

TELEPHONE (205) 325-5252

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801 RICHARD ARRINGTON, JR. BLVD. N. BIRMINGHAM, ALABAMA 35203-2320

# CONVICTION REVIEW UNIT (CRU)

The Conviction Review Unit (CRU) will begin operations November 2, 2020, as a part of the Jefferson County District Attorney's Office-Birmingham Division. The protocols developed by this office for the establishment and operation of the CRU are as follows:

#### Introduction

A prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." Berger v. Untied States, 295 U.S. 78, 88 (1935).

It is the prosecutor's duty to protect the innocent before, during and after trial. The prosecutor is to seek truth and justice, not merely obtain convictions.

To promote best practices, the Office of the District Attorney-Birmingham Division has established a Conviction Review Unit (CRU).

#### **Eligible Cases**

- 1. The conviction must have occurred in Jefferson County-Birmingham Division.
- 2. The convicted defendant must be living. The CRU will not review convictions of a person who is deceased.
- 3. The conviction must be for a felony offense.
- 4. The convicted defendant must be currently incarcerated.
- 5. The conviction must not be based on a plea agreement entered into with the State.

- 6. The application must be based on new, credible, and verifiable evidence of actual innocence. Actual innocence means the convicted defendant bore no criminal responsibility for the offense. New evidence means evidence that was not known to the judge and/or jury at the time of the conviction.
- 7. The CRU will not attempt to act as a thirteenth juror and reweigh evidence.
- 8. The CRU will not consider requests for review while any appeal, petition, or writ is pending in court.
- 9. A person may only see review after a final judgment of conviction has been entered and a sentence imposed.

The CRU retains the discretion to review any case if it is in the interest of justice to do so.

Any request coming from a convicted defendant or one from someone on behalf of a convicted defendant must have the convicted defendant's approval and must complete a Conviction Review Request Questionnaire Form provided by the CRU which is attached.

## **Confidentiality Agreement**

In order for the CRU to consider a request for review, the convicted defendant must agree on the following cooperation:

- 1. The convicted defendant will waive privilege and share anything relating to guilt or innocence in this case.
- 2. The convicted defendant and the CRU must both consent to disclosure of material not already in the public record before any disclosure to any third party.
- 3. The Office of the District Attorney retains the right not to disclose the following:
  - a. Information that would compromise an investigation of an alternate suspect:
  - b. Information that would endanger the life of a witness: or
  - c. Information that is prohibited by law from being released.

## **Advice of Rights**

This application is not intended to convey legal advice. Any person who submits an application to the CRU should understand that the convicted individual has the right not to provide information to a government agency, including the District Attorney's Office CRU. However, failure to provide full and open disclosure regarding the convicted defendant's guilt or innocence can cause his/her application to be denied. By submitting an application to the CRU, the convicted defendant is acknowledging that any information is given freely and voluntarily.

The CRU may have need to speak with the attorney who represented the convicted defendant during the process leading to conviction. As a result, the CRU will request a waiver of the attorney-client privilege from the convicted defendant.

#### **Conviction Review Unit Procedure**

Once a case is referred to the CRU, the procedure is as follows:

- 1. At initial contact, the Deputy District Attorney(s) assigned to evaluate conviction review applications will review the request and either:
  - a. Request additional information and proceed to Step 2 after receipt of information;
  - b. Determine that further review is needed and proceed to Step 3; or
  - c. Decline review if no new evidence of actual innocence is present. If review is declined, the convicted defendant will be informed of the reason(s) and will be given an opportunity to respond.
- 2. Review additional information and either:
  - a. Determine that further action is needed and proceed to Step 3; or
  - b. Determine that no further action is needed.
- 3. The Deputy District Attorney(s) will report to the Chief Deputy District Attorney to receive approval to proceed with a full investigation. The CRU Deputy District Attorney(s) will work with a District Attorney's Office Criminal Investigator to complete the new investigation.
- 4. The original file, the new investigation and recommendation of the CRU Deputy District Attorney(s) will be forwarded to the Chief Deputy District Attorney and the District Attorney.
- 5. The District Attorney will make a decision after considering the recommendations of the CRU Deputy District Attorney(s) and the Chief Deputy District Attorney and will base that decision on all available facts.

#### **Victim Notification**

If the CRU decides to proceed with a full investigation, the Office of the District Attorney will notify the victim(s) of the case pursuant to the Alabama Crime Victims' Bill of Rights.

## **Conviction Review Report and Recommendation**

If the CRU conducts a full investigation, the CRU Deputy District Attorney(s) will prepare a report summarizing the case facts, the issues presented by the application, and any investigative findings. The report will contain the CRU's recommendation and be presented to the Chief Deputy District Attorney and the District Attorney. The decision to recommend or not recommend that the convictions be vacated rests with the District Attorney. A recommendation to vacate a conviction will be made to the Alabama Attorney General's Office if the District Attorney no longer has confidence in the conviction because of clear and convincing evidence of actual innocence.

## **Standard for Decision to Recommend Vacating Conviction**

The standard to be used by the Jefferson County District Attorney's Office – Birmingham Division is "clear and convincing evidence" that a defendant was convicted in our jurisdiction of an offense he did not commit.

A recommendation to vacate a conviction will be made if the District Attorney no longer has confidence in the conviction because of clear and convincing evidence of actual innocence.

#### **Notification to Convicted Defendant**

The convicted defendant will be notified in writing of the District Attorney's final decision.

## **Annual Report**

The CRU will maintain records of cases reviewed and the decisions resulting from those reviews in a CRU case management system. The CRU will present an annual report to the District Attorney.

#### **Root Cause Analysis (RCA)**

Understanding that all human systems are fallible and that risks in a system can be minimized, the Office of the District Attorney strives to be a high reliability organization, which engages in self-monitoring and self-improving by incorporating established practices. The Office of the District Attorney shall create and maintain protocols around the conduct of RCA to reduce non-conforming work or departures from policies and procedures revealed during the conviction review process.

## Office Training Resulting from RCA

The CRU will assist with training programs to promote best practices and to reduce non-conforming work or departures from policies and procedures.

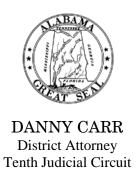
#### Notification of Other Agencies of Needed Changes Revealed by RCA

Criminal justice agencies providing non-conforming work or departing from policies or procedures which is revealed by RCA will be notified. The Office of the District Attorney will offer to provide training for those criminal justice agencies.

## **Policy Statement**

As a general policy, the CRU will not investigate, in the absence of other compelling justification, claims where the convicted defendant knew or should have known the basis of his or her current claim at the time of the conviction, or where the defendant now disavows his or her trial testimony and offers a different theory of innocence. Additionally, absent a compelling showing that a guilty or no contest plea was entered to avoid a more significant sanction, the convicted defendant must have continually maintained his or her innocence in order to merit review.

It is also the policy of the District Attorney's Office and the CRU to preclude any member of this office that participated in the prosecution of a case that is being reviewed from the decision-making process for that case.



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## **CONVICTION REVIEW REQUEST QUESTIONNAIRE FORM**

Convicted Defendant's Name:							
	Last	First	Middle				

#### **INSTRUCTIONS - READ CAREFULLY**

The Jefferson County District Attorney's Office-Birmingham Division may review, upon request, certain convictions that occurred in Jefferson County-Birmingham Division. This questionnaire is considered a person's request to have their claim of innocence reviewed.

IF THE CONVICTION YOU WANT REVIEWED OCCURRED IN ANOTHER COUNTY OR IN A FEDERAL COURT, STOP HERE. CONVICTIONS THAT OCCURRED OUTSIDE OF JEFFERSON COUNTY-BIRMINGHAM DIVISION OR IN A FEDERAL COURT WILL NOT BE ELIGIBILE FOR REVIEW.

IF THE MATTER YOU WANT REVIEWED DID NOT RESULT IN A FELONY CONVICTION, STOP HERE. MATTERS THAT DO NOT RESULT IN A CONVICTION WILL NOT BE ELIGIBLE FOR REVIEW.

IF AN APPEAL, PETITION, OR WRIT IS PENDING IN THIS MATTER, THE CONVICTION REVIEW UNIT WILL NOT CONSIDER THE MATTER UNTIL A DETERMINATION IS MADE BY THE COURT.

IF AN APPEAL, PETITION, OR WRIT IS FILED AFTER A CONVICTION REVIEW IS REQUESTED, THE CONVICTION REVIEW UNIT WILL NOT CONSIDER THE MATTER UNTIL A DETERMINATION IS MADE BY THE COURT.

ALL COMMUNICATION WILL BE IN WRITING. PLEASE DO NOT CALL OR HAVE ANYONE CALL THE DISTRICT ATTORNEY'S OFFICE.

The following information is required for the Conviction Review Unit of the Jefferson County District Attorney's Office-Birmingham Division to consider your request and determine whether the conviction will be reviewed. If any item is not applicable, you must indicate NA.

1.	Convicted Defendant's Date of Birth:						
		Month	Day	Year			
2.	Convicted Defendant's E-mail Address	ss:					
3.	Last Four Digits of Convicted Defend	lant's Soci	al Security Nu	ımber:			
4.	Is the convicted defendant incarcerate If you answered no, <b>stop here</b> . Only reviewed.			-	will be		
5.	Please provide the following informat	tion:					
	a. AIS Number (Alabama Institu	itional Ser	ial Number):_				
	b. Prison where incarcerated:						
6.	. Name and division of the court and case number where the defendant was convicted and sentenced:						
	Name of Court	Division		Case Ni	umber		
7.	Name of Court  Date Convicted:  Month		Day	Case Ni	umber Year		
	Date Convicted:  Month  Date Sentenced:		Day	Case Ni	Year		
8.	Date Convicted:		Day Day				
<ul><li>8.</li><li>9.</li></ul>	Date Convicted:  Month  Date Sentenced:  Month  Sentenced Received:  Expected Release Date:		Day Day		Year Year		
<ul><li>8.</li><li>9.</li><li>10.</li></ul>	Date Convicted:  Month  Date Sentenced:  Month  Sentenced Received:  Expected Release Date:  Month		Day Day		Year		
<ul><li>8.</li><li>9.</li><li>10.</li></ul>	Date Convicted:  Month  Date Sentenced:  Month  Sentenced Received:  Expected Release Date:		Day Day		Year Year		
<ul><li>8.</li><li>9.</li><li>10.</li></ul>	Date Convicted:  Month  Date Sentenced:  Month  Sentenced Received:  Expected Release Date:  Month		Day Day		Year Year		

c. Guilty Plea

a.	Name:			
	Last	First	Mi	iddle
b.	Address:			
	Street	City	State	Zip
c.	Phone Number:			
	Office		Cell	
d.	E-mail Address:			<del> </del>
3. Appel	llate Attorney (represented the	e convicted defendant in	n the appeal):	
a.				
	Last	First	Mi	iddle
b.	Address:			
	Street	City	State	Zip
c.	Phone Number:		C-11	
	Office		Cell	
d.	E-mail Address:			
4. Curre	nt Attorney (if an attorney is a	assisting with this Conv	viction Review Req	uest):
a.	Name:			
	Last	First	Mi	iddle
b.	Address:			
	Street	City	State	Zip
c.	Phone Number:			
c.	Phone Number: Office		Cell	

12. Trial Attorney (represented the convicted defendant in the trial):

15.	Name(s) and contact information for an attorney(s) that represented defendant on any state or federal petitions after the appeal (For exa Corpus):		
16.	Name of court(s), type of petition(s) and docket number(s) for any petitions, filed on behalf of the convicted defendant after the appear or are pending:		
17.	Is the conviction currently being challenged on appeal?	Yes	No
18.	Is there a Post-Conviction Relief Appeal pending (Habeus Corpus, Rule 32)?	Yes	No
19.	Did the convicted defendant give a statement to law enforcement?	Yes	No
20.	If there was a trial, did the convicted defendant testify in the trial?	Yes	No

If the answer to either 17 or 18 is yes, a conviction review will not be done while those court actions are pending.

cur	nat new evidence, if any, exists that was not known at the time of trial? Please provide rent contact information for any witnesses who have knowledge of that evidence. If a need extra space, you may attach additional pages to this request.

Please state the reason should be reviewed. request.	on(s) why you beli If you need extra	eve that you ar space, you may	e innocent and v y attach addition	why the convictional pages to this

3. You may attach exhibits or documents to this questionnaire to assist the Conviction Review U camination of your request.				
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	view Unit inty District Arrington J		ffice-Birminghar rd North	n Division		
			Date:	Month	Day	Year
				Туре	or Print Name	
				Signo	ature of Claiman	t
Confid on beh	entiality Ag	greement, the A	I have read an dvice of Rights, nt, I have the con	and if I am	submitting th	is application
e.	Relationshi	p to Convicted	l Defendant:			
d.	E-mail Add	dress:				
c.	Phone Nun	nber:			Cell	
b.		reet	City		State	Zip
	Last		First		М	iddle
	Name:					

Office-Birmingham Division, you will be contacted and informed of the status of your request.