

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 Assem-
bly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new arti-
2 cle 15 to read as follows:

ARTICLE 15

CONVICTION INTEGRITY UNITS

5 Section 15.10 Short title.

6 15.15 Definitions.

7 15.20 Conviction integrity unit.

8 § 15.10 Short title.

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

11 § 15.15 Definitions.

12 The following terms shall have the following meanings:

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

16 (a) the convicted person is significantly likely to be factually inno-
17 cent;

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

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

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

27 (ii) significantly calls into question the legitimacy of the jury
28 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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1 2. "Convicted person" means the person whose conviction or sentence is
2 under review.

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

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

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

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

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

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

19 § 15.20 Conviction integrity unit.

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

22 (a) plausible allegations of factual innocence;

23 (b) newly discovered material evidence; or

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

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

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

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

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

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

38 (b) (i) occurred within a different judicial district or was prose-
39 cuted by another prosecution agency not under the direct control and
40 supervision of the establishing office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (a) vacate the conviction;

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

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

41 (d) modify the conviction or sentence.

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

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

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

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

1 (b) notify the victim or the victim's representative, if any, in writ-
2 ing, that a petition has been filed, provide the victim or the victim's
3 representative, if any, with a copy of the petition and all other docu-
4 ments filed in support, and advise the victim or the victim's represen-
5 tative of the victim's right to be heard by the court under subdivision
6 thirteen of this section; and

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

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

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

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

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

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

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

28 (b) require that additional evidence be submitted;

29 (c) conduct an evidentiary hearing; or

30 (d) grant the relief requested by the petitioning prosecution agency,
31 or any other relief expressly permitted by this part, if by a preponder-
32 ance of the evidence the petition presents:

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

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

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

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

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

44 13. If the court requests additional information or holds an evidenti-
45 ary hearing, the convicted person, and the victim or the victim's repre-
46 sentative, if any, and, if notice to the office of the attorney general
47 was required under paragraph (c) of subdivision ten of this section, the
48 attorney general, shall have the right to be heard by the superior
49 court, through written submissions or testimony.

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

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

54 (a) vacate the conviction;

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

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

1 (d) modify the conviction or sentence.

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

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

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

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

14 19. Nothing in this section:

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

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

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

24 20. Nothing in this article:

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

29 (b) may revive a claim or cause of action or implicate a defense
30 otherwise available to the state under any other provision of this chap-
31 ter, or any other applicable provision of law; or

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

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

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