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MACOMB COUNTY PROSECUTOR'S CONVICTION INTEGRITY UNIT POLICIES

INTRODUCTION

Prosecutors play a special role in the criminal legal system and are constitutionally mandated to seek both truth and justice. And, in Michigan, prosecutors have an explicit ethical duty to remedy wrongful convictions. Specifically, MRPC 3.8(g) states:

“When the prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor’s jurisdiction is innocent of the crime for which the defendant was prosecuted, the prosecutor shall seek to remedy the conviction”.

The following are the Macomb County Conviction Integrity Unit’s (CIU) policies. These policies outline how the CIU will interface with Applicants and operate to fulfill its mandate to seek truth and justice and its Mission to ensure convictions are valid. To do so, the CIU will evaluate an Applicant’s claim of factual innocence and newly discovered evidence to determine if an innocent person was convicted and if so, seek to remedy the conviction under MRPC 3.8.

CIU POLICIES

1. Application Sources:

a. Applicants or Others

Defendant’s or their attorneys, may submit an Application for review by the CIU.¹ The CIU will set up a website and online Application form, and will accept Applications via email, regular mail and electronic submission. Applications will be mailed to potential Applicants upon request.

b. Referral from Appeals

- i. Generally, the CIU will not review cases that are being litigated.

¹ If necessary, others may assist the Defendant in filling out the Application.

- ii. The Chief Assistant Prosecuting Attorney of Appeals, may refer 6.500 motions to the CIU for independent review.
- iii. If in the course of screening the 6.500 motion, the CIU determines that an investigation may be necessary, the CIU will recommend to the Chief APA of Appeals that an extension be requested and will provide an estimate of the time necessary for an investigation. Where applicable, Appeals will file for an adjournment.
- iv. Review of the 6.500 motion by Appeals and any investigation by the CIU shall be wholly independent and will be subject to a conflict wall. Only the Prosecuting Attorney or his Deputy may determine that a discussion with both units is necessary and in the interest of justice.
- v. The Court shall not be notified that the CIU is reviewing a pending case. Such notification may prejudice the case by suggesting to the Court that the Applicant's claims have no merit if the CIU cannot substantiate claims of factual innocence, or discover new evidence to substantiate such claims.

c. Request of an Assistant Prosecuting Attorney (APA)

Because the Prosecutor's Office is committed to avoiding wrongful convictions, APAs may request consultation or review of a case or any part of a case by the CIU, before, during, or after a case.

2. Screening Protocols:

a. Pre Screen

- i. The CIU will pre-screen all Applications to ensure that the prosecution and conviction occurred in Macomb County via the Macomb County Prosecutor's Office. Federal cases, or cases from other states or counties, will not be accepted for investigation
- ii. Applications must be accompanied by a signed Advice of Rights.
- iii. The CIU will determine if the Applicant has exhausted his/her appeals and that there are no other post-conviction proceedings pending such as an MCR 6.500 motion, federal habeas petition, or other post-conviction proceedings. If pending, these cases (except in rare instances) will be declined.

b. Screening Criteria

- i. The Applicant must claim "factual innocence," meaning that he/she did not play any role in the crime at issue.

- ii. New, credible, material information that supports the Applicant's claim of factual innocence must be identified. This is evidence not specifically addressed by any court. The Applicant may know of such evidence or it may be uncovered during a CIU investigation of the case.²
- iii. A guilty plea is eligible for review if factual innocence based on newly discovered evidence can be shown.
- iv. The CIU will not investigate claims that have already been considered by a judge or jury, or raised in post-conviction proceedings such as direct appeal, federal habeas, or MCR 6.500.
- v. The CIU will not investigate claims of legal error such as unfavorable rulings, procedural errors, or sentencing errors. Nor will the CIU investigate claims involving affirmative defense such as self-defense, consent, etc.
- vii. The CIU may also, in its discretion and in discussion with the Prosecuting Attorney or his Deputy, investigate other claims of innocence and/or wrongful conviction in exceptional circumstances where the interests of justice require such action.
- viii. Applicants will not be required to waive attorney-client privilege to apply for CIU review. Should the CIU determine that speaking with trial counsel and/or obtaining the trial file would assist in the review, the Unit will request written authorization for release of information from the Applicant.
- ix. Any conflict that disqualifies the CIU from investigating a case, will be made on a case by case basis. The Applicant will be informed if a conflict exists. The Attorney General's office will be petitioned for possible reassignment of the Application. See MCL 49.160 entitled: "Special Prosecuting Attorney".

c. Outcomes of Screening

- i. Acceptance for further investigation by CIU.
- ii. Rejection in writing.

² An Applicant does not need to identify new evidence in the Application. Applicants are often unable to develop new evidence while incarcerated. A preliminary investigation, therefore, is often needed.

3. Reinvestigation, Outcomes and Discovery:

a. Reinvestigation

- i. If the CIU accepts a case for reinvestigation, the CIU will gather investigative materials from the applicable law enforcement agencies. The trial court, and appellate court case files, and any new evidence discovered or that has been submitted will also be assembled and analyzed. In cases involving codefendants, incentivized witnesses, or where other criminal cases may be implicated, the CIU will collect the files related to those cases as needed.
- ii. Where applicable and on a case-by-case basis, other files to gather may include medical records, Department of Corrections, etc.

b. Outcomes of Reinvestigation

- i. Based on its review of the documentary evidence, the CIU may recommend closing the case. Or, as outlined below, continue the Investigation.
- ii. Such investigation may include, gathering additional information, testing physical evidence, consulting experts, interviewing the Applicant and/or witnesses, or any other means deemed necessary.

c. Discovery Considerations

- i. When a case accepted for review is submitted by a *pro se* Applicant, the CIU shall determine, on a case by case basis, whether the appointment of independent legal representation would promote justice and facilitate review of the case. In such cases, the CIU shall recommend that the Applicant seek legal representation and, if requested, assist by referring the individual to an appropriate innocence project, law school clinic, *pro bono* counsel, or public defender's office. The Applicant may retain private counsel as well.
- ii. The CIU will, to the extent possible, provide updates to Applicants and/or their counsel on the investigation.
- iii. Should forensic testing or expert consultation be required, the CIU will seek to obtain such testing or consultation in a cost-effective and timely manner. Possible resources for such testing and/or consultation are the Michigan Attorney General's Conviction Integrity Unit, and Western Michigan University, Thomas M. Cooley Law School Innocence Project.

- iv. If forensic testing is contemplated or advice of an expert deemed necessary, the Applicant must have the advice of counsel to discuss all implications, or make a written waiver of such representation.
- v. Should an Applicant send materials or information to the CIU, the CIU may share such information and materials provided by an Applicant to the Prosecuting Attorney to discuss any remedy regarding the claim of innocence. Otherwise, the materials and information provided by the Applicant will not be shared unless required by law or the Michigan Rules of Professional Conduct.

4. Victim Advocacy and Media:

a. Crime Victim Rights

- i. The CIU shall comply with all statutes and rules governing victims' rights. The CIU may engage a victim's advocate at any stage in the investigation when doing so may be in the best interest of the investigation and/or the victim.
- ii. Involving a victim's advocate is especially critical prior to the filing of any pleading in a case, including orders to test evidence, or a motion to vacate or otherwise alter the conviction. Prior to any interview of the victim, the victim's advocate must be contacted.

b. Media

At any point during an investigation, if a media outlet is in contact with the CIU, every effort shall be made to contact the victim(s) prior to any statement to the media.

5. Results of Reinvestigation:

a. Rejection

The CIU may decide to reject a case at any time during the investigation. The Applicant and/or the Applicant's attorney will be notified of the rejection in writing.

b. Recommendation for Release or New Trial, etc

- i. At the conclusion of a reinvestigation, the CIU Chief will evaluate the evidence and draft a summary of the CIU's findings and will make a recommendation for remedy (release, new trial, etc), if any, to the elected Prosecuting Attorney. The Prosecuting Attorney will make the final decision as to whether and what kind of remedy to seek.

- ii. If the Prosecutor decides that release, new trial or other relief is warranted, the court will be notified by the appropriate pleading. If a defendant does not have an attorney, one shall be engaged via pro bono counsel, or a public defender may be appointed to represent the defendant. The defendant may also retain private counsel.
- iii. The Prosecuting Attorney will inform prosecutors who handled the underlying case of the outcome of a given review.

6. Release and Re-entry:

a. Release

Where the Prosecuting Attorney determines and a court decides that a conviction should be overturned and a case dismissed based on factual innocence, the CIU will, to the extent possible, assist the exoneree with re-entry into the community.

b. Organizations That May Be Helpful With Re-Entry

- i. MDOC: Available for 2 years after release; may assist with housing, employment, etc. www.michigan.gov/corrections
- ii. Proving Innocence: May provide modest financial assistance to get exoneree basics after release. <http://www.provinginnocence.org>
- iii. After Innocence: Provides assistance with post release health care, social services, public benefits and legal services. jon@after-innocence.org
- iv. National Organization of Exonerations: Detroit based group that assists exonerees post release. natloggofexonerees@outlook.com
- v. Healing Justice: Organization utilizes a multidisciplinary approach to assisting victims and exonerees with the aftermath of wrongful convictions. <http://healingjusticeproject.org>

c. Statutory Resources

The Wrongful Imprisonment Compensation Act, MCL 691.1751 et seq (WICA), allows the wrongly convicted to file a petition against the State of Michigan for financial compensation for years spent in prison.

7. Investigation Security:

a. Underlying Conviction Considerations

Prior prosecutors, police, or others who participated in the underlying conviction or helped to preserve it on appeal may be interviewed as fact witnesses, but they will not have any role in deciding whether the case should be reinvestigated or whether relief should be granted.

b. Investigation Security

All CIU files will be kept in a secured CIU folder, which is accessible only by CIU staff and the Prosecuting Attorney and Deputy Prosecuting Attorney. The Prosecuting Attorney may decide to allow additional access.

8. Education:

a. Training of APA's and Others in the Community

The CIU will provide training to prosecutors and others in the community, on the causes of wrongful convictions, and topics that relate to wrongful convictions.

b. Failure Analysis

- i. Once exoneration is complete, training on what led to the wrongful conviction may be considered in consultation with the Prosecuting Attorney.
- ii. Should the CIU identify systemic errors or patterns resulting in wrongful convictions, it will work with the Prosecutor's Office, relevant law enforcement agencies, the court system, and community stakeholders to identify causes and work to remedy them.

9. Annual Report:

The CIU will issue an annual report detailing the number and nature of cases the Unit reviewed, and the outcomes of investigations.