STATE OF NEW YORK

10622

IN ASSEMBLY

June 10, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Dickens) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing conviction integrity units

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new article 15 to read as follows:

ARTICLE 15

CONVICTION INTEGRITY UNITS

Section 15.10 Short title.
15.15 Definitions.
15.20 Conviction integrity unit.

§ 15.10 Short title.

This act shall be known and may be cited as the "conviction integrity units act."

§ 15.15 Definitions.

The following terms shall have the following meanings:

1. "Bona fide and compelling evidence" means that the evidence presented by the petitioning prosecutor establishes by a preponderance of the evidence that:

(a) the convicted person is significantly likely to be factually innocent;

(b) newly discovered material evidence, if presented at or before the time of trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(c) there exists information discovered or received by the petitioning prosecution agency after a judgment of conviction and sentencing that:

(i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. "Convicted person" means the person whose conviction or sentence is under review.

3. "Conviction integrity unit" means a program established by a prosecution agency to conduct extrajudicial, fact-based reviews of criminal convictions and sentences.

4. "Establishing office" means the prosecution agency establishing a conviction integrity unit.

5. "Legitimacy" means consistent with the United States and New York constitutions, federal and state law, and all rules and principles of a fair and just legal system.

6. "Petitioning prosecutor" means the prosecutor who files a civil petition seeking relief under this part.

7. "Prosecution agency" means a county attorney, district attorney, the office of the attorney general, or other prosecution agency as part of a superior or local criminal court pursuant to article ten of this chapter.

8. "Significant" or "significantly likely," for purposes of this part, means to a large degree or of a noticeably or measurably large amount.

§ 15.20 Conviction integrity unit.

1. A prosecution agency may establish a conviction integrity unit to investigate:

(a) plausible allegations of factual innocence;

(b) newly discovered material evidence; or

(c) information discovered or received by the prosecution agency after trial, judgment of conviction, or sentencing that:

(i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

2. A conviction integrity unit may review a conviction or sentence if the conviction and sentence:

(a) (i) occurred within the judicial district of the establishing office; and

(ii) was prosecuted by the establishing office or another prosecution agency under the direct control and supervision of the establishing office; or

(b) (i) occurred within a different judicial district or was prosecuted by another prosecution agency not under the direct control and supervision of the establishing office;

(ii) (A) the prosecution agency that prosecuted the case has not established a conviction integrity unit; or

(B) the prosecution agency that prosecuted the case has established a conviction integrity unit but determines that review of the conviction or sentence should be conducted by a conviction integrity unit established by another prosecution agency; and

(iii) the district attorney, county attorney, attorney general, or other prosecutor that directly oversees and supervises the requesting agency requests the review.

3. (a) An individual convicted of a crime may submit an application to a conviction integrity unit requesting review of the individual's conviction or sentence as provided in subdivision two of this section.

(b) If a convicted person submits an application for review of a conviction that resulted in a sentence of death, and the application is submitted to any conviction integrity unit other than a conviction integrity unit established by the office of the attorney general, the

conviction integrity unit that receives the application shall forward copies of the application to the office of the attorney general and to the convicted person's current counsel of record.

(c) If a conviction integrity unit other than a conviction integrity unit established by the office of the attorney general, undertakes any review of a conviction that resulted in a sentence of death, the conviction integrity unit shall send the findings and recommendations promptly upon completion to the office of the attorney general and to the convicted person's current counsel of record.

(d) If a conviction integrity unit other than a conviction integrity unit established by the office of the attorney general discovers or receives any information relevant to a conviction that resulted in a sentence of death, the conviction integrity unit that discovers or receives the information shall promptly notify the office of the attorney general and the convicted person's current counsel of record.

4. The form of the application for review and its contents shall be determined by the establishing office.

5. Once the review is complete, the conviction integrity unit shall present its findings and recommendations to:

(a) the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office; or

(b) if the review was requested by another prosecution agency under paragraph (b) of subdivision two of this section, the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the prosecution agency that requested such review.

6. The district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested review under paragraph (b) of subdivision two of this section, is not required to accept or follow the findings and recommendations of the conviction integrity unit.

7. The district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested review under paragraph (b) of subdivision two of this section, may commence a civil proceeding by filing a petition in the superior court with jurisdiction over the case seeking a court order to:

(a) vacate the conviction;

(b) vacate the conviction and order a new trial;

(c) vacate the sentence and order further proceedings; or

(d) modify the conviction or sentence.

8. The decision to petition the superior court under subdivision seven of this section is solely within the discretion of the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested the review under paragraph (b) of subdivision two of this section.

9. Except as otherwise provided in this part, a petition filed with the superior court shall comply with the provisions of this chapter, and shall include the number of the underlying criminal case that resulted in the judgment of conviction or sentence in connection with which the petitioning prosecutor seeks relief from the court.

10. If a petition is filed under subdivision seven of this section the petitioning prosecutor shall promptly:

(a) notify the convicted person, in writing, that the petition has been filed and provide the convicted person with a copy of the petition and all other documents filed in support of the petition;

(b) notify the victim or the victim's representative, if any, in writing, that a petition has been filed, provide the victim or the victim's representative, if any, with a copy of the petition and all other documents filed in support, and advise the victim or the victim's representative of the victim's right to be heard by the court under subdivision thirteen of this section; and

(c) if the underlying conviction was a felony offense, notify the office of the attorney general, in writing, that the petition has been filed and provide the attorney general with a copy of the petition and all other documents filed in support.

11. If a petition is filed pursuant to subdivision seven of this section, the office of the attorney general has standing to intervene as of right and to participate as a party in the superior court proceeding if:

(a) the convicted person submitted an application under paragraph (a) of subdivision three of this section requesting review of the person's conviction or sentence by the conviction integrity unit;

(b) the conviction integrity unit undertook review of the convicted person's conviction or sentence as a result of the convicted person's application; and

(c) the office of the attorney general reasonably believes the relief requested by the petitioning prosecutor would be barred if the petition were filed or the relief were requested directly by the convicted person.

12. Upon review of the petition, the superior court may:

(a) dismiss the petition as provided in subdivision fourteen of this section;

(b) require that additional evidence be submitted;

(c) conduct an evidentiary hearing; or

(d) grant the relief requested by the petitioning prosecution agency, or any other relief expressly permitted by this part, if by a preponderance of the evidence the petition presents:

(i) bona fide and compelling evidence that the convicted person is significantly likely to be factually innocent;

(ii) bona fide and compelling newly discovered material evidence; or

(iii) bona fide and compelling information discovered or received by the petitioning prosecution agency after the trial, judgment of conviction, and sentencing that:

(A) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(B) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

13. If the court requests additional information or holds an evidentiary hearing, the convicted person, and the victim or the victim's representative, if any, and, if notice to the office of the attorney general was required under paragraph (c) of subdivision ten of this section, the attorney general, shall have the right to be heard by the superior court, through written submissions or testimony.

14. A superior court may dismiss a petition without a hearing if the court finds by a preponderance of the evidence that the petition fails to assert grounds on which relief may be granted.

15. In granting relief under this part, the superior court may:

(a) vacate the conviction;

(b) vacate the conviction and order a new trial;

(c) vacate the sentence and order further proceedings; or

(d) modify the conviction or sentence.

16. The superior court shall state on the record the reasons for the court's decision.

17. (a) An appeal may be taken by the petitioning prosecutor from a final order entered under this part.

(b) If notice to the office of the attorney general was required under paragraph (c) of subdivision ten of this section, the petitioning prosecutor shall consult with the attorney general prior to filing an appeal and, if an appeal is filed by the petitioning prosecutor, the office of the attorney general has standing to intervene as of right and to participate as a party in all appellate proceedings.

18. Attorney fees, costs, orders of restitution, or any other form of monetary relief are not available under this article.

19. Nothing in this section:

(a) precludes a conviction integrity unit from reviewing a conviction or sentence based on information discovered or received directly by the establishing office or received from an individual other than the convicted individual;

(b) prohibits an establishing office from adopting additional written criteria for the convictions or sentences the establishing office will review or will decline to review; or

(c) requires a conviction integrity unit to review any conviction or sentence.

20. Nothing in this article:

(a) including review by a conviction integrity unit or the filing of a petition under subdivision seven of this section, may operate to stay any other proceeding, or to extend, toll, or otherwise alter any other deadline or limitation period under the provisions of this chapter;

(b) may revive a claim or cause of action or implicate a defense otherwise available to the state under any other provision of this chapter, or any other applicable provision of law; or

(c) confers standing or creates a private right of action for a convicted person or victim of a convicted person.

21. Relief under this section does not exclude any other available remedy.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.