



# MASSBAR

A S S O C I A T I O N

## RESOLUTION 2 SUPPORTING CONVICTION INTEGRITY PROGRAMS IN MASSACHUSETTS PROSECUTORIAL OFFICES

RESOLVED, That the Massachusetts Bar Association (“MBA”), which has long supported equal justice in the criminal justice system and innovative prosecutorial reforms to prevent injustice and wrongful convictions, and which recognizes that effective conviction integrity programs in prosecutorial offices have prevented and remedied wrongful convictions of innocent persons, strongly endorses and urges that Massachusetts District Attorneys and the Attorney General of Massachusetts establish and maintain internal conviction integrity programs. Such programs promote public trust and confidence in the criminal justice system, while offering assurance that all Massachusetts prosecutorial offices are taking the steps necessary to prevent, identify, and remedy wrongful convictions, correct miscarriages of justice, and address implicit bias in the criminal justice system. Specifically, the MBA strongly encourages:

1. All prosecutorial offices in Massachusetts, including District Attorneys’ Offices and the Office of the Attorney General, establish a ‘Conviction Integrity Program’ through an internal ‘Conviction Integrity Unit, Division, Committee or Panel’, (unless and until a fully functional statewide Innocence Commission is created and supplants the need for office-based programs), to provide independent internal reviews, analysis and re-investigation of cases involving a post-conviction claim of actual innocence, and to assess and investigate allegations of prosecutorial error and misconduct that resulted in wrongful convictions.
2. All District Attorneys’ Offices and the Office of the Attorney General to develop and institute internal accountability measures for every stage of the investigative and prosecutorial process. This includes developing internal protocols and enhanced policies on investigative and pretrial processes that reflect accepted ‘best practices’, and providing needed training on professional and ethical obligations. These measures should most effectively prevent miscarriages of justice, ensure against the risk that innocent persons are wrongfully convicted, enable prosecutorial offices to identify and reform internal policies and practices found deficient through re-investigation, and significantly reduce the number of successful legal challenges to convictions.

3. Prosecutorial offices are to enter into cooperation agreements with other offices to enable the transfer of a claim to another office's Conviction Integrity Program where its own program is unable to address it because its 'program' participants were previously involved in the case, and therefore, are unable to perform an 'independent' review. This is similar to when a prosecutorial office transfers a case to another prosecutorial office after a conflict of interest is identified.
4. Massachusetts District Attorneys and the Office of the Attorney General jointly consult with an outside panel of volunteer, inter-disciplinary expert advisors to review and provide advice about how they may improve their integrity programs.
5. Each District Attorney's Office and the Office of the Attorney General to effectively and regularly publicize the existence and role of its Conviction Integrity Program to the public and members of the defense bar, including providing information about how members of the public and defense bar may contact its Conviction Integrity Unit, Division, Committee or Panel for review of claims under its purview.
6. While recognizing and commending the District Attorneys in Massachusetts who have already established a Conviction Integrity Program in their offices that provide for the review and analysis of post-conviction claims of actual innocence, the MBA also urges them to strengthen their Conviction Integrity Programs by adopting the additional reforms set-forth above that are not currently instituted.

FURTHER RESOLVED, That the Massachusetts Bar Association will seek to convene or participate in a working group of representatives of state prosecutorial offices and other key stakeholders, including the Massachusetts 'Innocence Network', to study and make recommendations about 'best practices' for conviction integrity programs, and about the most effective structure(s) to promote conviction integrity and prevent and remedy wrongful convictions and miscarriages of justice; for example, through county-based programs and/or the establishment of a statewide Innocence Commission.

## Rationale

Determinations of wrongful convictions, which have increased due to the availability of post-conviction DNA testing and new studies in various forensic science disciplines, have led many prosecutors to be more willing to examine credible claims of actual innocence. One approach that is increasingly employed by prosecutors is the establishment of “Conviction Integrity Units” or “Conviction Review Units.”<sup>1</sup>

Two recent national studies reviewed the variety of models for such units, including “internal” units that operate wholly within prosecutors’ offices<sup>2</sup> and “external” units that also utilize non-prosecutorial personnel.<sup>3</sup>

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<sup>1</sup> Use of the term “Conviction Integrity Unit” as used here identifies just one example of an internal structure that that a prosecutor’s office might choose when establishing a conviction integrity program. A District Attorney’s office also may decide to establish a Conviction Integrity Division, Committee or Panel.

<sup>2</sup> See, e.g., C. Oliva, *Establishing Conviction Integrity Programs in Prosecutors’ Offices: A Report of the Center on the Administration of Criminal Law’s Conviction Integrity Project* (New York University Law Center on the Administration of Criminal Law, 2016), available at: [http://www.law.nyu.edu/sites/default/files/upload\\_documents/Establishing\\_Conviction\\_Integrity\\_Programs\\_Final\\_Report\\_ecm\\_pro\\_073583.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_Final_Report_ecm_pro_073583.pdf).

<sup>3</sup> See, e.g., J. Holway, *Conviction Review Units: A National Perspective* (April 2016) (Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School), available at: <https://www.law.upenn.edu/live/files/5522-cru-final>.

Internal units. Units that are wholly internal to the prosecutorial office stress developing opportunities to create incentives for prosecutors to demonstrate commitment to ethical behaviors; such a model also promotes enhanced policies on investigative and pretrial processes, including discovery, and the creation of a mechanism for the internal review of post-conviction claims of actual innocence.<sup>4</sup> These units can present opportunities to develop protocols and checklists of good practices that can reduce errors and the chance of wrongful convictions.

“Internal” Conviction Integrity Units also can work directly with other law enforcement agencies to establish best practices in investigative techniques (such as methods of conducting identification procedures and interrogations) as well as with forensic laboratories on issues such as developing uniform evidence retention policies, identifying and analyzing DNA “hits” in closed cases and establishing internal quality assurance guidelines.<sup>5</sup>

External units. “External” conviction review units also include participants from outside the DA’s office who are appointed to the unit by the District Attorney. Policy makers recommend that members of external integrity units include persons with firsthand prosecutorial and criminal defense experience and who are viewed as objective and are well respected within the jurisdiction’s criminal justice community; in these units, independence, flexibility and transparency in daily operations are viewed as essential. It is also important to develop opportunities to communicate directly with members of the public about the cases that are being reviewed.<sup>6</sup>

Each of these approaches have merit and have led to a growing consensus that conviction integrity units promote public trust and confidence in the legitimacy of our legal system. Therefore, the policy of the Massachusetts Bar Association ought to be that all state prosecutors should be encouraged to establish a conviction integrity unit, or a functional equivalent, within their offices and that a representative working group should be established to consider and recommend to the Association best practices in this developing field.

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<sup>4</sup> Oliva, *supra* n.26.

<sup>5</sup> *Id.* at 35-41, 42-43.

<sup>6</sup> Holway, *supra* n.27.