



CONVICTION INTEGRITY UNIT

The Conviction Integrity Unit (the "CIU") investigates claims of innocence to determine whether there is clear and convincing new evidence that the convicted defendant was not the person who committed the conviction offense. The Michigan Rules of Professional Conduct provide:

- (f) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the crime for which the defendant was convicted, the prosecutor shall:
 - (1) promptly disclose that evidence to an appropriate court or authority, and
 - (2) if the conviction was obtained in the prosecutor's jurisdiction,
 - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
 - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant is innocent of the crime.
- (g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction is innocent of the crime for which defendant was prosecuted, the prosecutor shall seek to remedy the conviction.
- (h) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of section (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

The CIU makes recommendations to the Attorney General about the appropriate remedy (if any) that should result from its findings. The Attorney General makes all final decisions about whether a remedy should be provided to a person seeking review by the CIU.

The CIU is not a court and its work is not governed by court rules of procedure. CIU investigates claims of actual innocence based on new evidence; it does not function as a "13th juror" to review factual questions that already have been decided by a jury. Its mission is to determine whether new evidence shows that an innocent person has been wrongfully convicted of a crime, and to recommend steps to rectify such situations. Only a court can actually set aside a conviction.

To have your case reviewed by the CIU:

1. You must have been convicted of a felony in the State of Michigan.
2. You must present a claim of actual innocence (you did not commit or participate in the crime charged).
3. The claim must be supported by information or evidence not previously litigated before the original trier of fact (jury or bench trial).
4. The claim must be capable of being investigated and resolved, and if substantiated, would bear directly on the issue of innocence.
5. The direct appeal has become final.

The CIU will not review claims solely alleging judicial errors, such as unfavorable court rulings or procedural errors, those alleging lawful sentences are excessive/harsh, or those seeking to re-litigate affirmative defenses, evidence, or information previously considered by a prior finder of fact such as a jury or judge.

Please note that a submission of your petition does not guarantee investigation of your claim. It also does not toll the time to file an appeal or any post-conviction motions that may be appropriate.

To file a claim with the CIU:

The CIU has prepared a form that can be found on the Michigan Attorney General's website. Claimants are encouraged to use the CIU form, although the CIU will accept any writing that provides the necessary information. Claims must be brought to the CIU's attention in a written document, sent to the CIU through the U.S. Mail or an email (sent to AG-CIU@michigan.gov). **The CIU will not consider claims presented through telephone calls.** Claims can be submitted to:

Michigan Department of Attorney General
Conviction Integrity Unit
3030 W. Grand Blvd. Ste. 10-200
Detroit, MI 48202

Please do not send supporting documentation. If we accept your case, we will reach out with any requests for documentation.

Overview of procedures and frequently asked questions

This overview outlines the approach the CIU usually takes in cases brought to its attention. Depending on the circumstances of a case, the CIU may use a different approach suited to the unique facts of a specific case.

Is the CIU part of an Innocence Project?

No. The CIU is part of the Attorney General's Office. However, we sometimes closely collaborate with various innocence projects when reviewing and investigating case.

Does the CIU represent me as my attorney?

No. The CIU works for the Attorney General on behalf of the State of Michigan. As such, CIU attorneys are not able to offer legal advice to you. If you would like legal advice you should consider contacting an innocence project or retaining private counsel.

Who can petition the CIU for review?

Anyone associated with either the convicted person or the case may petition for relief based on innocence from a case prosecuted by the Attorney General's Office.

What kinds of cases are eligible for review by the CIU?

The CIU investigates claims that meet two essential criteria. First, the claimant must assert "actual innocence," which means that the claimant maintains that he or she was wrongfully convicted because he or she played no role in the criminal act(s) in question. Second, for the CIU to recommend that the conviction be overturned, the investigation must lead to the discovery of new evidence that was not considered by the trier of fact (i.e., judge or jury) during the proceedings that led to conviction.

The CIU may also, in its discretion, investigate other claims of actual innocence and/or wrongful conviction in extraordinary circumstances.

Does the CIU only review cases where there is forensic evidence available for DNA testing?

No. However, keep in mind that re-investigating cases without the benefit of DNA (or other forensic evidence) is more difficult and slow-moving because the investigation is time consuming.

Are there kinds of cases that the CIU will decline to investigate?

Yes. Because its focus is on claims that could exonerate a defendant from any role in an offense, the CIU generally will not investigate claims that newly discovered evidence supports an affirmative defense, such as consent, self-defense, or lack of intent. Similarly, the CIU will not consider claims that a decision to prosecute was not appropriate or that a sentence was unfairly harsh.

Will the CIU consider a claim where a defendant pled guilty?

Yes, a defendant whose conviction resulted from a plea of guilty in a Circuit or District Court is eligible for consideration by the CIU. As noted, however, the CIU only investigates claims by a person who asserts actual innocence, which requires that the claimant must have no criminal responsibility for the crime of conviction.

Must I solve the case in order to get relief?

No. The CIU exists to correct convictions of innocent people. A person can get relief even if the true offender is never identified nor prosecuted for the crime.

What kind of evidence is required to initiate investigation of a conviction?

The evidence required to trigger consideration by the CIU must be evidence that was not previously litigated or considered by the original finder of fact (either the jury or a judge). If you presented your claim or argument to a jury but disagree with the jury finding, your claim will not be investigated without new information or evidence not previously presented to the jury.

Who can file a claim with the CIU? Must a lawyer be involved?

Any person authorized by the defendant can file a claim with the CIU. It may be filed by the defendant who was convicted of an offense, by a family member or friend of the defendant, or by a lawyer acting on behalf of the defendant. As long as the defendant authorizes the filing, the CIU will accept claims from any source. A claim will receive attention regardless of whether it is submitted by a lawyer.

When can a claim be filed?

A claim can be filed with the CIU at any time after the conviction is final; there is no requirement that the person be in custody when filing a claim. A person convicted of a felony does not have to reside in Michigan to seek relief from the CIU.

Is the CIU part of the appellate/post-conviction process provided by Michigan law?

No. There are important differences between a review by the CIU and any appellate filings. The CIU was not created by statute, its investigations are not part of a court action, and it is not governed by court rules of procedure. The CIU does not focus on determining whether important constitutional rights were violated, it focuses on determining whether an innocent person has been wrongfully convicted.

Who will investigate and evaluate the claim of actual innocence?

Claims brought to the CIU are reviewed and investigated by attorneys and investigators assigned to the Conviction Integrity Unit. Consistent with its mission, the CIU stands apart as an independent division within the Attorney General's Office. It functions outside the traditional prosecutor function and its recommendations will be brought directly to the Attorney General.

The attorneys and investigators in the Unit have decades of experience in the criminal justice system. They work full-time in the CIU and they will not be involved in the investigation or prosecution of any pending criminal cases. No attorney, police officer, or investigator who was involved in the prosecution of the case under review by the CIU will play an investigative role in evaluating the claims brought to the CIU.

What will happen after the CIU receives a claim of actual innocence?

The CIU first reviews the claim to confirm the person's eligibility for consideration. This means the CIU evaluates the claim to confirm that it raises a claim of "actual innocence," i.e., does it allege facts which, if true, would exonerate the defendant from the crime of conviction? The CIU also reviews the procedural history of the case to find out whether the evidence on which the claim of innocence is based has already been considered by the court which imposed judgment.

After satisfying itself that the claim is eligible, the CIU investigates the newly available evidence and history of the case. The CIU lawyers review available materials from the criminal proceedings that led to conviction, including police reports, trial transcripts and pleadings. The CIU investigators locate and interview witnesses who are identified as supporting the claim of innocence. To the extent that a claim requires new or additional forensic analysis of items of physical evidence, arrangements are made to perform those tests where feasible.

The CIU may seek to interview the claimant to further explore claims of actual innocence. The CIU also may ask to interview the attorney[s] who represented the claimant during the circuit court (trial or guilty plea) proceedings. The CIU will not conduct such interviews, however, until after the claimant has the opportunity

to consult with counsel, and if unrepresented request the appointment of counsel. If the claimant chooses to proceed without counsel, then the claimant must make a knowing and intelligent waiver of the rights protected by the Fifth and Sixth Amendments to the United States Constitution. A claimant may elect not to waive those rights. In such circumstances, the CIU will investigate the factual claims to the greatest extent possible.

The CIU operates on the expectation that the claimant has produced (or will voluntarily make available) all the evidence, documents and information relevant to the claim of actual innocence that are in the possession or under the control of the claimant. The CIU reaches decisions based on all of the relevant information, and claimants who withhold information or who decide to release information in stages may be considered not to have participated in the review process in good faith.

The CIU tries to evaluate every claim of actual innocence brought to its attention. It cannot, however, give immediate investigative attention to every claim it receives.

Conflicts

The Attorney General will determine issues of disqualification and conflicts of interest for the CIU and office personnel on a case by case basis.

How will I know what conclusions have been reached by the CIU?

The CIU is aware that claimants are anxious to know that their claim has been received, that it is being considered, and that they will be advised of the decisions reached by the Unit.

Upon receipt of a written claim, the CIU conducts an initial screening process to determine whether the claim is eligible for consideration, based on the two criteria discussed above. If this initial review shows that the claim is not eligible, the claimant is notified in writing of that determination, and the CIU takes no further action. If the review shows the claim is eligible for review, the CIU will notify the claimant that it intends to investigate the factual merits of the claim.

Where appropriate, the CIU will work with claimants or their counsel to pursue factual investigations. Claimants do not, however, enjoy an absolute right to have notice of all investigative activities or results obtained by the CIU. To protect the integrity of its investigation, the CIU reserves the right to determine when investigative efforts and results should be disclosed.

Claimants will be informed of the conclusions reached by the CIU about their claim. Further, claimants (and/or their authorized representatives) may request to

meet with the Director of the CIU to discuss its conclusions and the recommendations the CIU intends to forward to the Attorney General.

What relief can be granted by the CIU?

The CIU evaluates, investigates and recommends, but the final decision whether to agree to relief rests solely with the Attorney General. Further, the nature or form of any agreed upon relief likewise is a matter solely within the Attorney General's discretion. Only a court can actually set aside a conviction.

If I disagree with the conclusions of the CIU investigation, what rights do I have for further review?

The existence of the Conviction Integrity Unit does not create or confer any "right" on those who bring claims of actual innocence. For this reason, there is no "right" to appeal its determinations. Because the CIU's investigation is not part of a court proceeding, its decisions or recommendations do not prevent a claimant from raising the same claims of innocence in another forum, such as through a Motion for Relief from Judgment. All claimants who file papers with the CIU should be aware, however, that the evidence developed by the CIU during its investigation will be shared with other units within the Attorney General's Office as well as with the local prosecuting agency.