

Representative Marsha Judkins proposes the following substitute bill:

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:



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **78B-9-501**, Utah Code Annotated 1953

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

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



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 district attorney, county attorney, or attorney general establishes by a preponderance
43 of the evidence that:

44 (a) the subject of the petition is factually innocent;

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

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

50 (i) if disclosed to the subject of the petition prior to trial, judgment of conviction, or
51 sentencing, would have resulted in a substantial probability that the result would have been
52 different; or

53 (ii) substantially calls into question the integrity of the jury verdict, judgment of
54 conviction, or sentence.

55 (2) "Conviction Integrity Unit" means a program established by a district attorney,
56 county attorney, Office of the Attorney General, or other prosecution agency to conduct

57 extrajudicial, fact-based reviews of criminal convictions.

58 (3) "Establishing office" means the agency establishing a conviction integrity unit.

59 (4) "Factually innocent" means the same as that term is defined in Section

60 [78B-9-401.5](#).

61 (5) "Newly discovered material evidence" means the same as that term is defined in

62 Section [78B-9-401.5](#).

63 (6) "Subject of the petition" means the individual whose conviction or sentence is

64 under review.

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

66 **78B-9-503. Conviction Integrity Unit.**

67 (1) A district attorney, county attorney, the Office of the Attorney General, or other
68 prosecution agency may establish a conviction integrity unit to investigate:

69 (a) plausible allegations of factual innocence;

70 (b) newly discovered material evidence; or

71 (c) information discovered or received by the district attorney, county attorney, Office

72 of the Attorney General, or other prosecution agency after trial, judgment of conviction, or

73 sentencing that:

74 (i) if disclosed to the subject of the petition prior to trial, judgment of conviction, or

75 sentencing, would have resulted in a substantial probability that the result would have been

76 different; or

77 (ii) substantially calls into question the integrity of the jury verdict, judgment of

78 conviction, or sentence.

79 (2) A conviction integrity unit may review a conviction or sentence if the conviction

80 and sentence:

81 (a) (i) occurred within the judicial district of the establishing office; and

82 (ii) was prosecuted by the establishing office or another prosecution agency under the

83 direct control and supervision of the establishing office;

84 (b) (i) occurred within a different judicial district or was prosecuted by another

85 prosecution agency not under the direct control and supervision of the establishing office;

86 (ii) (A) the prosecution agency that prosecuted the case has not established a conviction

87 integrity unit; or

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

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

93 (3) An individual convicted of a crime may submit an application to a conviction
94 integrity unit requesting review of the individual's conviction or sentence.

95 (4) The form of the application and its contents shall be determined by the establishing
96 office.

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

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

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

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

108 (7) The district attorney, county attorney, attorney general, or other prosecutor who
109 directly oversees and supervises the establishing office, or who requested review under
110 Subsection (2)(b), may petition the district court with jurisdiction over the case for a court
111 order to:

112 (a) vacate the conviction;

113 (b) reverse the conviction and order a new trial;

114 (c) reverse the sentence and order further proceedings; or

115 (d) modify the sentence.

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

119 (9) Except as otherwise provided in this part, a petition filed with the district court
120 shall comply with the Utah Rules of Civil Procedure, Rule 65C, and shall include the number
121 of the underlying criminal case that resulted in the judgment of conviction or sentence in
122 connection with which the petitioning prosecution agency seeks relief from the court.

123 (10) If the prosecution office brings a petition in the district court with jurisdiction over
124 the case, the petitioning prosecution office shall:

125 (a) notify the subject of the petition, in writing, that the petition has been filed and
126 provide the subject of the petition with a copy of the petition and all other documents filed in
127 support of the petition; and

128 (b) notify the victim or the victim's representative, if any, in writing, that a petition has
129 been filed, provide the victim or the victim's representative, if any, with a copy of the petition
130 and all other documents filed in support, and advise the victim or the victim's representative of
131 the victim's right to be heard by the court under Subsection (12).

132 (11) Upon review of the petition, the district court may:

133 (a) require that additional evidence be submitted;

134 (b) conduct an evidentiary hearing; or

135 (c) grant the relief requested by the petitioning prosecution agency, or any other relief
136 expressly permitted by this part, if by a preponderance of the evidence the petition presents:

137 (i) bona fide and compelling evidence that the subject of the petition is factually
138 innocent;

139 (ii) bona fide and compelling newly discovered material evidence; or

140 (iii) bona fide and compelling information discovered or received by the petitioning
141 prosecution agency after the trial, judgment of conviction, and sentencing that:

142 (A) if disclosed to the subject of the petition prior to trial, judgment of conviction, or
143 sentencing, would have resulted in a substantial probability that the result would have been
144 different; or

145 (B) substantially calls into question the integrity of the jury verdict, judgment of
146 conviction, or sentence.

147 (12) If the court holds an evidentiary hearing or requests additional information, the
148 subject of the petition and the victim or the victim's representative, if any, shall have the right
149 to be heard by the district court, through written submissions or testimony.

150 (13) A district court may dismiss a petition without a hearing if the court finds by a
151 preponderance of the evidence that the petition fails to assert grounds on which relief may be
152 granted.

153 (14) The district court may:

154 (a) vacate the conviction;

155 (b) reverse the conviction and order a new trial;

156 (c) reverse the sentence and order further proceedings;

157 (d) modify the sentence; or

158 (e) deny the petition.

159 (15) The district court shall state on the record the reasons for the court's decision.

160 (16) An appeal may be taken by the subject of the petition or by the petitioning agency
161 from a final order entered under this part.

162 (17) Attorney fees, costs, orders of restitution, or any other form of monetary relief are
163 not available under this part.

164 (18) Nothing in this section:

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

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

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

171 (19) Relief under this part does not exclude any other available remedy.

172 (20) Nothing in this part, including the filing of a petition under Subsection (7)
173 extends, tolls, or otherwise alters any other deadline or limitation period under Title 78B,
174 Chapter 9, Post-Conviction Remedies Act.