

MASSACHUSETTS CONVICTION INTEGRITY WORKING GROUP

Convened by the Massachusetts Bar Association

FREQUENTLY ASKED QUESTIONS FOR PROSECUTOR OFFICES ABOUT CONVICTION INTEGRITY PROGRAMS

1. I run a tight ship and have excellent prosecutors on my staff. I believe the same is true for my predecessors. Given this, why should I be concerned about wrongful convictions?

We all know that highly skilled people in any field can make mistakes. Wrongful convictions occur because our criminal legal system is a human system in which errors happen, most of which are unintentional and not the product of any misconduct. To recognize that wrongful convictions have occurred and may occur in the future is not to blame your staff for mistakes or shoddy work. Instead, it demonstrates to your staff and the public your acknowledgment that being a good prosecutor requires being open to reviewing convictions and even reinvestigating cases when new information has come to light.

2. Why should there be a Conviction Integrity Unit in my office?

Prosecutors have a duty to ensure that wrongful convictions are corrected and that procedures and policies are implemented to reduce the risk of future wrongful convictions. *See Mass. Rules of Professional Responsibility 3.8 (i)-(k)*. When a wrongful conviction happens, not only is an innocent person prosecuted and punished for a crime they did not commit, but also a guilty person has not been held accountable and is likely free and in the community. As the chief public safety officer of your district, it is essential that you have a mechanism in place to uncover where wrongful convictions have occurred and to create processes to prevent them from happening in the future. Furthermore, your office retains control over the files and evidence and has the ability to contact victims and witnesses in order to review and investigate claims expeditiously.

3. What are the elements of a successful Conviction Integrity Unit?

As a general matter, success is the creation of a CIU that reviews cases fairly and without bias toward upholding convictions; that trains staff in areas that can lead to wrongful conviction such as eyewitness identification and false confession issues; that establishes credibility with the community for fair post-conviction reviews; and that provides leadership throughout the office in prosecuting fairly and justly.

A successful CIU requires:

- a. Direct report to the District Attorney or Attorney General who communicates that this is a priority
- b. Structural independence from the trial and appellate units
- c. Clear protocols for screening, review, and investigation
- d. Public accessibility for submission of potential cases
- e. Training and education of members on how to spot wrongful convictions/issues underlying wrongful convictions/major causes
- f. Learning, training, and time to focus on and understand issues specific to identifying potentially wrongful convictions

4. Who should staff my Conviction Review Unit?

A CIU must be staffed by attorneys and others, including potentially laypeople, investigators, or experts, who understand that wrongful convictions occur and are willing to be trained on specific issues that can lead to wrongful convictions. They must not be afraid to identify and address a perceived wrongful conviction. Notably, the CIU does not act as a 13th juror, but it respects the jury process by considering whether errors or evidence the jury did or did not hear could have interfered with the jury's ability to reach a just verdict.

For prosecutors, confirmation and hindsight bias are especially likely in the post-conviction context where respect for jury verdicts, concern for the interest of victims and the public in finality, scarce office resources, and even difficulty believing that respected colleagues may have contributed to a wrongful conviction, all weigh heavily against re-examining a final conviction, especially if the error is not immediately obvious. Significantly, both experienced prosecutors and criminal defense litigators have a steep learning curve with respect to reviewing innocence cases. For this reason, best practices require that a CIU be staffed by people with various backgrounds, specialties, and professional experiences, including attorneys or others with specific innocence experience. A varied unit avoids the problem of "group think."

5. My appellate unit assents to Motions for New Trial where appropriate and routinely assents to post-conviction DNA testing requests. Why do I need a separate CIU?

A separate CIU has proven critical to providing an independent review of those cases that do not seem, initially, to be appropriate for a new trial or where the issues raised do not lend themselves to a specific available appellate remedy. A CIU is tasked with reviewing all cases brought to its attention. While a CIU may well involve one or more appellate prosecutors, just as it will likely involve one or more trial prosecutors, separating the unit from the appeals division emphasizes the distinct importance an office places on conviction integrity review. It further reflects that analysis of innocence

claims often involves vastly different skills and perspectives than those involved in an appellate prosecutor's regular caseload as well as additional and distinct education and training. A CIU should also be seen as a unit to which an appellate prosecutor can refer cases that may require a fresh eye and further investigation.

6. What steps should a DA's office take to publicize the existence of the CIU?

The existence of a CIU, how to access the CIU to apply for a case review, and the CIU's policies and procedures should be publicized on the office's website and within its press releases, through bar associations, defense organizations (e.g., New England Innocence Project, the Committee for Public Counsel Services, the Massachusetts Association of Criminal Defense Lawyers), and newsletters designed to reach prisoners and prison advocates (e.g., Prisoner Legal Services' *PLS Notes*).