

HB0324S01 compared with HB0324

{deleted text} shows text that was in HB0324 but was deleted in HB0324S01.

inserted text shows text that was not in HB0324 but was inserted into HB0324S01.

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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

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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

78B-9-502, Utah Code Annotated 1953

78B-9-503, Utah Code Annotated 1953

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

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

Part 5. Conviction Integrity Units Act

78B-9-501. Title.

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

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

78B-9-502. Definitions.

As used in this part:

(1) "Bona fide and compelling evidence" means that the evidence presented by the petitioning district attorney, county attorney, or attorney general ~~clearly and convincingly~~ establishes **by a preponderance of the evidence** that:

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

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

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

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

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sentencing, would have resulted in a substantial probability that the result would have been different; or

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

(2) "Conviction Integrity Unit" means a program established by a district attorney, county attorney, Office of the Attorney General, or other prosecution agency to conduct extrajudicial, fact-based reviews of criminal convictions.

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

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

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

(6) "Subject of the petition" means the individual whose conviction or sentence is under review.

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

78B-9-503. Conviction Integrity Unit.

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

(a) plausible allegations of factual innocence;

(b) newly discovered material evidence; or

(c) information discovered or received by the district attorney, county attorney, Office of the Attorney General, or other prosecution agency after trial, judgment of conviction, or sentencing that:

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

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

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

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

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(ii) was prosecuted by the establishing office or another prosecution agency under the direct control and supervision of the establishing office;

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

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

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

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

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

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

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

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

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

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

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

(a) vacate the conviction;

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- (b) reverse the conviction and order a new trial;
- (c) reverse the sentence and order further proceedings; or
- (d) modify the sentence.

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

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

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

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

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

~~{ (c) if the underlying conviction was a felony offense and the petition alleges the subject of the petition is factually innocent, notify the Office of the Attorney General, in writing, that the petition has been filed and provide the attorney general with a copy of the petition and all other documents filed in support of the petition.~~

~~};~~ (11) Upon review of the petition, the district court may:

- (a) require that additional evidence be submitted;
- (b) conduct an evidentiary hearing; or
- (c) grant the relief requested by the petitioning prosecution agency, or any other relief

expressly permitted by this part, if by a preponderance of the evidence the petition ~~{ clearly and convincingly}~~ presents:

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

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

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

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

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

(12) If the court holds an evidentiary hearing or requests additional information, the subject of the petition ~~;~~ and the victim or the victim's representative, if any, ~~;~~ and, if notice was required under Subsection (10)(c), the Office of the Attorney General shall have the right to be heard by the district court, through written submissions or testimony.

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

(14) The district court may:

(a) vacate the conviction;

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

(c) reverse the sentence and order further proceedings;

(d) modify the sentence; or

(e) deny the petition.

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

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

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

(18) Nothing in this section:

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

(b) prohibits an establishing office from adopting additional written criteria for the

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convictions or sentences the establishing office will review or will decline to review; or

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

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

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