

**CONVICTION INTEGRITY UNITS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marsha Judkins**

Senate Sponsor: Todd Weiler

**LONG TITLE**

**General Description:**

This bill allows prosecution agencies to create conviction integrity units to review convictions.

**Highlighted Provisions:**

This bill:

- ▶ describes conviction integrity units;
- ▶ creates definitions;
- ▶ provides that a prosecution agency may create a conviction integrity unit to review convictions;
- ▶ provides that a conviction integrity unit may make recommendations for changes in convictions and sentences obtained by the prosecution agency;
- ▶ gives the prosecution agency discretion regarding the conviction integrity unit’s recommendations;
- ▶ requires notice to the victim if a petition is filed by the prosecution agency; and
- ▶ gives the district court the discretion to provide relief.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-9-501**, Utah Code Annotated 1953

30 **78B-9-502**, Utah Code Annotated 1953

31 **78B-9-503**, Utah Code Annotated 1953

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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **78B-9-501** is enacted to read:

35 **Part 5. Conviction Integrity Units Act**

36 **78B-9-501. Title.**

37 This part is known as the "Conviction Integrity Units Act."

38 Section 2. Section **78B-9-502** is enacted to read:

39 **78B-9-502. Definitions.**

40 As used in this part:

41 (1) "Bona fide and compelling evidence" means that the evidence presented by the  
42 petitioning prosecutor establishes by a preponderance of the evidence that:

43 (a) the convicted person is significantly likely to be factually innocent;

44 (b) newly discovered material evidence, if presented at or before the time of trial,  
45 judgment of conviction, or sentencing, would have resulted in a significant probability that the  
46 result would have been different; or

47 (c) there exists information discovered or received by the petitioning prosecution  
48 agency after a judgment of conviction and sentencing that:

49 (i) if disclosed to the convicted person prior to trial, judgment of conviction, or  
50 sentencing, would have resulted in a significant probability that the result would have been  
51 different; or

52 (ii) significantly calls into question the legitimacy of the jury verdict, judgment of  
53 conviction, or sentence.

54 (2) "Convicted person" means the person whose conviction or sentence is under  
55 review.

56 (3) "Conviction Integrity Unit" means a program established by a prosecution agency  
57 to conduct extrajudicial, fact-based reviews of criminal convictions and sentences.

58           (4) "Establishing office" means the prosecution agency establishing a conviction  
59 integrity unit.

60           (5) "Factually innocent" means the same as that term is defined in Section  
61 78B-9-401.5.

62           (6) "Legitimacy" means consistent with the United States and Utah constitutions,  
63 federal and state law, and all rules and principles of a fair and just legal system.

64           (7) "Newly discovered material evidence" means the same as that term is defined in  
65 Section 78B-9-401.5.

66           (8) "Petitioning prosecutor" means the prosecutor who files a civil petition seeking  
67 relief under this part.

68           (9) "Prosecution agency" means a county attorney, district attorney, the Office of the  
69 Attorney General, or other prosecution agency.

70           (10) "Significant" or "significantly likely," for purposes of this part, means to a large  
71 degree or of a noticeably or measurably large amount.

72           Section 3. Section **78B-9-503** is enacted to read:

73           **78B-9-503. Conviction Integrity Unit.**

74           (1) A prosecution agency may establish a conviction integrity unit to investigate:

75           (a) plausible allegations of factual innocence;

76           (b) newly discovered material evidence; or

77           (c) information discovered or received by the prosecution agency after trial, judgment  
78 of conviction, or sentencing that:

79           (i) if disclosed to the convicted person prior to trial, judgment of conviction, or  
80 sentencing, would have resulted in a significant probability that the result would have been  
81 different; or

82           (ii) significantly calls into question the legitimacy of the jury verdict, judgment of  
83 conviction, or sentence.

84           (2) A conviction integrity unit may review a conviction or sentence if the conviction  
85 and sentence:

86           (a) (i) occurred within the judicial district of the establishing office; and  
87           (ii) was prosecuted by the establishing office or another prosecution agency under the  
88 direct control and supervision of the establishing office; or

89           (b) (i) occurred within a different judicial district or was prosecuted by another  
90 prosecution agency not under the direct control and supervision of the establishing office;

91           (ii) (A) the prosecution agency that prosecuted the case has not established a conviction  
92 integrity unit; or

93           (B) the prosecution agency that prosecuted the case has established a conviction  
94 integrity unit but determines that review of the conviction or sentence should be conducted by a  
95 conviction integrity unit established by another prosecution agency; and

96           (iii) the district attorney, county attorney, attorney general, or other prosecutor that  
97 directly oversees and supervises the requesting agency requests the review.

98           (3) (a) An individual convicted of a crime may submit an application to a conviction  
99 integrity unit requesting review of the individual's conviction or sentence as provided in  
100 Subsection (2).

101           (b) If a convicted person submits an application for review of a conviction that resulted  
102 in a sentence of death, and the application is submitted to any conviction integrity unit other  
103 than a conviction integrity unit established by the Office of the Attorney General, the  
104 conviction integrity unit that receives the application shall forward copies of the application to  
105 the Office of the Attorney General and to the convicted person's current counsel of record.

106           (c) If a conviction integrity unit other than a conviction integrity unit established by the  
107 Office of the Attorney General, undertakes any review of a conviction that resulted in a  
108 sentence of death, the conviction integrity unit shall send the findings and recommendations  
109 promptly upon completion to the Office of the Attorney General and to the convicted person's  
110 current counsel of record.

111           (d) If a conviction integrity unit other than a conviction integrity unit established by the  
112 Office of the Attorney General discovers or receives any information relevant to a conviction  
113 that resulted in a sentence of death, the conviction integrity unit that discovers or receives the

114 information shall promptly notify the Office of the Attorney General and the convicted person's  
115 current counsel of record.

116 (4) The form of the application for review and its contents shall be determined by the  
117 establishing office.

118 (5) Once the review is complete, the conviction integrity unit shall present its findings  
119 and recommendations to:

120 (a) the district attorney, county attorney, attorney general, or other prosecutor who  
121 directly oversees and supervises the establishing office; or

122 (b) if the review was requested by another prosecution agency under Subsection (2)(b),  
123 the district attorney, county attorney, attorney general, or other prosecutor who directly  
124 oversees and supervises the prosecution agency that requested the review.

125 (6) The district attorney, county attorney, attorney general, or other prosecutor who  
126 directly oversees and supervises the establishing office, or who requested review under  
127 Subsection (2)(b), is not required to accept or follow the findings and recommendations of the  
128 conviction integrity unit.

129 (7) The district attorney, county attorney, attorney general, or other prosecutor who  
130 directly oversees and supervises the establishing office, or who requested review under  
131 Subsection (2)(b), may commence a civil proceeding by filing a petition in the district court  
132 with jurisdiction over the case seeking a court order to:

133 (a) vacate the conviction;

134 (b) vacate the conviction and order a new trial;

135 (c) vacate the sentence and order further proceedings; or

136 (d) modify the conviction or sentence.

137 (8) The decision to petition the district court under Subsection (7) is solely within the  
138 discretion of the district attorney, county attorney, attorney general, or other prosecutor who  
139 directly oversees and supervises the establishing office, or who requested the review under  
140 Subsection (2)(b).

141 (9) Except as otherwise provided in this part, a petition filed with the district court

142 shall comply with the Utah Rules of Civil Procedure, Rule 65C, and shall include the number  
143 of the underlying criminal case that resulted in the judgment of conviction or sentence in  
144 connection with which the petitioning prosecutor seeks relief from the court.

145 (10) If a petition is filed under Subsection (7), the petitioning prosecutor shall  
146 promptly:

147 (a) notify the convicted person, in writing, that the petition has been filed and provide  
148 the convicted person with a copy of the petition and all other documents filed in support of the  
149 petition;

150 (b) notify the victim or the victim's representative, if any, in writing, that a petition has  
151 been filed, provide the victim or the victim's representative, if any, with a copy of the petition  
152 and all other documents filed in support, and advise the victim or the victim's representative of  
153 the victim's right to be heard by the court under Subsection (13); and

154 (c) if the underlying conviction was a felony offense, notify the Office of the Attorney  
155 General, in writing, that the petition has been filed and provide the attorney general with a copy  
156 of the petition and all other documents filed in support.

157 (11) If a petition is filed pursuant to Subsection (7), the Office of the Attorney General  
158 has standing to intervene as of right and to participate as a party in the district court proceeding  
159 if:

160 (a) the convicted person submitted an application under Subsection (3)(a) requesting  
161 review of the person's conviction or sentence by the conviction integrity unit;

162 (b) the conviction integrity unit undertook review of the convicted person's conviction  
163 or sentence as a result of the convicted person's application; and

164 (c) the Office of the Attorney General reasonably believes the relief requested by the  
165 petitioning prosecutor would be barred if the petition were filed or the relief were requested  
166 directly by the convicted person under Part 1, General Provisions.

167 (12) Upon review of the petition, the district court may:

168 (a) dismiss the petition as provided in Subsection (14);

169 (b) require that additional evidence be submitted;

170           (c) conduct an evidentiary hearing; or  
171           (d) grant the relief requested by the petitioning prosecution agency, or any other relief  
172 expressly permitted by this part, if by a preponderance of the evidence the petition presents:  
173           (i) bona fide and compelling evidence that the convicted person is significantly likely  
174 to be factually innocent;  
175           (ii) bona fide and compelling newly discovered material evidence; or  
176           (iii) bona fide and compelling information discovered or received by the petitioning  
177 prosecution agency after the trial, judgment of conviction, and sentencing that:  
178           (A) if disclosed to the convicted person prior to trial, judgment of conviction, or  
179 sentencing, would have resulted in a significant probability that the result would have been  
180 different; or  
181           (B) significantly calls into question the legitimacy of the jury verdict, judgment of  
182 conviction, or sentence.  
183           (13) If the court requests additional information or holds an evidentiary hearing, the  
184 convicted person, and the victim or the victim's representative, if any, and, if notice to the  
185 Office of the Attorney General was required under Subsection (10)(c), the attorney general,  
186 shall have the right to be heard by the district court, through written submissions or testimony.  
187           (14) A district court may dismiss a petition without a hearing if the court finds by a  
188 preponderance of the evidence that the petition fails to assert grounds on which relief may be  
189 granted.  
190           (15) In granting relief under this part, the district court may:  
191           (a) vacate the conviction;  
192           (b) vacate the conviction and order a new trial;  
193           (c) vacate the sentence and order further proceedings; or  
194           (d) modify the conviction or sentence.  
195           (16) The district court shall state on the record the reasons for the court's decision.  
196           (17) (a) An appeal may be taken by the petitioning prosecutor from a final order  
197 entered under this part.

198 (b) If notice to the Office of the Attorney General was required under Subsection  
199 (10)(c), the petitioning prosecutor shall consult with the attorney general prior to filing an  
200 appeal and, if an appeal is filed by the petitioning prosecutor, the Office of the Attorney  
201 General has standing to intervene as of right and to participate as a party in all appellate  
202 proceedings.

203 (18) Attorney fees, costs, orders of restitution, or any other form of monetary relief are  
204 not available under this part.

205 (19) Nothing in this section:

206 (a) precludes a conviction integrity unit from reviewing a conviction or sentence based  
207 on information discovered or received directly by the establishing office or received from an  
208 individual other than the convicted individual;

209 (b) prohibits an establishing office from adopting additional written criteria for the  
210 convictions or sentences the establishing office will review or will decline to review; or

211 (c) requires a conviction integrity unit to review any conviction or sentence.

212 (20) Nothing in this part:

213 (a) including review by a conviction integrity unit or the filing of a petition under  
214 Subsection (7), may operate to stay any other proceeding, or to extend, toll, or otherwise alter  
215 any other deadline or limitation period under Title 78B, Chapter 9, Post-Conviction Remedies  
216 Act;

217 (b) may revive a claim or cause of action or implicate a defense otherwise available to  
218 the state under any other provision of Title 78B, Chapter 9, Post-Conviction Remedies Act, or  
219 any other applicable provision of law; or

220 (c) confers standing or creates a private right of action for a convicted person or victim  
221 of a convicted person.

222 (21) Relief under this part does not exclude any other available remedy.