

# STATE OF NEW YORK

5908

2023-2024 Regular Sessions

## IN SENATE

March 22, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed 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:

1 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:

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

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1 (i) if disclosed to the convicted person prior to trial, judgment of  
2 conviction, or sentencing, would have resulted in a significant proba-  
3 bility that the result would have been different; or  
4 (ii) significantly calls into question the legitimacy of the jury  
5 verdict, judgment of conviction, or sentence.

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

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

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

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

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

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

22 8. "Significant" or "significantly likely," for purposes of this part,  
23 means to a large degree or of a noticeably or measurably large amount.  
24 § 15.20 Conviction integrity unit.

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

27 (a) plausible allegations of factual innocence;  
28 (b) newly discovered material evidence; or  
29 (c) information discovered or received by the prosecution agency after  
30 trial, judgment of conviction, or sentencing that:

31 (i) if disclosed to the convicted person prior to trial, judgment of  
32 conviction, or sentencing, would have resulted in a significant proba-  
33 bility that the result would have been different; or  
34 (ii) significantly calls into question the legitimacy of the jury  
35 verdict, judgment of conviction, or sentence.

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

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

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

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

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

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

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

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

4 (b) If a convicted person submits an application for review of a  
5 conviction that resulted in a sentence of death, and the application is  
6 submitted to any conviction integrity unit other than a conviction  
7 integrity unit established by the office of the attorney general, the  
8 conviction integrity unit that receives the application shall forward  
9 copies of the application to the office of the attorney general and to  
10 the convicted person's current counsel of record.

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

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

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

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

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

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

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

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

45 (a) vacate the conviction;

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

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

48 (d) modify the conviction or sentence.

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

54 9. Except as otherwise provided in this part, a petition filed with  
55 the superior court shall comply with the provisions of this chapter, and  
56 shall include the number of the underlying criminal case that resulted

1 in the judgment of conviction or sentence in connection with which the  
2 petitioning prosecutor seeks relief from the court.

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

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

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

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

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

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

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

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

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

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

35 (b) require that additional evidence be submitted;

36 (c) conduct an evidentiary hearing; or

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

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

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

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

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

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

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

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

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

5 (a) vacate the conviction;

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

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

8 (d) modify the conviction or sentence.

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

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

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

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

21 19. Nothing in this section:

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

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

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

31 20. Nothing in this article:

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

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

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

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

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