

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

64 (7) "Petitioning prosecutor" means the prosecutor who files a civil petition seeking
65 relief under this part.

66 (8) "Prosecution agency" means a county attorney, district attorney, the Office of the
67 Attorney General, or other prosecution agency.

68 (9) "Significant" or "significantly likely," for purposes of this part, means to a large
69 degree or of a noticeably or measurably large amount.

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

71 **78B-9-503. Conviction Integrity Unit.**

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

73 (a) plausible allegations of factual innocence;

74 (b) newly discovered material evidence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 (d) If a conviction integrity unit other than a conviction integrity unit established by the
110 Office of the Attorney General discovers or receives any information relevant to a conviction
111 that resulted in a sentence of death, the conviction integrity unit that discovers or receives the
112 information shall promptly notify the Office of the Attorney General and the convicted person's
113 current counsel of record.

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

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

118 (a) the district attorney, county attorney, attorney general, or other prosecutor who

119 directly oversees and supervises the establishing office; or

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

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

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

131 (a) vacate the conviction;

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

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

134 (d) modify the conviction or sentence.

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

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

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

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

148 (b) notify the victim or the victim's representative, if any, in writing, that a petition has
149 been filed, provide the victim or the victim's representative, if any, with a copy of the petition

150 and all other documents filed in support, and advise the victim or the victim's representative of
151 the victim's right to be heard by the court under Subsection (12); and

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

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

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

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

162 (c) the Office of the Attorney General reasonably believes the relief requested by the
163 petitioning prosecutor would be barred if the petition were filed or the relief were requested
164 directly by the convicted person under Subsection (3).

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

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

167 (b) require that additional evidence be submitted;

168 (c) conduct an evidentiary hearing; or

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

171 (i) bona fide and compelling evidence that the convicted person is significantly likely
172 to be factually innocent;

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

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

176 (A) if disclosed to the convicted person prior to trial, judgment of conviction, or
177 sentencing, would have resulted in a significant probability that the result would have been
178 different; or

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

181 (13) If the court requests additional information or holds an evidentiary hearing, the
182 convicted person, and the victim or the victim's representative, if any, and, if notice to the
183 Office of the Attorney General was required under Subsection (10)(c), the attorney general,
184 shall have the right to be heard by the district court, through written submissions or testimony.

185 (14) A district court may dismiss a petition without a hearing if the court finds by a
186 preponderance of the evidence that the petition fails to assert grounds on which relief may be
187 granted.

188 (15) In granting relief under this part, the district court may:

189 (a) vacate the conviction;

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

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

192 (d) modify the conviction or sentence.

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

194 (17) (a) An appeal may be taken by the petitioning prosecutor from a final order
195 entered under this part.

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

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

203 (19) Nothing in this section:

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

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

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

210 (20) Nothing in this part:

211 (a) including review by a conviction integrity unit or the filing of a petition under

212 Subsection (7), may operate to stay any other proceeding, or to extend, toll, or otherwise alter
213 any other deadline or limitation period under Title 78B, Chapter 9, Post-Conviction Remedies
214 Act;

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

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

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