

Conviction Review Today

A Quick Guide for Prosecutors



Prosecutors' Center for Excellence

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A Quick Guide

Prosecutors' Center for Excellence (PCE) study entitled *Conviction Review Today: A Guide for Prosecutors*¹ identified 67 conviction review units in prosecutor offices and six statewide units.² In addition, a 2019 survey of prosecutors in 20 states revealed that 100 prosecutor offices in those states have some form of conviction review, including formal or informal conviction review.³

To obtain current information about the conviction review process in prosecutor offices, PCE conducted original research including interviews with 18 current and former prosecutors doing conviction review work from 16 offices throughout the United States, reviewed available Conviction Review Unit (CRU) websites and forms, and examined related literature and other sources.

The full report, [*Conviction Review Today: A Guide for Prosecutors*](#), provides examples from prosecutor offices of all sizes and greater detail regarding the issues covered in this Quick Guide. Below is a summary of the report's guidance on developing or enhancing conviction review in a prosecutor office.

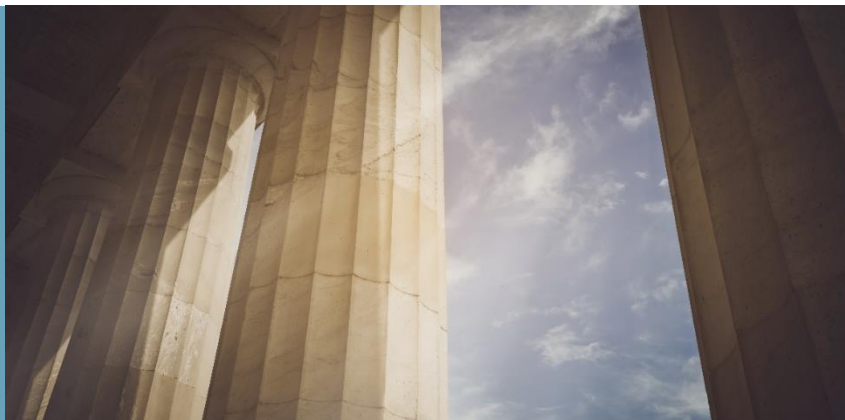
¹ This guide was co-authored by Kristine Hamann, executive director of the Prosecutors' Center for Excellence, and Owen R. Eagan and Alexandra Rogers, both students at the Georgetown University Law Center. The paper was funded in part by the National Prosecutors' Consortium (NPC) grant. NPC is a collaboration between the Prosecutors' Center for Excellence and Justice & Security Strategies which was supported by Award No. 2015-DP- BX-KOO4 awarded to Justice & Security Strategies, Inc. by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions expressed in these materials are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

² See Appendix of *Conviction Review Today: A Guide for Prosecutors* for a list of the 67 CRUs. Statewide conviction review programs of varying types were also located in six states: Delaware, Michigan, New Jersey, New York, North Carolina and Pennsylvania.

³ This survey was part of the National Prosecutor Consortium Project, and it asked a variety of questions to prosecutors about their work including: "Does your office have a Conviction Review Program (a person or unit that reviews claims of postconviction innocence), Yes or No." The scope of the question included all types of conviction review ranging from a CRU to an office with a conviction review process handled by a single person. Further research is needed to identify what type of program exists in each of the offices that responded affirmatively to the survey question. Some of the 67 identified CRUs are included in the survey responses. See the Appendix of *PCE's Conviction Review Today: A Guide for Prosecutors* for the 2019 Prosecutor Survey chart.

Types of Conviction Review

- **Conviction Review Unit:** A Conviction Review Unit is a distinct unit within a prosecutor office, or in an Attorney General's Office, in which one or more experienced prosecutors are tasked with reviewing past cases in which outcomes are in question, most often due to a claim of actual innocence.
- **Conviction Review Process:** A conviction review process, usually found in smaller offices, has formal procedures for conducting conviction review on a case-by-case basis utilizing various resources from a prosecutor office.
- **Review of Systemic Issues:** These reviews investigate errors that could have negatively impacted a number of cases, rather than just one case. In some instances, this specialized review is assigned to the CRU and in others it is assigned as a special project within a prosecutor office.
- **Proactive Case Review:** Some offices conduct a review of cases in a systematic fashion on their own initiative, rather than through a request from an outside source. Most commonly, these offices have reviewed the available DNA evidence in older homicide cases from a time when DNA technology was unavailable or less discriminating.



Creating a CRU or a Conviction Review Process

The principles outlined in this quick guide apply to Conviction Review Units and conviction review processes. For the ease of expression, both will be referred to as CRU.

What are the benefits of a CRU?

- They offer an avenue to review and remedy claims of actual innocence and significant injustices in past convictions.
- They enhance community confidence in the criminal justice system.
- They continue to foster an office-wide culture of integrity and can create prosecutor best practices to reduce the likelihood of future wrongful convictions.

Considerations for Starting a CRU

- **Input:** Gather input on how to form a CRU from a wide array of stakeholders, including community members, the defense bar, local innocence project, other prosecutor offices with a CRU and members of the prosecutor's office.
- **Decision Maker:** Clarify that the final decision will be made by the head of the office.
- **Office Morale:** Consider potential impacts on office morale and develop a plan for addressing this issue.
- **CRU Leader:** Choose a CRU leader who is experienced and well-respected. The leader can be a prosecutor from within the office, a prosecutor from another office or a former defense attorney.
- **Non-Legal Staff:** Assign non-legal staff to the CRU, either full-time or part-time, to track requests and outcomes and to assist with finding needed records and evidence. Some CRUs also have investigators to assist with reinvestigations.
- **CRU Independence:** Ensure the CRU's independence from prosecutors and staff that previously handled the case and from the appeals unit that may be defending the case in question.
- **External Review Panel:** Decide whether to include an external review panel to provide advice to the CRU and the decision maker.

Developing Procedures for the CRU

- **Sources of Requests:** Identify the sources of requests for conviction review which can include incarcerated individuals, innocence organizations, defense counsel, prosecutors within the office, investigative reporters and others.

- **Criteria for Accepting a Claim:** Create criteria for when a claim will be accepted, such as the request must contain “a credible claim of innocence” or “clear evidence of injustice”.
- **Types of Cases Accepted:** List the types of crimes that will be considered for review and whether the unit will review pleas as well as trials. When the unit begins the list may be limited to violent felonies and trial cases, and then expand if resources allow.
- **How to Prioritize:** Determine how to prioritize requested reviews, for example, the incarceration status of the defendant is often a factor considered by prosecutors.
- **Available Records and Evidence:** Determine how to assess whether the records and evidence needed for the review still exist, and if so, how they can be obtained.
- **Systemic Reviews:** Decide if the CRU will handle systemic reviews, such as when false evidence or a discredited witness has been uncovered that may have impacted a number of cases.

Policies and Forms

- **Written Policies:** Develop CRU written policies that outline the work of the CRU. Note that policies can change over time.
- **Standard Forms:** Create standard forms for the CRU such as an intake form, a letter acknowledging receipt of the application and a letter providing the outcome of the review.
- **Tracking System:** Establish a system for tracking requests for review, the progress of the review and the outcome.
- **Posting of the CRU Mission and Forms:** The mission of the CRU, the application form and application process can be posted on the office’s website and in other locations that are available to the public.

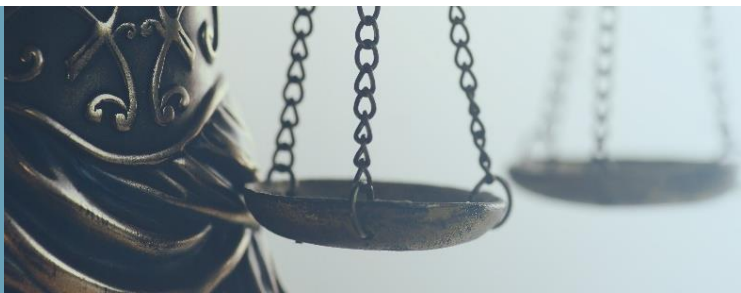
Conducting the CRU Investigation

- **Role of the Original Prosecution Team:** Define the involvement, if any, of the original prosecutors or investigators of the case being reinvestigated.
- **Locate Files and Evidence:** Identify where files or evidence can be found. This can include prosecutor and police files, as well as records associated with post-judgment appeals and other litigation, forensic testing, court proceedings, parole, probation and the Department of Corrections.
- **Retesting of Evidence:** Determine whether any evidence should be retested.

- **Pending Litigation:** Decide whether any pending appeals or post-judgment motions related to the reinvestigated case should be stayed.
- **Role of Defense Counsel:** Define the role of defense counsel in the investigation and determine what agreements need to be made concerning the sharing of prosecutor files, obtaining defense files, waiver of attorney-client privilege, timing of the investigation, interviewing witnesses and contact with the media.
- **Ethical Concerns or Wrongdoing:** Develop a method to address ethical concerns or wrongdoing committed by any actor involved in the case that is uncovered during the reinvestigation.
- **Contact with the Victim:** Determine when and how to reach out to the victim in the reinvestigated case and explore if services are needed for the victim.

Vacating a Conviction

- **Types of Exonerations:** There are a variety of scenarios that support an exoneration or dismissal. They include DNA evidence or newly discovered evidence that establishes actual innocence, interest of justice dismissals where cases cannot be retried and partial exonerations.
- **How to Vacate a Conviction:** The legal steps needed to vacate a conviction vary from state to state and case to case. Prior to vacating a conviction, the prosecutor should notify all relevant parties, including the victim and prior prosecution team, arrange for release of the defendant, and consult with defense counsel about needed support for the defendant. The prosecutor should also prepare for possible media attention.



Get It Right the First Time

A CRU can work proactively to learn from mistakes of the past and seek to prevent the mistakes from happening again. There are a variety of approaches to learning from lessons of the past:

- **Training:** Training can include common causes of error, examples of wrongful convictions and methods for improving initial investigations.
- **Checklists:** Lists of issues to consider during the initial review of a case can assist with identifying common causes of error.
- **Pre-Trial Exoneration Review:** Review cases where the prosecutor uncovered innocence prior to the final disposition of the case and seek to rectify the cause.
- **Root Cause Analysis:** Convene participants in the exonerated case to determine what went wrong and propose remedial action to prevent similar mistakes.

Conclusion

In the modern era, prosecutors are embracing the concept that conviction review is part of their work. They acknowledge that the criminal justice system, like all human systems, is not immune from error. In the face of that reality, a prosecutor office that adopts a CRU or a conviction review process demonstrates its dedication to reaching its ultimate aim of achieving justice in every case.

