

HB0324S02 compared with HB0324S01

~~deleted text~~ shows text that was in HB0324S01 but was deleted in HB0324S02.

inserted text shows text that was not in HB0324S01 but was inserted into HB0324S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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}~~ **prosecutor** establishes by a preponderance of the evidence that:

(a) the ~~{subject of the petition}~~ **convicted person** is **significantly likely to be** 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}~~ **significant** 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:

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

(ii) ~~{substantially}~~significantly 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; Convicted person" means the person whose conviction or sentence is under review.~~

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

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

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

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

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

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

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

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

78B-9-503. Conviction Integrity Unit.

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(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}~~ convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a ~~{substantial}~~ significant probability that the result would have been different; or

(ii) ~~{substantially}~~ significantly 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

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

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

(b) If a convicted person submits an application for review of a conviction that resulted in a sentence of death, and the application is submitted to any conviction integrity unit other

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than a conviction integrity unit established by the Office of the Attorney General, the conviction integrity unit that receives the application shall forward copies of the application to the Office of the Attorney General and to the convicted person's current counsel of record.

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

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

(4) The form of the application **for review** 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 **commence a civil proceeding by filing a** petition **in** the district court with jurisdiction over the case ~~for~~**seeking** a court order to:

(a) vacate the conviction;

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

(8) The decision to petition the district court ~~under Subsection (7)~~ 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}~~ prosecutor seeks relief from the court.

(10) If ~~{the prosecution office brings }~~ a petition ~~{in the district court with jurisdiction over the case}~~ is filed under Subsection (7), the petitioning ~~{prosecution office}~~ prosecutor shall promptly:

(a) notify the ~~{subject of the petition}~~ convicted person, in writing, that the petition has been filed and provide the ~~{subject of the petition}~~ convicted person 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);

~~(11); and~~

(c) if the underlying conviction was a felony offense, 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.

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

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

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

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

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

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

(~~f~~a~~+~~b) require that additional evidence be submitted;

(~~f~~b~~+~~c) conduct an evidentiary hearing; or

(~~f~~c~~+~~d) 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 presents:

(i) bona fide and compelling evidence that the ~~{subject of the petition}~~ convicted person is significantly likely to be factually innocent;

(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}~~ convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a ~~{substantial}~~ significant 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.

(~~f~~12~~+~~13) If the court ~~{ holds an evidentiary hearing or }~~ requests additional information or holds an evidentiary hearing, the ~~{subject of the petition}~~ convicted person, and the victim or the victim's representative, if any, and, if notice to the Office of the Attorney General was required under Subsection (10)(c), the attorney general, shall have the right to be heard by the district court, through written submissions or testimony.

(~~f~~13~~+~~14) A district court may dismiss a petition without a hearing if the court finds by a preponderance of the evidence that the petition fails to assert grounds on which relief may be granted.

(~~f~~14~~+~~15) ~~{The}~~ In granting relief under this part, the district court may:

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

~~{(e) deny the petition}~~.

~~{15}~~ 16 The district court shall state on the record the reasons for the court's decision.

~~{16}~~ 17 (a) An appeal may be taken by the ~~{subject of the petition or by the~~
~~{petitioning~~ {agency} prosecutor from a final order entered under this part.

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

~~{17}~~ 18 Attorney fees, costs, orders of restitution, or any other form of monetary relief are not available under this part.

~~{18}~~ 19 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 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 {;};~~

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

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

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

(21) 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.~~

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