Memorandum

To:
Conviction Review Unit

From:
George Brauchler, District Attorney

Subject:
CRU procedures

Date:
January 4, 2018

I. OVERVIEW

The Office of the District Attorney establishes a Conviction Review Unit (CRU) for the review of convicted offenders’ extrajudicial post-conviction claims of actual innocence.

The District Attorney will appoint a CRU Coordinator. The CRU Coordinator shall be an experienced prosecutor working at the District Attorney’s Office.

Under the direct supervision of District Attorney George Brauchler, the CRU Coordinator will work collaboratively with the members of the CRU to organize the work and will lead all investigations of meaningful claims of actual innocence where the pursuit of truth and justice requires the CRU’s review.

The District Attorney will solicit volunteer members for the CRU. Volunteers must have substantial experience with criminal investigations or the criminal justice system, but shall not be currently employed in such capacity. Volunteers will be limited to former prosecutors, former judges, former police investigators, and former criminal defense attorneys. Volunteers will be appointed to the CRU at the sole discretion of the District Attorney, and may be relieved of their duties at any time and without prior notice at the sole discretion of the District Attorney. Such volunteer members shall receive no compensation, although the District Attorney, at the District Attorney’s sole discretion, may pay for expenses incurred in the course of their volunteer work.

The District Attorney and the CRU are responsible for the performance of work that, for the most part, is highly confidential, private, and sensitive in nature. The District Attorney and the CRU expressly prohibit all members of the CRU from the unauthorized release or disclosure of confidential information.

All CRU members must immediately disclose to the CRU Coordinator any potential or actual conflict of interest. Following the disclosure and confirmation of a conflict of interest, the member may be recused from participating in the review, investigative process, and determination of the merits concerning the case where such conflict of interest exists.
II. CRU REQUIREMENTS AND INTAKE PROCESS

Notwithstanding other statutory remedies, a criminal defendant may only submit an application to the CRU based on a claim of actual innocence as defined below. The application must comply with the requirements set forth herein, and will only be accepted if the offender is currently incarcerated or under community supervision for the index offense.

The following types of case submissions will be accepted and reviewed:

A. Claims of actual innocence

1. All requests must be submitted in writing. In order for the Conviction Review Unit to carry out a preliminary review of a conviction, the following prerequisites must be met:

   a. The conviction occurred in the District Court of Arapahoe, Douglas, Elbert or Lincoln Counties;

   b. The conviction must be the result of a trial verdict of guilty (either by a jury trial or a court trial), and not the result of a guilty plea or no contest plea;

   c. The applicant must currently be a living person serving a sentence of imprisonment or under community supervision for the offense;

   d. There must be a claim of actual innocence, and not a claim based on a legal issue (whether or not previously raised and/or could have been raised at the trial or during the appellate process);

   e. Credible evidence of innocence must exist;

   f. The claim must not be frivolous; and

   g. The applicant must sign a written “limited” waiver of certain procedural safeguards and privileges (See Consent and Waiver form), agree to cooperate with the CRU, and agree to provide full disclosure regarding all requirements of the CRU.

2. The request shall include the applicant’s name, case number, an explanation of the claim and evidence of innocence and, if applicable, a recommendation as to how the CRU can further investigate applicant’s claim.

3. The CRU will not review strictly legal challenges such as procedural errors or rulings unless there is an obvious material error or ruling that necessitates such review in light of an accompanying credible claim.
of actual innocence.

4. An applicant or applicant’s counsel must submit a written application to the CRU. If the applicant is represented by counsel, all communication will be through the applicant’s attorney, unless there is an express written waiver by both counsel and the applicant.

III. CONVICTION REVIEW UNIT REVIEW PROCESS

A. Initial Review

After receiving a written request, the CRU Coordinator will assign the request a case number and index the request.

The CRU Coordinator will review each request and supporting documentation. If a request that is received does not include the necessary information for review, the CRU Coordinator will return the application to the requesting party for completion prior to reviewing the claim.

B. Accepted Claims and Rejected Claims

If the CRU Coordinator determines that the prerequisite criteria are not met, the applicant and/or legal representative will be notified that no further action will be taken.

If the applicant is determined to have submitted a claim that qualifies for review, the applicant will be notified the case is under review, and the CRU Coordinator will present the case to the CRU for review.

A victim advocate from the District Attorney’s office will provide Victim Rights Act notification in accordance with statutory requirements.

District Attorney George Brauchler retains final decision-making authority on accepted and rejected claims for review, but under no circumstance shall any applicant be advised they may appeal to the District Attorney directly.

C. Review Process for Accepted Cases

When the CRU accepts a case for review, the CRU Coordinator will present the application to the CRU. After the claim is presented, the CRU coordinator, the CRU, and any other persons designated by the District Attorney will discuss how to proceed with investigating the claim of innocence and related evidence.

The investigation procedure is unique for each case and may include without limitation, in the sole discretion of the CRU, consideration of the following:

A complete review of the case file, appellate record, post-conviction motions and all
relevant evidence;

Information from a cooperating defendant, or the defendant’s counsel,

Information from cooperating witnesses, and/or confidential informants;

Brady/Giglio material (Brady v. Maryland (1963) 373 U.S. 83, and its progeny, and Giglio v. United States (1971), 405 U.S. 150);

Any recantation evidence;

Transcripts of proceedings;

The defense attorney’s file, where consent is given in writing;

Any other relevant information.

D. Records shall be kept by the CRU throughout the investigation.

If at any point during the review and investigation process, it is determined that the case does not meet the criteria for an application, the CRU may choose to take no further action on the claim, or continue the review at the sole discretion of the CRU. The applicant will be notified if the CRU decides to take no further action on their claim.

If, the CRU determines that the case meets the criteria of an actual claim of innocence, an in-depth review and re-investigation may be conducted.

Records created or obtained during an investigation pursuant to this review process are not subject to the discovery requirements set forth in the Rules of Criminal Procedure or standards set forth under Brady and Giglio

E. In-Depth Review and Re-Investigation

1. If an accepted case is reviewed and meets the criteria for a claim of actual innocence, the CRU Coordinator will designate a CRU member or members to review the innocence claim as soon as practicable. The designated CRU member will prepare for the CRU a memorandum outlining the merits of the claim and all pertinent information warranting further review or investigation.

   a. The CRU Coordinator will supervise the review of the cases that warrant further consideration of the merits.

   b. A thorough review will be given to all such claims, which may include but shall not be limited to the review of: DNA test results (by a certified laboratory) that exonerate and/or incriminate or tends to incriminate a person other than the applicant; interviews of other
persons claiming responsibility for committing the crime(s); victim and/or witness recantations; misidentification of the applicant; verifiably untruthful statements made by an informant/confidential informant/cooperating witness; co-defendant statements; a credible alibi that existed at the time of the trial but was not introduced through no fault of the applicant; and any competent evidence that bears on innocence.

2. Many post-conviction claims of actual innocence may include reviewing the entire case file, reviewing appellate files and briefs, or addressing any open issues with the Deputy District Attorney and defense attorney who handled the case. Other claims may require a more thorough examination including, but not limited to, further case investigation, interviews, a review of defense counsel files, additional scientific testing, and a review of any existing or new evidence. Each case will be carefully and independently weighed and reviewed on its own merits. Based upon a thorough and completed investigation, the CRU will make a final recommendation, which may be drafted by the CRU Coordinator working with the CRU. That recommendation may include without limitation the following findings:

   a. A valid claim of actual innocence is present.

   b. A valid claim is not present.

   c. More information and/or investigation is needed.

3. If a majority of the members of the CRU determine that a valid claim of innocence is present, the memorandum, the vote, and the recommendation to grant the applicant’s claim shall be presented to the District Attorney.

4. Dissenting CRU members may include an individual memo to the District Attorney outlining their positions.

5. The District Attorney may appoint one or more prosecutors in the District Attorney’s Office to review the findings of the CRU and present their opinions prior to review by the District Attorney.

6. If the District Attorney agrees with the CRU’s recommendation that a valid claim of innocence is present, the District Attorney will receive input from the CRU and determine, in the District Attorney’s sole discretion, what relief to grant, which may include without limitation a motion filed with the Court by the District Attorney.

7. In the event that the District Attorney disagrees with the CRU’s recommendation that a valid claim of innocence is present, the CRU may ask the District Attorney
to re-evaluate the evidence and reconsider the applicant’s claim. The CRU’s request for reconsideration must be in writing and must outline the specific reasons warranting the District Attorney’s reconsideration. It is in the District Attorney’s sole discretion to choose whether or not to reconsider the claim.

8. The District Attorney will make the final decision after re-evaluating the evidence and reconsidering applicant’s claim.

9. The CRU Coordinator, with the assistance of a District Attorney victim-witness advocate, will make every reasonable effort to notify and receive input from the victim(s), his or her family member(s), or their representative, if applicable, prior to a determination by the District Attorney that a valid claim of actual innocence is present.

10. The final decision will be communicated, in writing, to the applicant or to his or her legal representative if represented by counsel. The duration of the process cannot be predicted due to the complexities and extensive nature of the review, and investigative process involved. Each claim will be carefully and thoroughly reviewed and, when necessary, re-investigated. Each case will be assessed based on their unique case-by-case facts and evidence of the claim.

11. Each case shall be maintained according to the following procedure:

   a. The CRU shall create and maintain a tracking system that will record the name of the applicant and the ultimate outcome of the claim;

   b. The District Attorney will maintain completed files pursuant to the 18th Judicial District Record Retention Policy.

F. Final Determination

1. At all times during the CRU’s review process, the District Attorney for the 18th Judicial District has complete discretion and authority to review an applicant’s claim and accept or reject the claim based upon the District Attorney’s review of all relevant evidence. The District Attorney’s decision on the merits of the claim is final and is not subject to further review by anyone or any entity, including without limitation appellate review by any court or administrative agency.