript, discovery, other materials contained in the case management system and physical file, and any additional information readily available and necessary to make an initial assessment of the claim. The Unit Chief shall then present the case to the Review Panel. The function of the Review Panel is to determine whether a valid claim of innocence has been established.

In each case that comes before the Review Panel, there will be an initial review of the facts of the case and the grounds for reconsideration. After the initial review, the Panel will take whatever additional actions are reasonably necessary to resolve the claim. Such measures may include:

- a. Finding that no further action need be taken;
- b. Requesting that the original prosecutor, if still employed by the District Attorney's Office, appear before the Review Panel to answer questions that have arisen;
- c. Requesting that the original police agency or a District Attorney's Office Investigator collect supplemental information necessary to resolve the claim; or
- d. Requesting a full re-investigation of the case by the Unit Chief and an assigned Investigator.

Before making a recommendation, the Review Panel shall receive and consider any statement, presentation, or evidence the victim wishes to introduce to the Panel.

Once the Review Panel has the information it needs to make a recommendation, it shall determine by majority vote whether there is clear and convincing evidence of a valid claim of innocence.

The Review Panel shall prepare a report summarizing the case facts, the issues presented by the application, and any investigative findings. The report will contain the voting results on the question of whether a valid claim of innocence has been established. Any dissenting panel member may prepare a written explanation for the dissenting vote which will be attached to the

end of the report. The District Attorney will review the report from the Review Committee. The ultimate decision to grant or not grant the requested relief rests with the District Attorney.

