

# **EXTERNAL REVIEW OF MINNESOTA ATTORNEY GENERAL'S CONVICTION INTEGRITY UNIT**

Findings and Recommendations

**Patricia Cummings, Esq.**

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# EXTERNAL REVIEW OF MINNESOTA ATTORNEY GENERAL'S CONVICTION REVIEW UNIT: FINDINGS AND RECOMMENDATIONS<sup>1</sup>

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## INTRODUCTION

The National Registry of Exonerations (NRE) reports that over 3,600 wrongfully convicted people have been exonerated nationwide since 1989.<sup>3</sup>

In Minnesota, local publicity surrounding a possible wrongful conviction in a high-profile case raised awareness in 2020 of the need for a specialized unit in a prosecutor's office dedicated to reviewing past Minnesota convictions to determine whether innocent people have been incarcerated for crimes they did not commit. According to the NRE, such specialized units, often referred to as Conviction Integrity Units (CIUs) or Conviction Review Units (CRUs), exist in at least 100 prosecutor's offices throughout the country.<sup>4</sup>

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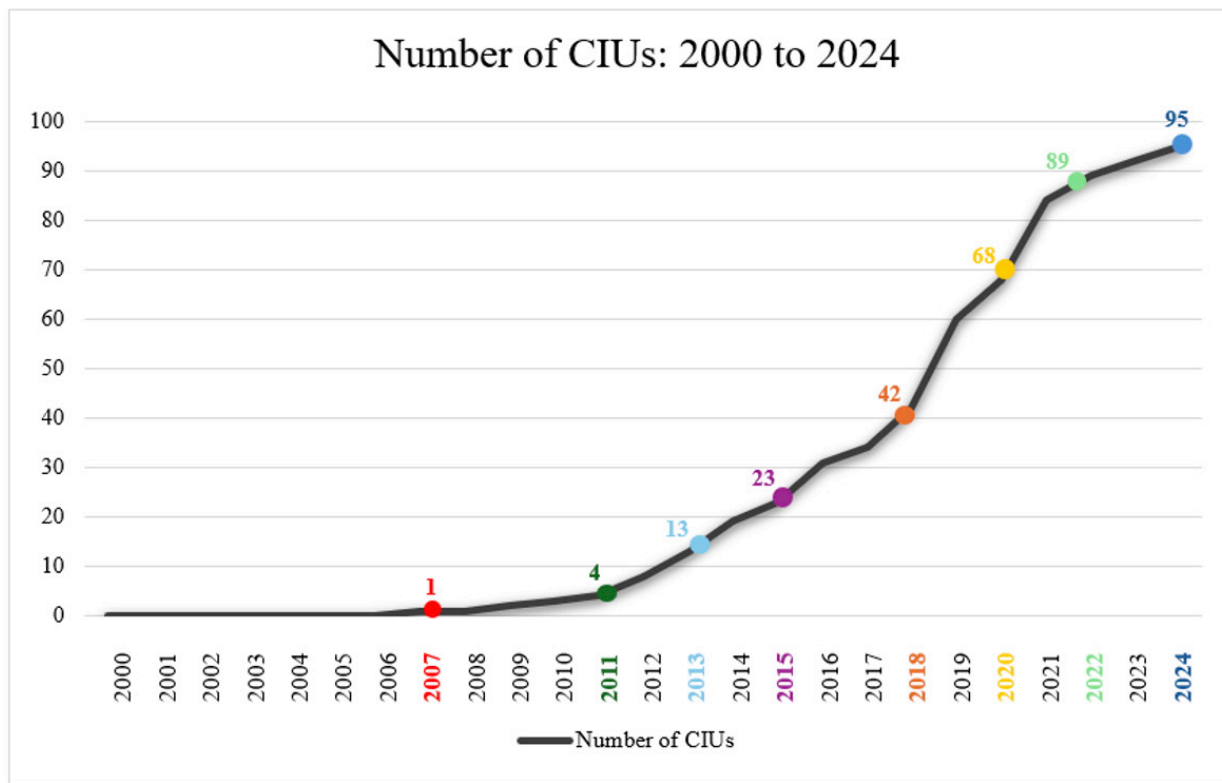
1 This project was initiated at the request of the Advisory Board to the Conviction Review Unit (CRU) for the Minnesota Attorney General's Office. The report reflects an evaluation of the CRU only and is specific to Minnesota law and the author's opinions.

2 Patricia Cummings is a Research Scholar for the Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law and a consultant for Conviction Integrity Units throughout the country. She has practiced criminal and juvenile law for over 30 years and is board-certified in both. She served as a defense lawyer and prosecutor as well as a juvenile judge, policy specialist, and teacher. Between her time leading first the Dallas County CIU and then the Philadelphia CIU, under District Attorney Larry Krasner, she helped secure the exoneration of over 50 people. In addition, she served as Director of Policy and Litigation for the Innocence Project of Texas and General Counsel for the Texas Criminal Defense Lawyers Association. After having served as a pro bono member of Michael Morton's legal team in Texas, Patricia was instrumental in securing the passage of the Michael Morton Act which led to major criminal discovery reform for the state in 2013.

3 The NRE is a project of the University of California Irvine Newkirk Center for Science & Society, University of Michigan Law School & Michigan State University College of Law, whose mission is to provide comprehensive information on exonerations of innocent criminal defendants to prevent future false convictions by learning from past errors. According to the NRE, in general "an **exoneration** occurs when a person who has been convicted of a crime is officially cleared after new evidence of innocence becomes available." See National Registry of Exonerations, *Glossary*, <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited October 21, 2024).

4 The various units are housed in prosecutor offices at either the county, district, state, or federal level. All units typically have the power (jurisdiction) to review past convictions originally prosecuted by their office. However, the jurisdiction of statewide units is typically narrow and limited because in most cases criminal prosecutions, and any resulting postconviction litigation, are initiated by an Attorney General only upon request of a local prosecutor.

Figure 1. Number of CIUs



Source: National Registry of Exonerations as of September 30, 2024. 5 additional CIUs are in operation but are not included in the chart due to an unknown founding year.

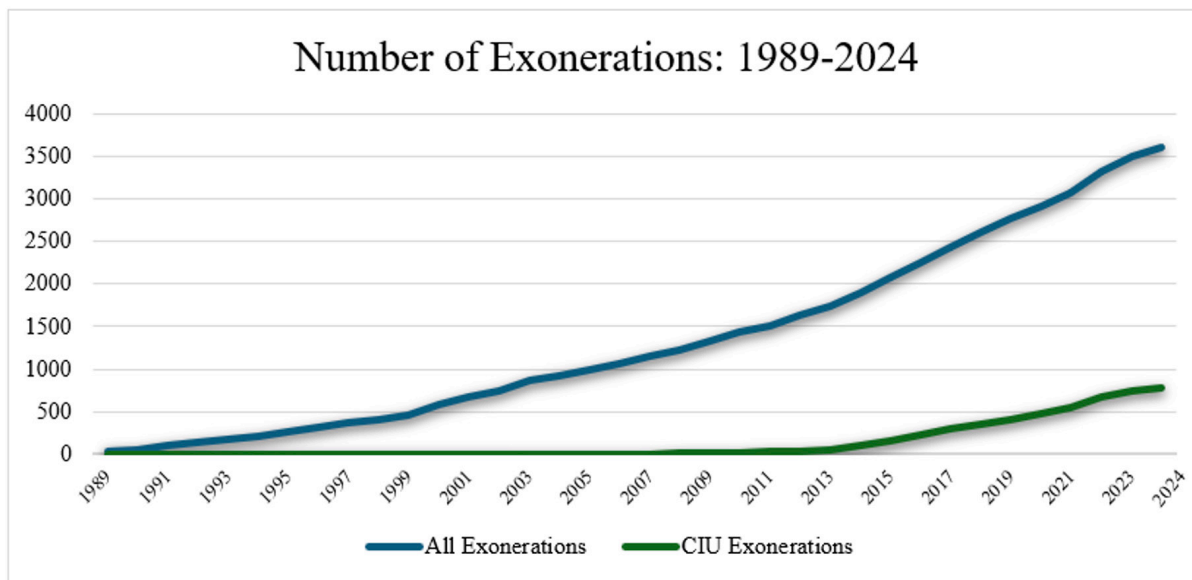
\*There were 2 statewide CIUs by the end of 2019 and 6 by the end of 2021.

As the figure on the next page shows, the role of CIUs/CRUs in securing exonerations in the United States has grown over time. In 2023 alone, CIU/CRUs helped secure 40% (60/153) of recorded exonerations.<sup>5</sup> However, as of 2020, Minnesota did not have any CIUs/CRUs and, as of September 30, 2024, when research for this report was completed, there had been no reported CIU/CRU exonerations in the entire state of Minnesota.<sup>6</sup>

5 NAT'L REGISTRY OF EXONERATIONS, *2023 Annual Report* (Mar. 18, 2024), <https://www.law.umich.edu/special/exoneration/Documents/2023%20Annual%20Report.pdf>.

6 *Conviction Integrity Units*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx> (last visited Sept. 30, 2024).

Figure 2. Number of Exonerations



Source: National Registry of Exonerations as of September 30, 2024. Statewide units are responsible for 8 exonerations (NJ: 2 & MI: 6)

Given that CIUs/CRUs did not exist until almost fourteen years after 1989—the earliest year included in the NRE’s exoneration count—the NRE has concluded that at least some of the units have accomplished a great deal in a short period of time.<sup>7</sup> And given the numerous procedural, structural, and cultural barriers to overturning past convictions, playing a role in just one exoneration is a huge accomplishment for a CIU/CRU.<sup>8</sup>

In Minnesota, awareness regarding the fallibility of the criminal legal system ultimately led to action in 2020. United States Senator Amy Klobuchar asked the top local prosecutor in Minneapolis to initiate an independent investigation into the case of Myon Burrell, a black teen sentenced to life in prison after an 11-year-old black girl was killed by a stray bullet.<sup>9</sup>

However, Hennepin County Attorney Mike Freeman, the elected prosecutor at the time, did not heed the call for action. Instead, two other criminal justice agencies stepped up—the first considered whether an injustice had occurred in the Burrell case and the second considered whether prosecutors could indeed play a role in identifying and rectifying injustices.

In the first instance, the Minnesota Board of Pardons granted Burrell a clemency hearing which ultimately led to the commutation of his sentence and his release from prison.<sup>10</sup>

7 *Id.*

8 See Daniel S. Medwed, *BARRED: WHY THE INNOCENT CAN’T GET OUT OF PRISON* (2022). In response to the question posed in the title of his book—how it is possible that a prisoner with a credible claim of innocence could have no legal recourse for relief—Medwed provides a blunt and sober answer in his introductory chapter: “In short, the system values finality and efficiency over accuracy.” *Id.* at 9.

9 Klobuchar was the elected Hennepin County Attorney when Burrell was convicted. Her letter to then-serving County Attorney Mike Freeman can be found at <https://mc-379cbd4e-be3f-43d7-8383-5433-cdn-endpoint.azureedge.net/-/media/cao/news/2020/jan-mar/klobuchar-letter-to-freeman-3-6-20.pdf?rev=61255132b7804511ac1ef93bc4081b9d&hash=8027CA1DEFc8959F396497A289D19EB8>. In the letter, Senator Klobuchar wrote, “[a]s you are aware, significant concerns about the evidence and police investigation have been raised by a press investigation, by members of the Hennepin County community, and by Myon’s family.”

10 Certificate of Commutation from Minnesota Board of Pardons, *State v. Burrell*, Case No. 27-CR-02-08794 (Minn. Dist. Ct. Dec. 28, 2020), <https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12949-TT/TT-OtherBurrellCommutation.pdf>. See also Ricardo

That same year, in the second instance, the top prosecutor for the State of Minnesota, Attorney General Keith Ellison, worked with the Great North Innocence Project,<sup>11</sup> to secure a federal grant to create the Attorney General's CRU—a statewide unit housed in the Attorney General's Office (AG's Office).<sup>12</sup> In January 2021, that announcement was followed by the formation of a 16-member advisory board comprised of criminal justice experts, stakeholders, and community advocates tasked with advising the Attorney General on the establishment, functioning, and staffing of the CRU.<sup>13</sup> In April of that same year, Carrie Sperling, a former law professor and defense attorney licensed to practice law since 1992, was hired as the director to lead the unit.<sup>14</sup> Four months later, in August 2021, the unit officially started accepting applications for review.<sup>15</sup>

From April 2021 (the date when the unit began operations) to September 30, 2024, the CRU received a total of 1,151 applications to review cases. For context, this number of applications represents almost 14% of the adult inmate population for the entire state of Minnesota.<sup>16</sup>

Almost 18 months after it started accepting applications for review the unit announced it was recommending relief in its first case, which it had agreed to prioritize because it involved forensic evidence previously called into question.<sup>17</sup>

As of the date of this Report, the CRU has completed two other thorough investigations in which it filed extensive written reports recommending postconviction relief—one in Hennepin County for Edgar Barrientos-Quintana, and the other in Aitkin County for Brian Pippitt.<sup>18</sup> Unlike the first case referenced above, both of these cases involve a recommendation for an exoneration<sup>19</sup> rather than a case correction. The Hennepin County Attorney agreed with the AG's Office to support relief for Mr. Barrientos-Quintana; the court

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Lopez, *Minnesota Pardons Board grants Myon Burrell a commutation on his life sentence for killing of 11-year-old girl*, MN. REFORMER (Dec. 15, 2020), <https://minnesotareformer.com/2020/12/15/minnesota-pardons-board-grants-myon-burrell-a-commutation-on-his-life-sentence-for-killing-of-11-year-old-girl/>.

11 At that time, the non-profit organization operated under the name of the Innocence Project of Minnesota. See <https://www.greatnorthinnocenceproject.org/>.

12 Office of MN Atty. Gen. Keith Ellison, Press Release, *Minnesota awarded federal grant to review legal cases for people believed to be innocent*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON (Oct. 8, 2020), [https://www.ag.state.mn.us/Office/Communications/2020/10/08\\_ConvictionReviewUnit.asp](https://www.ag.state.mn.us/Office/Communications/2020/10/08_ConvictionReviewUnit.asp).

13 Office of MN Atty. Gen. Keith Ellison, *Conviction Review Unit – Advisory Board*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON, <https://www.ag.state.mn.us/Office/CRU/AdvisoryBoard.asp>.

14 Kevin Featherly, *Q&A: Keith Ellison and Carrie Sperling: AG, new Conviction Review Unit's director will work to uncover wrongful convictions*, SESSION/LAW (Aug. 4, 2021), <https://sessionlaw.substack.com/p/q-and-a-keith-ellison-and-carrie>.

15 Office of MN Att'y Gen. Keith Ellison, *Conviction Review Unit*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON, <https://www.ag.state.mn.us/Office/CRU/>.

16 The most current published statistics report that as of July 1, 2024, there were 8,306 adults incarcerated in Minnesota state prisons. See MN Dept. of Corrections, *Adult Prison Population Summary*, MINNESOTA DEPARTMENT OF CORRECTIONS (July 1, 2024), [https://mn.gov/doc/assets/AdultPrisonPopulationSummary07012024\\_tcm1089-640707.pdf](https://mn.gov/doc/assets/AdultPrisonPopulationSummary07012024_tcm1089-640707.pdf).

17 The CRU recommended granting relief to Thomas Rhodes who was convicted in 1998 for first- and second-degree murder. Mr. Rhodes' release marked the first person freed from incarceration because of an investigation and case review by the CRU. However, the release was not an exoneration but was instead a "case correction" where an agreement was reached to allow Rhodes to plead guilty to a lesser charge of manslaughter resulting in a "time served" sentence. See Office of MN Atty. Gen. Keith Ellison, Press Release, *Conviction Review Unit Vacates First and Second-Degree Murder Sentence; Thomas Rhodes Release from Prison after nearly 25 years*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON (Jan. 13, 2023), [https://www.ag.state.mn.us/Office/Communications/2023/01/13\\_Rhodes.asp](https://www.ag.state.mn.us/Office/Communications/2023/01/13_Rhodes.asp).

By policy, the CRU writes an extensive report on each case in which relief is supported or recommended. Those reports are publicly posted on the Attorney General's website. The report for the Rhodes case, *CRU Report regarding the 1998 conviction of Thomas Rhodes* (Jan. 11, 2023), is available at: <https://www.ag.state.mn.us/Office/CRU/>.

18 See *CRU Report regarding the 2001 conviction of Brian Pippitt* (May 28, 2024); *CRU Report regarding the 2009 conviction of Edgar Barrientos-Quintana* (July 29, 2024). Both are available through the Attorney General's Office website at <https://www.ag.state.mn.us/Office/CRU/>.

19 Unlike the NRE, the Minnesota CRU does not explicitly define exoneration anywhere in its policies nor does it indicate reliance on any specific definition provided by Minnesota law or caselaw.

vacated his conviction, and he was released on November 6, 2024, after serving 16 years in prison.<sup>20</sup> The Aitkin County Attorney, by contrast, rejected the AG's recommendation and as of the date of this Report is opposing relief in court.<sup>21</sup>

Experts in the field of innocence and conviction integrity review caution that the success of a CIU/CRU should not be measured solely by the number of exonerations it helps to achieve. At the same time, however, given the frequency with which exonerations occur on a national basis and the attention these cases receive in the media, these specialized units are expected both to free innocent people and do so quickly and frequently. Thus, despite the experts' caution, there is a strong and powerful urge to use the number of exonerations as a yardstick for evaluating the efficiency and efficacy of review units. For many reasons set forth in this Report, that urge should—and can—be resisted with data and information.

## SCOPE OF REVIEW AND METHODOLOGY<sup>22</sup>

The idea for an external review was prompted by Minnesota CRU Advisory Board members who expressed concerns about the unit's lack of exonerations and the lengthy amount of time the unit was spending on case review and investigations. Ensuing discussions regarding the viability of conducting an external review focused on both the needs of the Minnesota CRU and the benefits of having an independent third party assess whether the unit is functioning to further its stated mission and goals.

Because the Minnesota CRU viewed addressing its board members' concerns as an important priority, the unit agreed to facilitate an external review. After agreeing to a scope of work, the external review of the Minnesota CRU formally began in April 2024.

Ultimately, all interested parties agreed that the primary objective of the external review was to assess the Minnesota CRU's overall efficiency and efficacy in screening and investigating statewide applications for conviction review while carefully assessing benefits

### *2023 Quattrone Center CIU/CRU Survey*

In 2023, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School conducted a national survey of Conviction Integrity/Review Units. The survey itself was organized into four primary categories: **Independence**, **Flexibility**, **Transparency**, and **Impact** with the intention of helping prosecutors assess how their units conform with—or depart from—current best practices. After distribution to the roughly 90 units in operation at the time, the Center received 63 responses by December 31, 2023. These 63 responses also included data from six statewide units. Before participating in the survey, respondents were promised anonymity in regard to the use of their data. As a result, in this Report, no statewide unit is identified in charts depicting data obtained from the survey. All of the Quattrone Center survey results are expected to be publicly released next year.

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20 See <https://www.cbsnews.com/minnesota/news/edgar-barrientos-quintana-murder-conviction-vacated/>. In the criminal system, prosecutors cannot unilaterally release convicted individuals. Even where a prosecutor agrees relief from conviction is appropriate, a judge must still make the final decision.

21 See <https://www.kare11.com/article/news/investigations/kare-11-investigates-aitkin-county-attorney-brian-pippitts-murder-conviction/89-69766f4c-f0b4-46cb-9c04-254251940504>. Because the Minnesota Attorney General does not have jurisdiction over most crimes in the state, the CRU cannot go into court to support a conviction reversal. That decision is up to the local County Attorney, who is not required to agree with the Attorney General's findings.

22 The funding for this external review comes from the Department of Justice's Office of Justice Program's Upholding the Rule of Law/ Preventing Wrongful Convictions grant under Award 2018-FA-BX-K003 through the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School's cooperative agreement to provide training and technical assistance to program grantees.

and drawbacks of various approaches designed to increase that efficiency and efficacy.<sup>23</sup> And, importantly, the AG's Office agreed that primary objective would best be realized with unfettered access to the unit and its work.<sup>24</sup>

In order to make findings and recommendations for this Report, the external review process involved several stages.

The first stage involved study and review of best practices as well as the Minnesota CRU existing policies. Sources reviewed included:

- CIU/CRU Best Practices;
- policies and Procedures for the Minnesota CRU;
- policies and procedures from other units; and
- the Quattrone Center 2023 National Survey of Conviction Integrity/Review Units — Completed Data Analysis.<sup>25</sup>

The author made several trips to Minnesota to conduct on-site research and meet with stakeholders. During those trips, the author had access to and reviewed the Minnesota CRU's case management system and individual case files in various stages of review. She also conducted interviews with:

- Attorney General Keith Ellison;
- Minnesota CRU personnel; and
- Advisory Board members.

Finally, various experts in the fields of investigations, innocence work, conviction integrity review, policy, and professional ethics including Barry Scheck, Steven Kleinman, Rebecca Brown, Ellen Yaroshefsky, and others were consulted throughout the review.

Once a preliminary report containing findings and recommendations was complete, it was presented to a meeting of the Advisory Board with the opportunity for questions, further discussion, and input.

## **A Word About Advisory Boards and CIUs.**

Because the Minnesota CRU has an advisory board, another objective of the external review was to assess the role of the board. As such, an important part of this external review included a general overview of the different roles advisory boards play with respect to CRUs/CIUs. Although the majority of units do not have advisory boards, those that do have varied approaches for advancing a unit's mission and goals.

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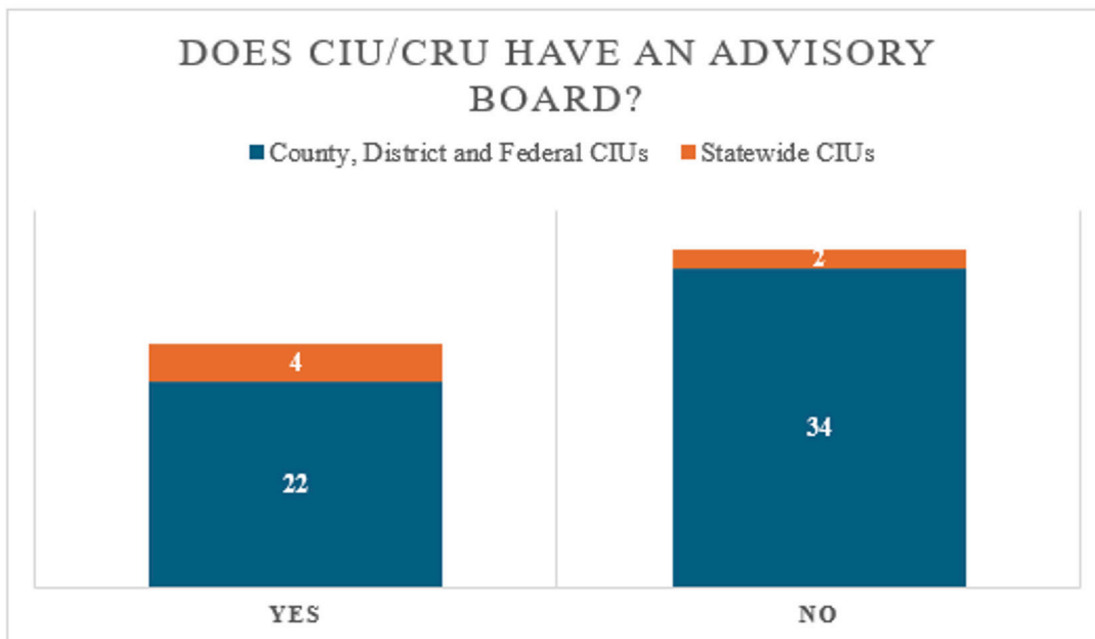
23 Because the CRU's mission also includes preventing wrongful convictions, the scope of review by implication necessarily includes an assessment of what steps, if any, are being taken to fulfill that part of its mission.

24 Mindful of privacy concerns, the Minnesota AG's Office, through a special prosecutor appointment, granted the author of this Report access to AG's Office case files to conduct the external review. In granting access to these case files, the goal was to enhance transparency about how the CRU conducts its review and investigation of individual cases. The AG's Office also understood that the Report would, if legally permissible and appropriate, identify individual cases.

25 The Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School is a national research and policy hub created to catalyze long term structural improvements to the US criminal system. The Quattrone Center focuses on improving collaboration between CIUs and wrongful conviction entities, developing best practices, guidelines, and policies for existing or newly created units, and providing trainings, resources, and information to the field. The Quattrone Center provides training and technical assistance to grantees under the Upholding the Rule of Law and Preventing Wrongful Convictions program.



Figure 3. Advisory Boards



Source: Anonymized data from 2023 Quattrone Center CIU/CRU Survey.

Some boards are small and undertake case reviews. Others are larger and serve a strictly advisory role. With an understanding of the varied approaches, this external review considered how the advisory board can be most effective in furthering the Minnesota CRU's mission and evolving needs. Specific issues considered included the original intent and purpose for creating the advisory board and whether the advisory board is currently serving that purpose.

### Key criteria for assessment of the CRU

The key criteria or benchmarks used to assess the Minnesota CRU included a review of: 1) legal and jurisdictional nuances in Minnesota and their impact on review and relief; 2) the unit's adherence to best practices; 3) the unit's formation; 4) the evolving level of CRU staffing and resources; 5) the number of applications and requests for review; 6) the number of cases reviewed; 7) transparency with stakeholders; and 8) duties to crime victims.



## FINDINGS

If a unit's stated mission and goals are grounded in "freeing the innocent," success requires that the unit adhere to best practices as much as practicable. Success also requires that a unit have the legal capabilities to identify the innocent and participate in a meaningful judicial process that allows innocence to be proven in court.<sup>26</sup> **On the important metrics, the Minnesota CRU shows close adherence to national best practices and an ability to efficiently review requests for review and move cases to investigation.**

### The key Findings of this review are:

- 1) The Minnesota CRU was formed in a thoughtful, deliberate manner designed to allow the unit to operate pursuant to best practices.
- 2) The Advisory Board played a critically important role in the creation of the Minnesota CRU.
- 3) Various procedural, structural, and cultural barriers impact the day-to-day operations of the Minnesota CRU.<sup>27</sup>
- 4) The CRU reviews and investigates cases in a timely and efficient manner.
- 5) The collective unit profile reveals the Minnesota CRU adheres to national best practices.<sup>28</sup>

## THE FORMATION OF THE MINNESOTA CRU

### FINDING #1 - The Minnesota CRU was formed in a thoughtful, deliberate manner designed to allow the unit to operate pursuant to best practices.

At the outset, Attorney General Keith Ellison studied the need for a specialized unit and consulted with partners and experts in the field before taking action. Funding for the unit was then obtained through a two-year, \$300,000, grant from the United States Department of Justice's Bureau of Justice Assistance awarded directly to the Great North Innocence Project to use in partnership with the Minnesota AG's Office.

Shortly after receiving notice of the award of the grant, Attorney General Ellison issued a press release announcing that, "while there are dozens of CRUs across the country, Minnesota's will be just the fourth in the country that operates through an Attorney General's Office. To date, CRUs have helped initiate the exoneration of 444 people in the U.S."<sup>29</sup> Not long after that press release, Attorney General Ellison demonstrated the depth of his understanding of the work and the inherent structural barriers that accompany it when he said: "[t]he success of the conviction review unit will not be measured in terms of numbers alone, or of cell doors we unlocked... The success will be measured by improving community trust in the integrity of the criminal justice system based on true improvement in the quality of justice and transparency."<sup>30</sup>

In short order, Attorney General Ellison created a diverse 16-member Advisory Board to help him establish the unit, hire its leader, and write a charter to define the core principles and objectives of the unit. The original make-up of the Advisory Board included elected prosecutors, judges, defense attorneys, national experts, academics, advocates, and community activists.

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26 MEDWED, *supra* note 6, 236 ("Another complication is that CIU support of an innocence claim doesn't guarantee judicial reversal of the conviction because the litigation must still traverse the shoals of appellate and postconviction procedures. Judges—not prosecutors—possess the ultimate legal authority to vacate convictions.").

27 Because legal procedures vary from state to state and jurisdiction to jurisdiction, a comparison of a review unit to other units across the country without a basic understanding of legal considerations could be misleading and have limited practical value. As a result, Finding #3 includes a summary of the "legal toolkit" available to the unit to review, investigate, and litigate postconviction claims of wrongful conviction and/or innocence.

28 Finding #5 includes a summary of best practices in the field.

29 Office of MN Atty. Gen. Keith Ellison, Press Release, *Minnesota awarded federal grant to review legal cases for people believed to be innocent*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON (Oct. 8, 2020), [https://www.ag.state.mn.us/Office/Communications/2020/10/08\\_ConvictionReviewUnit.asp](https://www.ag.state.mn.us/Office/Communications/2020/10/08_ConvictionReviewUnit.asp).

30 Mark Zdechlik, *Minnesota conviction review unit ready to start work*, MPR NEWS (Aug. 3, 2021), <https://www.mprnews.org/story/2021/08/03/minnesota-conviction-review-unit-ready-to-start-work>.

## THE ADVISORY BOARD

### FINDING #2 – The Advisory Board played a critically important role in the creation of the Minnesota CRU.

Attorney General Ellison posted the following stated purpose and role of the CRU Advisory Board on his office website:

To start, the CRU Advisory Board will advise the Attorney General on the establishment, functioning, and hiring of the unit. On an ongoing basis, it will advise on national best practices and evolving issues related to wrongful convictions and sentencing, and make policy recommendations. The board's first steps will be to approve the charter for the Conviction Review Unit, and to make a recommendation to the Attorney General about hiring the unit director.<sup>31</sup>

Consistent with the office's website pronouncement, the Advisory Board participated in the hiring process of the unit's director and ratified a 13-page charter for the unit.<sup>32</sup> The charter, which is modeled after the Los Angeles County CIU Charter, is an extensive and detailed document intended to establish principles for the unit and how it is supposed to operate. It spells out the unit's mission in its opening paragraph followed by very specific policies and criteria for issues such as case review, investigations, communications with defense counsel, discovery, and independence of the unit to name just a few.

Since the unit was launched, the director of the unit has scheduled and led quarterly public meetings. As a matter of course, the Advisory Board meetings have mostly been virtual, open to the general public, and governed by a posted agenda that includes items such as the Director's Report, Case Review Statistics, and Clinical Work with Law Students. Due to privacy and confidentiality considerations, specifics regarding pending cases are not generally discussed.

## PROCEDURAL, STRUCTURAL, AND CULTURAL BARRIERS

### FINDING #3 - Various procedural, structural, and cultural barriers impact the day-to-day operations of the Minnesota CRU.

#### Procedural and Structural Barriers—A Brief Overview of Relevant Minnesota Laws

The CRU's ability to review, investigate, and obtain relief in wrongful conviction cases is shaped by Minnesota state law. A short summary of the relevant statutory provisions and seminal case law that inform the CRU's review and the applicant's ability to seek postconviction relief is outlined below.

#### *The AG Office's Legal Authority to Appear in Felony Criminal Cases in Minnesota Is Limited.*

In Minnesota there are 87 elected county attorneys; each has the authority to prosecute felony criminal cases within their jurisdiction.<sup>33</sup> The AG's Office obtains the authority to appear in a felony criminal case only if either the elected county attorney requests the AG's Office to appear or the Governor requests that the Attorney General prosecute a particular case.<sup>34</sup>

The CRU can, and does, receive applications from individuals throughout the state of Minnesota convicted of crimes who assert innocence. If the CRU decides to review an applicant's case, the review is extra-judicial—meaning outside any court process.

Unless the local county attorney who prosecuted the case agrees to provide the CRU the prosecution and law enforcement case

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31 Office of MN Atty. Gen. Keith Ellison, *Conviction Review Unit—Advisory Board*, THE OFFICE OF MINNESOTA ATTORNEY GENERAL KEITH ELLISON, <https://www.ag.state.mn.us/Office/CRU/AdvisoryBoard.asp>.

32 The finalized Charter of the Minnesota CRU is available on the Attorney General's Website at <https://www.ag.state.mn.us/Office/CRU/Charter.pdf>.

33 Minn. Stat. § 388.051, sub. 1(3).

34 Minn. Stat. § 8.01 (providing that when the Governor requests, the Attorney General “shall prosecute any person charged with an indictable offense, and in all such cases may attend upon the grand jury and exercise the powers of a county attorney”).

files, the CRU's review is limited to publicly available documents and whatever information the applicant is willing to provide to the CRU.<sup>35</sup>

In cases where the CRU determines that a full investigation is needed and appropriate, the CRU must obtain and rely on a written agreement, called a Memoranda of Understanding or MOU, with the local county attorney. To date, the standard MOUs utilized by the CRU include provisions stating the unit will be given access to the county attorney's file and the county attorney will assist the CRU in its efforts to obtain relevant law enforcement files. Although the terms of the MOUs are negotiated separately with each local county attorney, they are all drafted to allow the AG's Office to legally appear in the case if the CRU recommends relief. However, all executed agreements to date have expressly contained language stating the MOU is voluntary and may be terminated by either party.

### *The CRU Lacks the Legal Authority to File a Motion to Vacate a Conviction or Sentence.*

Minnesota's postconviction statute states that only a "person convicted of a crime" may commence a proceeding through filing a postconviction petition.<sup>36</sup> There is no equivalent vehicle or mechanism that allows a prosecutor to initiate a postconviction proceeding to address a wrongful conviction.<sup>37</sup>

### *An Overview of Postconviction Law in Minnesota.*

After a felony conviction, a defendant has two options for challenging a conviction. They can commence a direct appeal<sup>38</sup> within 90 days, or they can file a petition for postconviction relief in district court when certain facts are not in the record and need development.<sup>39</sup> When a direct appeal is filed, the district court loses the authority to issue orders affecting the judgment appealed until the appeal has concluded or is stayed.<sup>40</sup>

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35        However, if the AG's Office previously obtained authority to appear in the case, the Minnesota CRU would have access to the prosecution and law enforcement files.

36        Minn. Stat. § 590.01.

37        This is the case in the great majority of states. Only Missouri, Utah, Maryland, and Arizona allow a prosecutor to file an affirmative motion to reverse a conviction. In 2021, the St. Louis Prosecuting Attorney sought to reverse Lamar Johnson's conviction based upon his actual innocence, drawing national attention. When the county and then state supreme courts determined she had no such authority, the Missouri legislature acted within months to correct the situation. Under the new statute, a prosecuting attorney may file a motion to vacate a conviction for a person in their jurisdiction who "may be innocent or may have been erroneously convicted." Mo. Rev. Stat. § 547.031(1). Upon a showing of "clear and convincing" evidence of innocence, the court "shall grant" the motion. *Id.* at (2). See also Tony Messenger, *Missouri Legislature Gives Prosecutors a Path to Seek Justice*, ST. LOUIS POST-DISPATCH (May 14, 2021), [https://www.stltoday.com/news/subscriber/messenger-missouri-legislature-gives-prosecutors-a-path-to-seek-justice/article\\_faa7b301-5682-5390-9f38-61ca9df62f49.html](https://www.stltoday.com/news/subscriber/messenger-missouri-legislature-gives-prosecutors-a-path-to-seek-justice/article_faa7b301-5682-5390-9f38-61ca9df62f49.html). However, the statute allows the Missouri Attorney General to "appear, question witnesses, and make arguments" at the hearing. Mo. Rev. Stat. § 547.031(2). See *Missouri v. Johnson*, Appeal from the Circuit Court of the City of St. Louis, Supreme Court of Missouri, No. SC98303 (Hogan, J. March 2, 2021). See also Ariz. R. Crim. P. 24.2; Md. Code Ann., Crim. Proc. § 8-301.1; Utah Code Ann. § 78B-9-503.

38        That is, an appeal that challenges the verdict based upon the trial record itself. The CRU has a policy against accepting and investigating cases while an appeal is pending. The CRU's charter states that it will "review cases from applicants who have exhausted direct appeals available under state law, or where the deadline for any such appeals has expired." The charter allows the CRU to agree to review a case before the direct appeal is final in special circumstances that strongly suggest that an injustice has occurred or is about to occur. CRU staff members defended the policy on several bases. Practically speaking, transcripts of the trial are not produced until months after an appeal is filed and the CRU has no accurate way of knowing what occurred at trial until an appeal is already being litigated. Normally a defendant on appeal is represented by an attorney at the Minnesota Appellate Public Defender's office or a private defense attorney. While a person is represented on appeal or postconviction, the CRU's position is that it is the duty of the postconviction defense attorney to investigate claims of innocence or violations of due process. A CRU investigation could hamper a defendant's initial challenge to their conviction with their attorney if the CRU discovers evidence which either conflicts with their attorney's theory on appeal or is inculpatory. Therefore, unless there are extraordinary circumstances and a request from an applicant's postconviction attorney, the CRU likely will not review the case if an appeal or postconviction proceeding are pending.

39        For example, a claim of ineffective assistance of counsel cannot be raised on the basis of the trial record and normally relies on facts that need to be developed during a postconviction hearing.

40        Minn. R. Civ. App. P. 108.01. (In Minnesota, criminal appeals are governed by the Rules of Civil Procedure. Minn. R. Crim. P. 28.01, subd. 2 ("To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.")).

A defendant pursuing a direct appeal forfeits any issue not raised on appeal if that issue was known or should have been known. It is not uncommon for a defendant to file a notice of direct appeal and then request to stay that appeal for postconviction proceedings in district court upon discovery of issues needing an evidentiary hearing.<sup>41</sup>

### Bases for Relief Under the Postconviction Statute

Minnesota's postconviction statute allows relief when a petitioner can establish by a preponderance of the evidence that their conviction or sentence "violated the person's rights under the Constitution or laws of the United States or of the state."<sup>42</sup> Additionally, a petitioner can obtain relief when they establish that "scientific evidence not available at trial," obtained pursuant to a testing motion, "establishes the petitioner's actual innocence."<sup>43</sup> The scientific-evidence provision allows a motion for new scientific testing to demonstrate a person's actual innocence only on fingerprint or DNA evidence.<sup>44</sup>

Minnesota's postconviction statute does not allow a stand-alone "actual innocence" claim. Still, the Minnesota Supreme Court retains the inherent authority to vacate convictions to ensure the fair administration of justice.<sup>45</sup> However, this power is only used in "exceptional circumstances" to correct blatant official misconduct and due-process violations.<sup>46</sup>

### Two-Year Time Bar

In general, no petition for postconviction relief may be filed more than two years after a judgment of conviction if no appeal was filed, or after an appellate court's disposition if it was. One particularly significant exception to the two-year bar for purposes of conviction integrity work is the newly found evidence exception, which includes new scientific evidence.<sup>47</sup> A petitioner must assert any exception to the time bar within two years of the date "the claim arises" — meaning from when the evidence forming the basis for relief became known.

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41 Minn. R. Crim. P. 28.02, subd. 4(4) (providing "[i]f, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings."). *See Frisch v. State*, 840 N.W.2d 426, 427–28 (Minn. App. 2013) (explaining that the court of appeals frequently grants motion to stay and remand but that the defendant needs to establish a "threshold factual showing" explaining which issues will be pursued on postconviction).

42 Minn. Stat. § 590.01, subd. 1.

43 *Id.* The Minnesota Supreme Court held that actual innocence is "more than an uncertainty about guilt. Instead, establishing actual innocence requires evidence that renders it more likely than not that no reasonable jury would convict." *Riley v. State*, 819 N.W.2d 162, 170 (Minn. 2012).

44 For a testing motion to be granted the petitioner must surmount several hurdles. They need to establish, for example, that the evidence was not subjected to the testing because certain technologies were not available, or the testing was not available as evidence at the time of the trial. Additionally, they need to show both that identity was an issue at trial and the evidence to be tested has an unbroken chain of custody. Finally, the petitioner must convince a court that testing has the potential to produce "new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence" and the requested testing method is "generally accepted within the relevant scientific community." Minn. Stat. § 590.01, subd. 1a.

45 *State v. Beecroft*, 813 N.W.2d 814, 846 (Minn. 2012) ("We typically will not award a criminal appellant a new trial in the absence of prejudicial error. But we have on occasion awarded a new trial in the interests of justice even when there is no showing of actual prejudice. When doing so, we have relied on our "supervisory power to insure the fair administration of justice." Put differently, our power to reverse "prophylactically or in the interests of justice comes from our power to supervise the trial courts.")) (internal citations omitted).

46 *Id.*

47 Under this particular exception to the two-year bar, a petitioner needs to show by clear and convincing evidence (1) the existence of newly discovered evidence, including scientific evidence, (2) the evidence provides "facts necessary to sustain one or more legally cognizable claims for postconviction relief," (3) the evidence "could not have been ascertained by the exercise of due diligence by the petitioner's attorney within the two-year period" to file, (4) the evidence is "not cumulative," and (5) the evidence is "not for impeachment purposes." Minn. Stat. § 590.01, subd. 4(b)(2).

### Knaffla Procedural Bar

In addition to the two-year time bar, a petition for postconviction relief may be dismissed if it is procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). Under the *Knaffla* rule, claims asserted in a second or subsequent postconviction petition are procedurally barred if they were known and could have been raised on direct appeal or in a previous postconviction petition.<sup>48</sup>

There are two exceptions to the *Knaffla* rule. A petition is not barred when (1) a claim is so novel that the legal basis was not previously available, or (2) the interests of justice require review. The “interests of justice” exception is narrow and only limited to a petition for postconviction relief with “substantive merit” and where a petitioner has “not deliberately and inexcusably delayed” in bringing the claim.<sup>49</sup>

### CRU Prosecutors' Ability to Waive Time and Procedural Bars

The two-year time bar within Minnesota's postconviction statute is waivable by the state and, therefore, it is not jurisdictional—a court can hear an otherwise untimely petition for postconviction relief if the state agrees.<sup>50</sup> Prior cases from the Minnesota Supreme Court on when a filing requirement is jurisdictional point to the *Knaffla* rule as being non-jurisdictional and waivable.<sup>51</sup>

## Cultural Barriers – How Cognitive Bias Plays a Role in the Work of the Minnesota CRU

One criticism of the Minnesota CRU is that it is not working fast enough to recommend relief in cases. This criticism is understandable and not unique to the Minnesota CRU—families who have loved ones in prison they believe are innocent feel strongly cases should move quickly. However, as outlined above, the Minnesota CRU faces several procedural and structural barriers that impact its day-to-day work. An additional barrier, which most CIUs/CRUs don't have to face, is the built-in barrier of operating within the AG's Office.

The Minnesota CRU has no jurisdiction over most of the cases it reviews. As a result, it has no legal authority to appear and act in those cases. As a practical matter, this means that the CRU process of review cannot proceed unless the local prosecutor with jurisdiction in the case agrees to turn over its case files to the unit. At its most basic level, this means the CRU must convince the locally elected county attorney that a conviction its prosecutors likely fought hard to win may be flawed—not an easy task because sometimes prosecutors who played a role in a conviction may be affected by various forms of cognitive bias.<sup>52</sup> Cognitive biases can be defined as “the systematic pattern of deviation from norm or rationality in judgment, whereby inferences about other people and situations may be drawn in an illogical fashion.”<sup>53</sup>

Cognitive dissonance—likely the most powerful bias that impacts the Minnesota's CRU's work—is a specific type of cognitive bias defined as “a state of tension that occurs whenever a person holds two cognitions (ideas, attitudes, opinions) that are psychologically inconsistent. ... Dissonance produces mental discomfort, a state that is as unpleasant as hunger, and people don't rest easy until they

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48 *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

49 *Id.*

50 *Hooper v. State*, 838 N.W.2d 775, 781 (Minn. 2013); *Carlton v. State*, 816 N.W.2d 590 (Minn. 2012). However, the Minnesota Supreme Court has ruled that when the state fails to raise the time limits set forth in the postconviction statute, a court may consider the time limits “on its own motion” to control its docket. *Weitzel v. State*, 883 N.W.2d 553, 560 (Minn. 2016).

51 *See McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 588 (Minn. 2016) (holding that jurisdictional requirements “cannot be expanded to account for the parties’ litigation conduct”). The *Knaffla* rule has an exception for the litigant’s conduct in failing to pursue a claim, so the Minnesota Supreme Court would likely find that it is non-jurisdictional. The Hennepin County Attorney’s Office and the Great North Innocence Project recently convinced a Hennepin County judge that the *Knaffla* rule was not jurisdictional and waivable by the state. *See* Memos on Ability of State to Waive *Knaffla* Bar, *Haynes v. State*, Case No. 27-CR-04-035635 (Minn. Dist. Ct. Oct. 16, 2023).

52 An understanding of cognitive bias might provide some insight into the Aitkin County Attorney’s opposition in the Brian Pippitt case.

53 Richard L. Byyny, *Cognitive Bias: Recognizing and Managing Our Unconscious Biases*, THE PHAROS, at 2 (Winter 2017), <https://www.med.upenn.edu/inclusion-and-diversity/assets/user-content/cognitive-bias.pdf>. It is important to remember that cognitive biases are not necessarily intentional acts; they are simply part of human decision-making processes.



find a way to reduce it.”<sup>54</sup> As explained by Elliot Aronson and Carol Tavis<sup>55</sup> in their book, *Mistakes Were Made (but not by me)*, cognitive dissonance affects how people process and react to information that is inconsistent with the beliefs they hold about themselves.<sup>56</sup>

Prosecutors who have dedicated their lives to doing justice will experience cognitive dissonance when confronted with evidence that they may have convicted an innocent person. They must somehow relieve the tension between two possible realities: “I’m a good person who has fought for justice my entire career” and “I am responsible for unjustly convicting an innocent person.” Most often, they will ease the tension with self-justification. The idea that they sent an innocent man to prison is so antithetical to their competence and beliefs that they will go through hoops to convince themselves that they could not have made such an error. As Aronson and Tavis explain, “[i]t is precisely because prosecutors believe they are pursuing the truth that they do not torpedo cases” when evidence of innocence filters into the investigation.<sup>57</sup> And it gets more and more difficult to change course each step of the way—through arrest, indictment, trial, and postconviction. The more pain inflicted upon the innocent defendant, the higher the tension and the more likely prosecutors will resolve the tension by discounting the new evidence.

Cognitive dissonance also affects police, defense attorneys, and judges. For example, Justice Antonin Scalia never wavered from his statement that fewer than a fraction of 1% of convicted defendants were innocent even after DNA exonerations proved otherwise.<sup>58</sup> Instead, he just became more adamant that the large number of DNA exonerations was a sign that the criminal legal system works.<sup>59</sup>

Cognitive dissonance impacts the CRU's ability to quickly review, investigate, and obtain relief for post-conviction applicants' cases. Some ways cognitive dissonance may negatively impact the work of the CRU can be seen from county attorneys' reluctance to quickly release prosecutor or law enforcement files or slow-walking interviews with key staff members, to disagreement on investigative outcomes.<sup>60</sup>

## THE MINNESOTA CRU

### FINDING #4 – The CRU Reviews and Investigates Cases in a Timely and Efficient Manner

The sheer number of applications the Minnesota CRU has received (1,151 from April, 2021, through September, 2024) compared to the number of its personnel is alone a reasonable explanation for the time it takes to review and investigate a case. However, delving a little deeper into the issue of timeliness provided an opportunity for understanding the unit's overall efficiency and efficacy in identifying and rectifying injustices.

The CRU has three stages of review: intake, substantive evaluation, and investigation. If, after investigation, the Attorney General recommends a conviction be vacated, the case must also go through litigation before an exoneration can occur. The investigation stage for any CIU/CRU is complex, challenging, and time-intensive, particularly if that unit is committed to discovering the truth and obtaining relief for a person who has been wrongfully convicted. As illustrated in how it handled Pippitt and Barrientos, two of its recent cases, the Minnesota CRU has demonstrated it has that kind of commitment. In both cases, the unit used the Science-

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54 Carol Tavis, Elliot Aronson, *Self-Justification in Public and Private Spheres: What cognitive dissonance theory teaches us about cheating, justice, memory, psychotherapy, science, and the rest of life*, THE GENERAL PSYCHOLOGIST, Vol. 42, No. 2 (2007), <https://cdn.evbu.com/eventlogos/58191675/genpsychologist.07.pdf>.

55 Tavis and Aronson also spoke about cognitive dissonance at the Minnesota Judicial Conference in December 2023. Meeting information including an agenda and video recording can be accessed at <https://www.mncourts.gov/Minnesota-Judicial-Council/Meeting-Archive.aspx>.

56 Carol Tavis and Elliot Aronson, *MISTAKES WERE MADE (BUT NOT BY ME): WHY WE JUSTIFY FOOLISH BELIEFS, BAD DECISIONS, AND HURTFUL ACTS* 131-32 (2007). Chapter Five is specifically devoted to explaining the role bias plays in criminal prosecutions.

57 *Id.*

58 *Kansas v Marsh*, 548 US 163, 197 (2006) (Scalia, J., concurring).

59 *Id.* at 193 (“Reversal of an erroneous conviction on appeal or on habeas, or the pardoning of an innocent condemnee through executive clemency, demonstrates not the failure of the system but its success.”)

60 When the CRU requested the Barrientos-Quintana trial and investigative files from the local prosecutor, it took the County Attorney's Office 198 days (6 months, 14 days) to get the files to the CRU.

Based Investigative Interviewing model<sup>61</sup> to conduct the investigation followed by extensive and detailed reporting regarding that investigation.<sup>62</sup>

### *Case Management and Data Collection*

Proper data collection and a case management system are essential to allow a unit to create and maintain its own case files separately and confidentially from other units in the office. This also includes: meaningfully assisting in the collection and dissemination of police officer misconduct information; creating a “tag” system for identifying other known factors that contribute to wrongful convictions; identifying and spotting bad actors for purposes of systemic reviews; and providing detailed information and metrics that will permit evaluation of the unit’s processes and effectiveness.<sup>63</sup>

The CRU set up an integrated database and case tracking system before it started accepting applications for review. This is a secure system developed using Microsoft SharePoint. Access to the SharePoint database is restricted to only CRU staff and authorized personnel. The creation and set up of this system at the outset allowed the unit to manage the onslaught of applications it received from applicants in an organized manner while collecting data helpful for review, tracking, and future insights. It also allowed unit staff and law students to meaningfully participate in the screening process and track application status, daily workflow collaboration, and management. The functionality of the system, however, was, and continues to be, somewhat limited by the platform.

The AG’s Office is currently developing an office-wide case management system. When finished, the CRU will be able to use this new system without compromising security and confidentiality because CRU files will be kept separately from the rest of the office. This new system will enhance the CRU’s ability to manage its data and track the progress of applications through each step of the review process. It will also allow the CRU to move data, integrate case file data internally and externally, generate documents, review and organize records, and view a case’s procedural history all in one place, all of which will enhance efficiency, accuracy, and reporting of the unit.<sup>64</sup>

### *Case Statistics*

The number of applications the unit has received, processed, and reviewed since its formation is staggering—particularly in light of the size of its staff and compared to statistics of other statewide units. The chart below provides a snapshot of the total caseload combined of the five statewide units that participated in the Quattrone Center CIU/CRU survey as of December 2023. Meanwhile, the Minnesota CRU-specific chart provides a snapshot of its total caseload from when it started accepting applications in August 2021 until September 30, 2024.<sup>65</sup> Side-by-side comparisons to other units should always be done cautiously because of the many

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61 The Science-Based Investigative Interviewing model is a recognized best practice for CIU investigations and is discussed further below as part of the National Best Practices review.

62 For Pippitt, the investigative phase took 440 days (1 year, 2 months). For Barrientos-Quintana, the investigative phase lasted 515 days (1 year, 4 months, 29 days).

63 The Quattrone Center created a resource for CIUs to use as a reference in collecting and analyzing this type of data based on input from over a dozen practitioners and data analyst specialists. See Quattrone Center, DATA COLLECTION ANALYSIS: A RESOURCE GUIDE FOR CONVICTION INTEGRITY UNITS AND INNOCENCE ORGANIZATIONS (2023), <https://www.law.upenn.edu/live/files/13053-data-collection-and-analysis-a-resource-guide>.

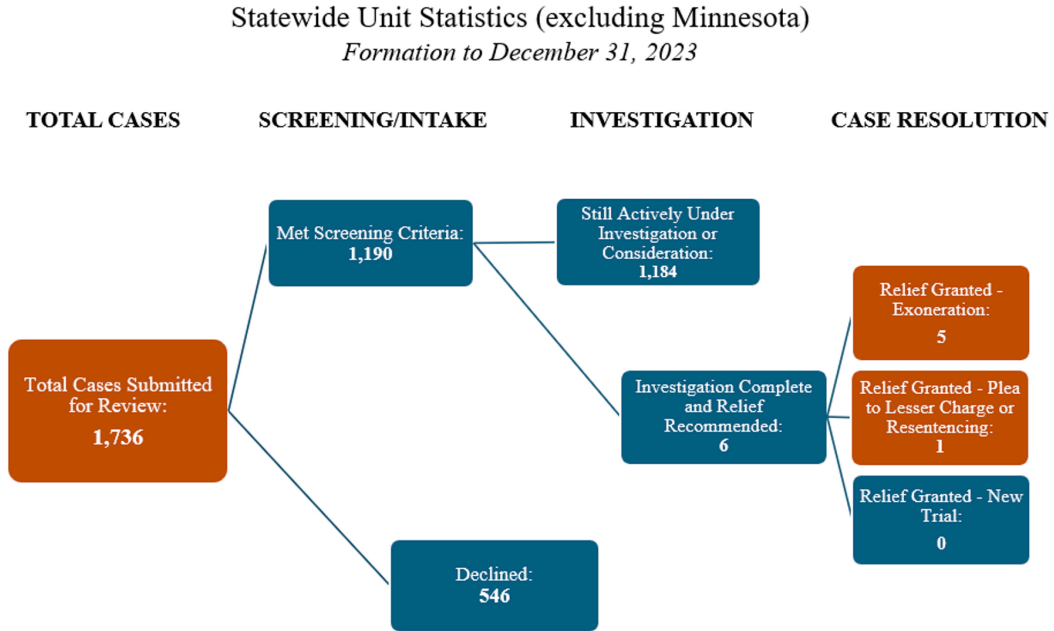
64 The case tracker system uses a screening checklist to guide the screener’s review of an application. It also requires the screener to enter data about both the applicant and applicant’s claim(s). The data collected, along with many of the unit-generated case “flags” used in the system, can be helpful to the review of the individual case, the study of wrongful convictions, and identifying trends for possible systemic reviews. Some of the “flag” categories, however, might benefit from a review when the unit transitions to the new case management system so that they properly reflect case disposition and the unit’s workload. The unit may also want to consider adding new “flags” such as: how long the jury deliberated; whether the jury asked questions during deliberations; and tracking the reason for a mistrial. One flag should be considered for deletion: whether the applicant has information on the real perpetrator.

65 The Minnesota CRU’s number of applications will decrease because Hennepin County recently created its own Conviction Integrity Unit. <https://www.hennepinattorney.org/en/news/news/2024/July/conviction-integrity-unit>. That fact has been taken into consideration in formulating near-term recommendation #1 for additional resources. In other words, if the Minnesota CRU were to continue having primary responsibility for Hennepin County cases, additional staffing would have been suggested in the recommendation.



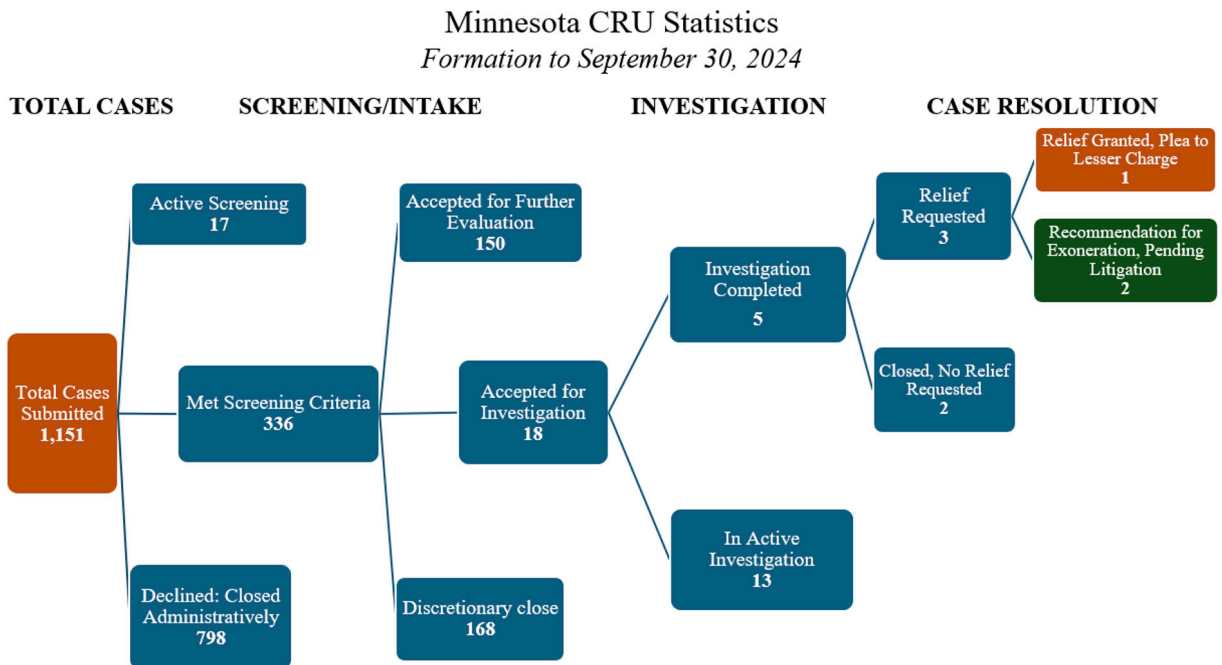
inherent jurisdictional, legal, and practical differences among all the units. However, by all available measures, the Minnesota CRU has efficiently processed the overwhelming number of applications it has received.

**Figure 4. Statewide Unit Statistics (excluding Minnesota)**



Source: Anonymized data from 2023 Quattrone Center CIU/CRU Survey.

**Figure 5. Minnesota CRU Statistics**



What the CRU cannot guarantee is an exoneration because the final step of the process—litigation—depends on variables outside the CRU's control. For example, as with the Pippitt case, county attorneys may not agree with the CRU's findings and choose to litigate the case. Moreover, judges have the final authority to either grant or deny an applicant's postconviction petition for relief from conviction even where both sides agree relief is appropriate.<sup>66</sup>

## FINDING #5 – The Collective Unit Profile Reveals the Minnesota CRU Adheres to National Best Practices

### Background - CIU/CRU National Best Practices

Units like the Minnesota CRU are a relatively new addition to the American criminal legal system. The longest-running unit is the Dallas County District Attorney's CIU which was created in 2007.<sup>67</sup> Although other elected and appointed prosecutors have followed Dallas County's lead in creating units, it took well over a decade for them to reach the total number of units that exist today. According to the NRE, there are at least 100 units across the country and fewer than 10 of those are statewide units similar to the Minnesota CRU.<sup>68</sup> The first statewide CIU was formed in 2019 in New Jersey.

A handful of organizations, academics, and practitioners have envisioned, studied, and written about CIUs/CRUs over the last two decades as both a prosecutor's ethical responsibility and a potential solution to what some have referred to as an epidemic of wrongful convictions in this country.<sup>69</sup>

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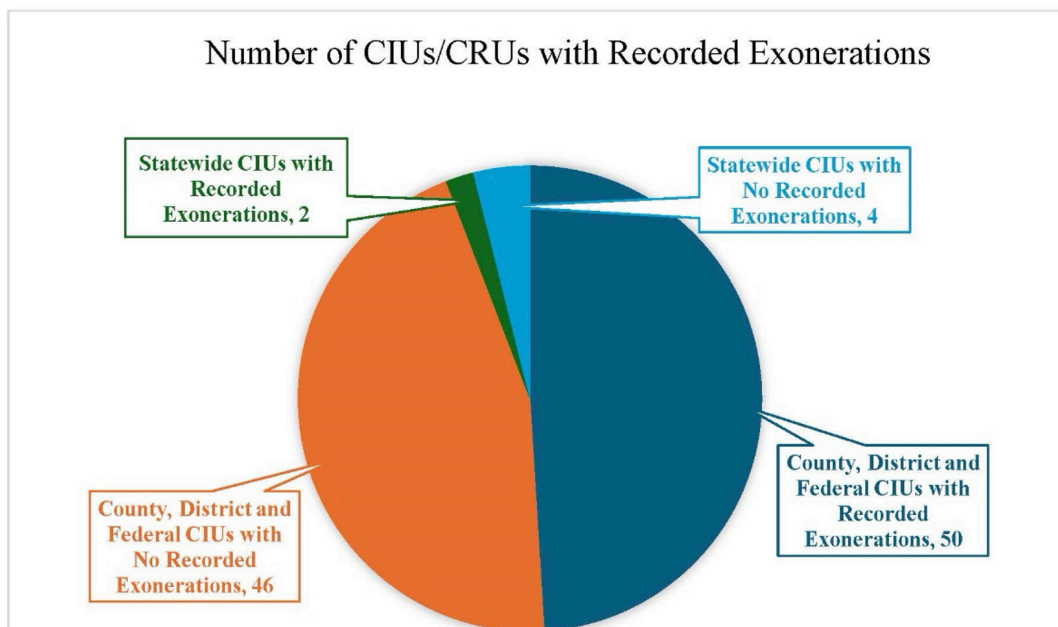
66 As noted above, the Minnesota CRU publishes their investigative reports publicly. They are posted on the CRU's website, <https://www.ag.state.mn.us/Office/CRU/>, and are typically announced with a press release. See, e.g., *CRU Report Regarding the 1998 Conviction of Thomas Rhodes, Kandiyohi County* (Jan. 11, 2023), [https://www.ag.state.mn.us/Office/CRU/Reports/Rhodes\\_Thomas.pdf](https://www.ag.state.mn.us/Office/CRU/Reports/Rhodes_Thomas.pdf); *CRU Report Regarding the 2001 Conviction of Brian K. Pippitt* (May 8, 2024), [https://www.ag.state.mn.us/Office/CRU/Reports/Pippitt\\_Brian.pdf](https://www.ag.state.mn.us/Office/CRU/Reports/Pippitt_Brian.pdf); *CRU Report Regarding the 2009 Conviction of Edgar Barrientos-Quintana, Hennepin County* (July 29, 2024), [https://www.ag.state.mn.us/Office/CRU/Reports/Barrientos-Quintana\\_Edgar.pdf](https://www.ag.state.mn.us/Office/CRU/Reports/Barrientos-Quintana_Edgar.pdf).

67 Terri Moore, "Prosecutors Reinvestigate Questionable Evidence: Dallas Establishes a 'Conviction Integrity Unit.'" *CRIMINAL JUSTICE*, Volume 26, Number 3, Fall 2011.

68 An exact number of units is somewhat elusive because, as Daniel Medwed points out in his book *Barred*, some units "operate passively, with nary an exoneration or rigorous investigation under their belts, and seem little more than a link on a website." (MEDWED, *supra* note 6, p. 235).

69 See Judith A. Goldberg & David M. Siegel, *The Ethical Obligations of Prosecutors in Cases Involving Postconviction Claims of Innocence*, 38 CAL. W. L. REV. 389 (2002); Ellen Yaroshefsky, *Wrongful Convictions: It is Time to Take Prosecution Discipline Seriously*, 8 UDC/DCSL L. REV. 275 (2004); Daniel Kropesch, *Prosecutorial Best Practices Committees and Conviction Integrity Units: How Internal Programs Are Fulfilling the Prosecutor's Duty to Serve Justice*, 29 GEO. J. LEGAL ETHICS 1095, 1103-05 (2016); Brandon Hamburg, *Legally Guilty, Factually Innocent: An Analysis of Post-Conviction Review Units*, 25 REV. L. SOC. J. 183, 204 (2016). See also American Bar Ass'n, Rule 3.8: Special Responsibilities of a Prosecutor-Comment, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_3\\_8\\_special\\_responsibilities\\_of\\_a\\_prosecutor/comment\\_on\\_rule\\_3\\_8/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor/comment_on_rule_3_8/) (last visited October 9, 2024).

Figure 6. Number of CIUs/CRUs with Recorded Exonerations



Source: National Registry of Exonerations as of September 30, 2024.

### The Experts

Barry Scheck, one of the founders of the Innocence Project, has contributed more to the conversation on conviction integrity units than anyone. Accordingly, many of the best practices discussed below come from him.<sup>70</sup> Others who have studied and expanded upon these best practices include: Rachel Barkow, the Faculty Director of the Zimroth Center on the Administration of Criminal Law at NYU; John Hollway, the Executive Director of the Quattrone Center; the late Ken Thompson, the former District Attorney of King County New York; and Miriam Krinsky, the Executive Director of Fair and

### Conviction Review Units: A National Perspective

In his report “*Conviction Review Units: A National Perspective*” published in 2016, John Hollway, the Executive Director of the Quattrone Center, used Professor Ronald Sullivan’s acronym “CRINO”—Conviction Review in Name Only—to describe certain CIUs/CRUs that are not reviewing past convictions in good faith with a sincere commitment to investigate and resolve credible claims of actual innocence. CRINOs are often identifiable not only by their lack of recorded exonerations but by their lack of independence, flexibility, and transparency. Hollway rightfully cautions that there is no single, conclusive measure or “best practice” that reveals whether a particular unit is a sincere CIU/CRU or a CRINO. Instead, he suggests that the collective profile of a unit, gathered from a review of overall adherence to general best practices, is the more reliable approach to assessing whether a unit is a sincere unit or a CRINO. He then recommends the use of a “best practice” checklist he created to serve as a tool to help distinguish between the types of units.

**However, it is important to note that the checklist was created before any statewide unit existed. Using it to assess a state unit requires even more caution and a recognition that its usefulness in that context maybe attenuated.**

70 Barry Scheck, *Professional and Conviction Integrity Programs: Why We Need Them, Why They Will Work, and Models for Creating Them*, 31 CARDOZO L. REV. 2215 (2010); Barry Scheck, *Conviction Integrity Units Revisited*, 14 OHIO ST. J. CRIM. LAW 705 (2017).

Just Prosecution.<sup>71</sup> All of these sources, along with several others, have been considered in this external review. A sampling of some of the more significant best practices is described below.

### *Independence*

The notion that prosecutors can either police, prosecute, or independently evaluate the work of their brethren has been analogized to “the fox guarding the henhouse.” Most experts recommend that to protect against that criticism, leaders of newly formed units should report directly to the elected or appointed leader in their office. Such a reporting structure is important because it shows the leader’s serious commitment to “look back” to right the wrongs of the past and to learn from those wrongs so as to not blindly allow them to continue. This reporting structure also serves the additional purpose of ensuring the unit’s independence from other prosecutors within the office which will allow for integrity in the work it undertakes.<sup>72</sup> Another important aspect of independence is hiring a leader from outside the office and, preferably, someone with criminal defense experience.

### *Broad Scope of Review*

Historically, CIUs/CRUs mostly limited their review efforts to actual innocence claims instead of claims of wrongful conviction in general.<sup>73</sup> The existence and availability of DNA evidence in many cases initially made a narrow “innocence” funnel of review both reasonable and workable. However, most of the exonerations that occur today are not DNA cases.<sup>74</sup> Moreover, according to the NRE, as of October 21, 2024, official misconduct and perjury or false accusation are the most common contributing factors identified in cases that result in exonerations.<sup>75</sup>

There is consensus that the mandate or scope of review undertaken by a unit should involve case reviews done in an “interests of justice” framework rather than limiting review to past trials where there is now a credible claim of “actual innocence.” Adoption of an “interests of justice” framework requires members of the unit to ask, throughout their review and investigation, “if we knew then all the information we know now, would we do things in a materially different manner?” In other words, does this new lens result in a loss

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71 Barkow et al., *Establishing Conviction Integrity Programs in Prosecutors’ Offices*, CENTER ON THE ADMINISTRATION OF CRIMINAL LAW (2012), [https://www.law.nyu.edu/sites/default/files/upload\\_documents/2011-CACL-Conviction-Integrity-Programs-Report.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/2011-CACL-Conviction-Integrity-Programs-Report.pdf); John Hollway, *Conviction Review Units: A National Perspective*, QUATRONE CTR. FOR THE FAIR ADMIN. OF JUSTICE, U. PENN. CAREY L. SCH. (2016), <https://www.law.upenn.edu/live/files/5522-cru-final>; Summit on Strategies for Overturning Wrongful Convictions Held by Brooklyn District Attorney Kenneth Thompson at Brooklyn Law School, <https://ny1.com/nyc/brooklyn/news/2015/10/15/summit-on-strategies-for-overturning-wrongful-convictions-held-at-brooklyn-law-school> (Oct. 15, 2015).  
Fair and Just Prosecution, *Conviction Integrity and Review: Key Principles and Best Practices for Ensuring Justice and Accountability* (2019), <https://www.law.upenn.edu/live/files/10595-fjp-conviction-integrity-statement-of-principles>.

72 There are at least two different types of “prosecutorial interference” CIU/CRUs must steer clear of when they review a case. The first, and most obvious type of interference, involves prosecutors and law enforcement who worked on the case from pre-trial through post-conviction trying to weigh in on decision-making or the outcome of the review. The second type of interference, often more insidious, comes from prosecutors (and law enforcement) who did not work on the case but, due to other reasons such as bias, unreasonably advocate for preserving the conviction. Because of that, ensuring these actors cannot do an “end run” around the CIU/CRU and speak with the head prosecutor about a case is a critical aspect of ensuring the unit’s independence.

73 Neither the Minnesota nor the United States Supreme Court have defined “actual innocence” or recognized it as an independent claim upon which a person can obtain postconviction relief. However, the term “actual innocence” is commonly used to describe a situation where a person is factually innocent of a crime for which they were convicted. The term “wrongful conviction” is broader than the term “actual innocence” in that it can encompass different situations including: (1) convictions of factually innocent people; (2) convictions where there was a constitutional error or miscarriage of justice resulting in the grant of a new trial where the case is either dismissed or an acquittal occurs because there is insufficient evidence to prove guilt beyond a reasonable doubt; or (3) convictions where the person committed the offense for which they were charged, but constitutional error or a miscarriage of justice has tainted the case thus resulting in a successful retrial or plea of guilty.

74 In 2023, there were 165 recorded exonerations; 24 involved DNA, and the remaining 141 did not. THE NATIONAL REGISTRY OF EXONERATIONS, *Exonerations by Year: DNA and Non-DNA* [Dynamic Graph], <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>.

75 THE NATIONAL REGISTRY OF EXONERATIONS, *Percentage of Exonerations by Contributing Factor* [Dynamic Graph], <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.

of confidence in the outcome of the original proceeding? Units that rigidly adhere to a “clear and convincing” standard of proof for “factual innocence” will likely fail to identify and correct many wrongful convictions.<sup>76</sup>

Reviews and investigations undertaken by a unit should therefore broadly include cases (including trials or guilty pleas) where there is a credible claim of:

- miscarriage of justice;
- official misconduct by police, prosecutors, or other actors;
- new favorable evidence; and
- unreliable forensic or other investigative techniques used to secure the conviction/sentence.

### *Policies and Procedures*

A unit should formulate, adopt, and publish clear policies and procedures designed to ensure internal independence and flexibility of operations, and encourage the submission of applications for review. More specifically the elected official, in consultation with the unit leader, should define the overall mission and purpose of the unit. From there, the director should draft unit policies and procedures. All experts and best practices guidelines agree those policies should include guidance and information regarding the following:

- how to submit a claim;
- potential effects a submission may have on postconviction litigation;
- the role of unit prosecutors and staff—i.e., explaining they are part of the prosecutor’s office, are not counsel for applicants, and all information provided during the intake, screening, and investigation process is not confidential;
- types of cases accepted for review;
- standards of review for initial case acceptance or screening, case review, systemic reviews, and recommending when a conviction/sentence should be vacated, dismissed or modified;
- mandatory screening (for conflict purposes) of original prosecutor/ investigator from all stages of case review so that they are not consulted or privy to the review, investigation and ultimate decision made in the case;
- the role of an applicant or applicant’s counsel in case review;
- requirement of a collaboration agreement, open file discovery—including work product with appropriate privacy and security redactions—and the joint participation in or sharing of information learned or obtained during unit investigation;
- when, and under what circumstances victims should be notified of a unit review;
- internal policies and procedures for handling postconviction requests for DNA testing and claims regarding invalidated or unreliable forensic science or expert testimony;
- procedures for handling credible allegations of prosecutorial or law enforcement misconduct;
- disclosure of final decision after case review and basic rationale; and
- whether an applicant can revisit the review process after a decision.

The unit should follow an internal uniform screening process that identifies information generally needed for the various stages of review. These will often include original trial prosecutor and police files, trial court and appellate opinions, hearing and trial transcripts, crime scene unit and forensic reports, autopsy/medical examiner reports, and an inventory of available physical evidence and interrogation recordings.

Because a new unit should expect an onslaught of case submissions, it should adopt a general policy regarding how to prioritize the review of cases before announcing the unit’s formation. Inevitably the reality of volume versus resources requires the unit to triage requests for review—the unit will have to decline certain cases during the early stages of review in order to adequately review and investigate cases more obviously warranting relief. Because of this, proper training of staff engaged in the screening process is essential to identify cases worthy of further consideration.

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76 Private correspondence with Barry Scheck, on file with the author.

The date of request and whether a lawyer represents an applicant should not be dispositive to whether a CIU undertakes a case review. Instead, the general policy should reflect relevant factors which, if present, support priority for assignment of the case to a unit prosecutor for further review and investigation. A prioritization system presumes a certain level of screening has been done by support staff.

The general prioritization policy should also include discretion to avoid being completely rigid or formulaic. Again, all experts and guidelines reviewed suggest the following factors should be considered relevant for prioritization:

- the nature of the offense and years incarcerated;
- that the applicant is currently incarcerated;
- that there is an actual innocence claim;
- the applicant's age at time of conviction with priority given to those who were juveniles at the time of the act's commission;
- availability and/or possibility of forensic testing/evaluation;
- involvement of known bad actor(s);
- if a co-defendant has been granted relief or released;
- any significant change/development in law;
- the submission date; and
- other extenuating circumstances such as medical issues with an applicant or necessary witness.

### *Working with Pro se Applicants*

Historically, successful units have received a high volume of requests from applicants who are *pro se*—that is, applicants not represented by counsel. A high volume of *pro se* applications is not surprising because incarcerated individuals are often unable to retain postconviction counsel. In other instances, a high volume of *pro se* applicants reflects the fact that some units have garnered trust from incarcerated individuals because of the unit's willingness to holistically review and evaluate their claims for relief, often even assisting in obtaining counsel for the incarcerated individual. A few specific actions to help facilitate trust and allow for a holistic review include:

- The unit *should not* require general waivers of attorney client privilege as a prerequisite for review and/or interview *pro se* applicants without counsel.
- The unit should have policies and procedures for determining when, and at what stage, to take affirmative steps to request counsel for *pro se* applicants.
- The unit should have a dedicated website with content including basic information and accessible electronic and downloadable application/intake forms.
  - Due to limited access to computers within prisons, the unit should develop an informational paper pamphlet and intake form for distribution instead of solely relying on electronic communication and delivery of forms.<sup>77</sup>
- Application/intake forms should be written in English, Spanish, and other languages dominant in the jurisdiction.
- Standardized communication methods should be used to keep *pro se* applicants informed of the status of their request for review.

### *Partnerships*

Units should work to partner with others in the field to increase transparency, ensure accuracy, and effectively manage a voluminous and complex caseload. More specifically, units should:

- explore partnering with law schools to engage students through either an externship, internship, or clinic as doing so will help with various day-to-day unit tasks such as basic case work-up, screening, research, and special projects and this type of partnership will have the added benefit of teaching future lawyers about the importance of this work in a prosecutor's office;

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<sup>77</sup> Because the unit should make every effort to ensure that *pro se* applicants are afforded the same full and fair consideration as applicants represented by counsel, all requisite forms should be written to maximize an understanding of both the risks and benefits of collaborating with the unit and the legal rights implicated by any waiver and acknowledgement forms. The Quattrone Center developed a sample application form with help from linguists and design experts which CIUs can use; the form is accessible through the Conviction Integrity Resource Center, available at [convictionreview.net](http://convictionreview.net)



- form cooperative relationships with innocence organizations, public defenders, and private counsel to provide assistance in more complex areas such as systemic reviews—units in Maryland, Michigan, New York, Pennsylvania, and Texas have partnered with local innocence organizations or other non-profit organizations and academics to assist in the review of *pro se* cases and provide legal representation where appropriate;<sup>78</sup> and
- retain independent scientists and legal experts to provide the unit with assistance in case review, investigations, and even litigation: areas where units have benefitted from such partnerships include cases involving eye-witness identifications, false confessions, and forensic pathology.

### *Science-Based Investigative Interviewing*

For those CIU/CRU cases that proceed past the screening process to a new investigation, it is important to note that there is a dearth of research that specifically explores how to do the necessary investigative interviewing, much less in a manner that produces reliable and credible information. Thus, it is not surprising that suggested best practices regarding aspects of the investigative functions of a CIU/CRU are general and offer little more than “investigations should be collaborative and transparent when possible.”

While collaboration and transparency are laudable, helpful, and arguably necessary objectives in any effort to free the wrongfully convicted, in the context of conviction integrity investigations both can be misunderstood without further discussion.<sup>79</sup> For instance, even though CIU/CRU attorneys and investigators have a unique and specific role to play in a prosecutor’s office, they still have legal and ethical obligations distinct from defense lawyers and defense investigators. As a result, those distinct obligations can require a CIU/CRU to use investigative techniques that are quite different from those employed by defense lawyers and investigators whose ethical obligation is to zealously represent their client.

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<sup>78</sup> Much of this work has been possible due to government and private grants. The federally funded Upholding the Rule of Law and Preventing Wrongful Convictions program through the Office of Justice Policy, which made this review possible, has funded collaborations between CIUs and innocence organizations in 16 jurisdictions since 2018. *See* [https://bja.ojp.gov/funding/expanded?search=%22upholding+the+rule+of+law%22&fiscal\\_year=&sort\\_by=field\\_closing\\_date\\_value&sort\\_order=DESC#funding-opportunities-block-3-ajv45oezva3lk6av](https://bja.ojp.gov/funding/expanded?search=%22upholding+the+rule+of+law%22&fiscal_year=&sort_by=field_closing_date_value&sort_order=DESC#funding-opportunities-block-3-ajv45oezva3lk6av).

<sup>79</sup> The Quattrone Center created a resource for lawyers conducting collaborative investigations developed from discussion groups involving dozens of practitioners and ethics experts. These *Guidelines for Collaboration and Engagement* include information on conducting interviews with witnesses, sharing information, collaboration agreements, ethical issues faced by prosecutors and defense counsel, interview coordination, Brady obligations, and more. Insofar as witness interviews are concerned, the Guidelines note they should “be conducted following open-ended cognitive interviewing techniques rather than use of leading or guilt-presumptive questioning.” *See*, Quattrone Center, GUIDELINES FOR COLLABORATION AND ENGAGEMENT: PROSECUTORS AND DEFENSE COUNSEL WORKING TOGETHER IN JOINT POST-CONVICTION INVESTIGATIONS, at 16 (2022), [www.law.upenn.edu/live/files/12062-guidelines-for-collaboration-and-engagement](http://www.law.upenn.edu/live/files/12062-guidelines-for-collaboration-and-engagement).



## How CIU/CRU Investigations are Different

To understand specific best practices for CIU/CRU investigative interviews it is vitally important to highlight some of the complexities and challenges a unit routinely encounters not often found in most law enforcement investigations occurring before trial.

- The conviction—and the criminal investigation that led to it—will have commonly taken place years even decades in the past.
  - Memories of those involved will have degraded to various degrees.
  - Witnesses, victims, forensic experts/technicians, and even the investigators themselves may not be available for interview.
  - Critical records are likely to be stored in physical archives rather than computer databases, making locating and accessing this material far more difficult and time-consuming.
- The conviction—and what makes it “wrongful”—likely would not have occurred without individual misconduct and/or malpractice, systemic dysfunction, and/or institutional racism, meaning many of the individuals and agencies involved may wish to circumvent the investigative effort.
  - Prosecutors have often strenuously argued that the case they brought against the accused was well-founded and just. This is true even in cases where a re-examination of the evidence (especially DNA) demonstrates the accused's irrefutable innocence—in some cases even supporting the identification of the actual perpetrator.
  - Defense attorneys who failed to effectively represent their client may be hesitant to admit to grave errors in law or trial strategy. They may have also offered advice that led to an innocent client accepting a plea deal rather than face the prospect of a more serious sentence if the case went to trial.
  - Original investigators in wrongful conviction cases rarely acknowledge shortfalls in their process, like a failure to pursue investigative leads that did not focus on the guilt of the accused. Similarly, investigators may minimize malpractice in their methods such as accusatory—even coercive—interrogation methods identified by research as instrumental in extracting false admissions or confessions.
  - Witnesses who have often undergone multiple interviews, interrogations, and courtroom examinations may be unlikely to admit to errors, bias, or succumbing to undue influence whether from lawyers, investigators, relatives/friends, or even members of the victim's family, especially where the accused has been incarcerated for long spans of time.

Despite the lack of research regarding CIU/CRU investigations, the process of conducting investigative interviews can and should effectively draw upon a model of science-based interviewing (SBI) that has emerged from robust empirical research and field validation studies completed in the past dozen years.<sup>80</sup> SBI is a model that follows a cognitive interview approach, using open-ended questions rather than leading or accusatory ones to gather information. The use of an SBI model allows a CIU/CRU to avoid the inherent flaws in the conventional, accusatory approach to law enforcement interviewing proven to increase the potential of extracting false confessions while simultaneously decreasing information yield, including information that can be mitigating and/or exculpatory.<sup>81</sup>

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80 Part of the external review of the Minnesota CRU involved consulting with subject matter experts, including Steven Kleinman. Kleinman, who served as a high-ranking military intelligence officer, is a recognized expert in the fields of human intelligence, special operations, and special survival training. He has also been a consulting and/or testifying expert witness in numerous conviction integrity cases. Much of the material regarding investigative interviewing in this Report comes from him. See Steven M. Kleinman, *Point Paper on the Challenges of Investigating Wrongful Conviction Cases: A Review of the Science* (2024), unpublished paper on file with the author.

81 *Id.* The accusatory approach, seen repeatedly in known false confession cases, is frequently informed by a guilt-focused mindset

Other benefits that come from the use of an SBI model in investigations is it allows a unit to: 1) leverage the broad and deep behavioral science literature to work in concert with, and even enhance, memory; 2) operate from a nonjudgmental perspective to elicit the accused's or witness' complete narrative; 3) present evidence in an objective, non-manipulative fashion; and 4) assess credibility based on more reliable, objective-based criteria. These benefits should help a unit overcome the complexities and challenges of a CIU/CRU investigation by yielding both reliable and credible information.

### *Duties to Crime Victims*

CIUs need to be aware of the impact an exoneration can have on a crime victim and/or their survivors (victims).<sup>82</sup> CIUs should be familiar with their legal responsibilities to victims and know early on who the victims are and how to reach them. Often both identifying victims and locating them can be difficult due to the passage of time since the case was “closed” with a conviction. After an exoneration occurs, victims are likely to experience a wide array of emotions and trauma. The experience can completely disrupt the victims' lives, resulting in feelings of revictimization and even guilt.<sup>83</sup> Often their sense of safety and closure disintegrates. Some victims may even fear physical retaliation or financial recrimination by the exoneree.<sup>84</sup> This experience is made worse with poor or no notice of a pending exoneration.

Transparency and communication are key to helping victims understand what is happening, that they are not to blame for an original wrongful conviction, and what services may be available to them to help them through the process. This notification should come from the CIU/CRU prosecutors themselves, as they are in the best position to explain why the conviction is being vacated and what the process will look like.<sup>85</sup> If available, a victim's advocate should participate in the notification process to provide information to the victims regarding available services and resources.

Some victim advocates and CIU experts disagree on when victims should be notified of a review or potential exoneration/case correction. Some feel that premature notification—when a case is going through early stages of DNA testing, or at the beginning of an investigation—may cause victims needless trauma as the investigation may yield nothing helpful or even incriminate the CIU applicant.<sup>86</sup> Others argue that early notification is key to allow the victims to decide for themselves how they will be informed of how a case progresses through a CIU investigation.<sup>87</sup>

At whatever point the CIU decides to notify victims of an ongoing investigation or pending exoneration, there is agreement the notification should be transparent and done with enough time for the victims to process what is happening.

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on the part of investigators, meaning investigators reach an early conclusion regarding the subject's guilt although they often have minimal evidence to support it.

82 There is no uniformity among states in either defining “crime victim” or in the rights victims have throughout the justice process. For an overview of states' obligations to victims, see generally Paul Cassell and Michael Ray Morris, *Defining “Victim” Through Harm: Crime Victim Status in the Crime Victims' Rights Act and Other Victims' Rights Enactments*, 61 AM. CRIM. L. REV. 329 (2024).

83 Some crime victims and their advocates have justifiably criticized the way prosecutors' offices in general have historically treated them throughout the exoneration process. Jennifer Thompson is an outspoken advocate for victims in the exoneration process. A crime victim herself who lived through an exoneration, Thompson has noted that a crime victim is the first to know about the crime and sometimes the last to know about an exoneration. This lack of communication causes the crime victims and their surviving family members to experience re-victimization and re-traumatization. Victims who are not notified of a pending exoneration by prosecutors or law enforcement often learn about the event only through the media after it has occurred and once the exoneree has been released. The National Institutes of Justice gathered experts to discuss these issues in 2013 and reported their findings. While generally helpful, only a few CIUs existed at that time and most exonerations occurred without them. See Nat'l Inst. of Just., *Study of Victim Experiences of Wrongful Conviction*, ICF INTERNATIONAL (2013), at 11, <https://www.ojp.gov/pdffiles1/nij/grants/244084.pdf>.

84 Nat'l Inst. of Just., *Study of Victim Experiences of Wrongful Conviction*, ICF INTERNATIONAL (2013), at 12, <https://www.ojp.gov/pdffiles1/nij/grants/244084.pdf>.

85 *Id.* at 53.

86 *Id.* (noting disagreement between law enforcement, prosecutors, and victim advocates as to the timing of notification).

87 Healing Justice, *Post-Conviction Survivor Resources: Eight Guiding Principles*, HEALING JUSTICE, [https://www.survivorservices.org/media/ks4jbcdd/practitioner-resources\\_guiding-principles\\_final.pdf](https://www.survivorservices.org/media/ks4jbcdd/practitioner-resources_guiding-principles_final.pdf).

## The Minnesota CRU Adheres to National Best Practices

The collective profile of the Minnesota CRU, gathered from a review of overall adherence to general best practices, revealed that the unit is operating in good faith to achieve its stated mission and goals.<sup>88</sup> In addition to adherence to best practices, this finding is based on an assessment of the benefits and drawbacks of how the unit approaches case reviews compared to other units in general and statewide units specifically. The comparison to best practices was particularly helpful regarding the unit's policies and procedures while the comparison of case review procedure was critical to understanding certain structural barriers unique to statewide units such as the Minnesota CRU.

### STATEWIDE UNITS

A statewide CIU/CRU is typically housed within a state attorney general's office and is designed to offer assistance on investigating claims of innocence and/or wrongful conviction to local prosecuting offices throughout the state. One structural barrier encountered by these units not encountered by county-based units is the lack of jurisdiction over cases. More specifically, statewide units are often not the prosecuting office with the legal authority or standing to litigate a postconviction claim of innocence and/or wrongful conviction. As a result, the statewide unit typically only acquires the legal authority to litigate a case when it has been referred or transferred to it from the local prosecuting office.

Currently, there are eleven statewide units in the country: California, Connecticut, Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and Virginia. In addition, North Carolina has the North Carolina Innocence Inquiry Commission, which is independent of the judiciary, and Missouri passed legislation last year to create a statewide CIU through the Missouri Office of Prosecution Services.

### Independence

The Minnesota CRU was created and initially funded by a federal grant provided by the Department of Justice through the Bureau of Justice Assistance.<sup>89</sup> The grant provided funding for one full-time attorney to be the unit's director. The unit staff has slowly, but steadily, grown over the last three years with an additional federal grant,<sup>90</sup> funds from two Minnesota foundations, and a legislative budget increase. With this funding, the staff expanded to include two full-time attorneys (previously three until one resigned in June 2024 and left the AG's office), one full-time investigator (hired following an attorney's resignation), one full-time paralegal, and one full-time legal secretary. The overall size of the unit is now similar to other statewide units. Yet, as discussed above in the Case Statistics section, the number of cases reviewed indicate the Minnesota CRU's input and output far exceeds those of other statewide units.

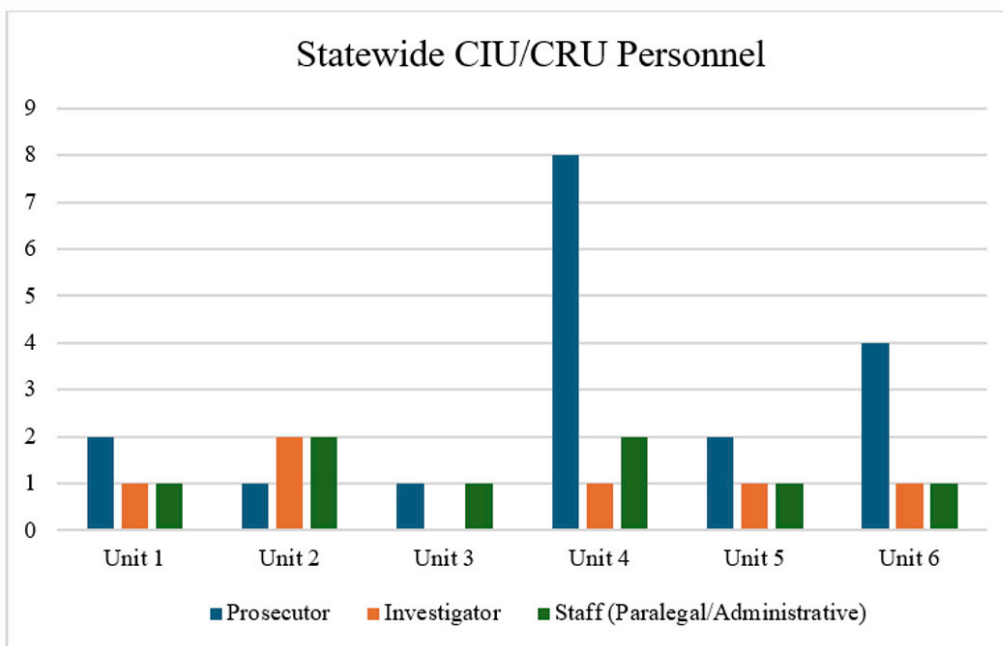
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88 See *Appendix, Table 1- Completed CRU Checklist for Minnesota CRU* (September 30, 2024), following Hollway's checklist, one of many tools used to assess the Minnesota CRU. See, HOLLWAY, *supra* note 60, at 5 - 6.

89 Award number 2020-FA-BX-0005, awarded in 2020. Information is available through the website for the Bureau of Justice Assistance, a component of the U.S. Department of Justice's Office of Justice Programs, at <https://bja.ojp.gov/funding/awards/2020-fa-bx-0005>.

90 Award number 15PBJA-22-GG-03902-WRNG, awarded in 2022. For a description of the grant proposal, see <https://bja.ojp.gov/funding/awards/15pbja-22-gg-03902-wrng>.

Figure 7. Statewide CIU/CRU Personnel



Source: Anonymized data from 2023 Quattrone Center CIU/CRU Survey.

### Policies and Procedures

The Minnesota CRU adopted, implemented, and made publicly available most of its policies and procedures before it began the active review of cases. While this may have initially slowed down case reviews, it provided much needed guidance and transparency to both applicants and the public.<sup>91</sup>

The unit's policies and procedures generally adhere to recommended best practices.<sup>92</sup> However, due to various procedural and structural barriers, the unit has not yet been able to implement all of them. For instance, due to the lack of resources, the volume of applications and the constraints of Minnesota law, the unit has triaged its work by prioritizing actual innocence claims and delayed acceptance of sentencing claims.

### Working with Pro Se Applicants and Partnerships

The CRU took great care in structuring its application to ensure it would be easily accessible to convicted individuals. The application itself uses appropriate language, calls for a minimum amount of narrative on the part of the applicant, and is available in English and Spanish. The website clearly outlines the process for applying and how the CRU evaluates and investigates cases. All of these are important to reach pro se individuals who could benefit from the CRU's work.

In addition, by working with the Great North Innocence Project, the unit has developed a system to connect volunteer lawyers with pro se applicants. Together, they have conducted training on post-conviction work and the complexities of the post-conviction process for interested lawyers. After training, the lawyers then register to work with a pro se applicant in various stages from reviewing the application through to representation.

91 The Office of Minnesota Attorney General Keith Ellison, *Request for Review by the Conviction Integrity Unit* [Form], [https://www.ag.state.mn.us/Office/CRU/MNCRU\\_Application\\_ENGLISH.pdf](https://www.ag.state.mn.us/Office/CRU/MNCRU_Application_ENGLISH.pdf); See also Minnesota Attorney General CRU website - *Frequently Asked Questions*, <https://www.ag.state.mn.us/Office/CRU/FAQ.pdf>.

92 There are two notable exceptions. While the leader of the unit has direct access to Attorney General Ellison to discuss case recommendations, the actual organizational chart shows that she has two supervisors in her chain of command before Attorney General Ellison. In addition, as mentioned elsewhere in this report, the number of applications for review have resulted in a prioritization of actual innocence claims, which has meant, effectively, the unit has been operating under a fairly narrow scope of review.

To maximize limited resources, Carrie Sperling, the leader of the unit and a former law professor, has consistently partnered with law schools for clinical student support to process and review applications. Although teaching and supervising law students is time-intensive, Sperling's teaching experience combined with her organizational skills and well-written policies and procedures have enabled law students to meaningfully contribute to the work of the unit.

### *Science-Based Investigative Interviewing*

The Minnesota CRU has spent a considerable amount of time not only investigating individual cases but also learning how to properly investigate its cases. In 2023, the unit hosted a nationwide training for CIU/CRU staff members organized by the Quattrone Center under their federal cooperation agreement with BJA focused on using the SBI model in investigations. The Minnesota training was led by Matt Jones, a former police detective in Tempe, Arizona. Jones is an exceptionally experienced investigator who has worked an array of major crimes, including homicide, and has immersed himself in the study and practice of science-based interviewing including earning a graduate degree in forensic psychology. Both Jones and Steven Kleinman led the Minnesota SBI training. Recently, the CRU hired a full-time investigator with training and experience using an SBI model in investigations.

### *Duties to Crime Victims*

The CRU has created a transparent and thoughtful approach in its relationship with crime victims.

The CRU created a three-page document used with crime victims or surviving family members, "*Overview for Victims and Survivors: The Conviction Review Unit's Investigatory Process*." The document provides a description of the review and investigation process as well as how the AG's Office makes decisions about cases it reviews.<sup>93</sup> The document attempts to manage expectations by addressing complex issues such as the time it takes to review and investigate a case, confidentiality protections, the media, and potential litigation. Victims and survivors are also informed that they may opt in or opt out of receiving CRU notifications and they are provided with contact information if they have questions.

Beyond providing written information, the CRU works with a victim advocate within the office, with a Victim Considerations Subcommittee of the Advisory Board, and with Healing Justice—a non-profit organization dedicated to working to "prevent and alleviate the harms caused to all by wrongful convictions through advocacy, education, and direct support."<sup>94</sup>

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93 Available from Minnesota CRU upon request.

94 Healing Justice was founded by Jennifer Thompson, a crime survivor whose case resulted in an exoneration supported by DNA evidence 10 years after conviction. The organization provides direct services to crime victims and exonerees and works with practitioners to promote victim awareness and support through the post-conviction process. To learn more, visit <https://healingjusticeproject.org/>.

## RECOMMENDATIONS

The following recommendations acknowledge the procedural, structural, and cultural limitations currently beyond the control of the unit and offer potential paths forward to remove and/or minimize those barriers. With fewer barriers, the unit will be better situated to continue and expand its work.

### Prioritization of Recommendations

In addition to making general recommendations, a prioritization schedule is included to not only provide a timeline guide should the unit adopt the recommendations but also to reflect the feasibility and potential impact adoption and implementation could have on furthering the mission and achieving the goals of the unit. Accordingly, all recommendations are classified as either:

- Near-term (within 6 to 12 months); or
- Long-term (within 12 to 24 months).

### Near-Term Recommendations (Within 6 to 12 Months)

#### *1 – Increase Resources for the Unit's Operations*

*The work the unit does is specific, complex, and is derived from processing, reviewing, investigating, and potentially litigating a heavy caseload; as a result, the unit must be adequately staffed.*

Since its creation, the unit has largely relied upon grant funding to grow its staff. And although that growth has steadily increased the unit's capacity to review and investigate cases, the data collected by the unit clearly supports a need for additional, consistent, and more reliable funding.

At a minimum, the unit should be funded to meet the following staffing needs:

- one Assistant Attorney General—Director;
- one Assistant Attorney General—Assistant Director;
- two Assistant Attorneys General;<sup>95</sup>
- two investigators;
- two paralegals; and
- one legal secretary.

The hiring criteria for unit prosecutors favors adequate relevant experience as defined by best practices in the field of conviction integrity review such as a criminal defense background, investigative skills, trial experience, and familiarity with forensic scientific principles. The unit should also have sufficient budgetary resources to retain outside forensic experts as needed.

A qualified staff, equipped with the proper tools, affirmatively taking steps to free the innocent, identify the wrongfully convicted, and reduce inequitable sentences<sup>96</sup> will promote prosecutorial responsibility and accountability, restore and/or build the community's trust in the criminal legal system, and may allow for the prosecution of the real perpetrator who escaped justice in the first instance.

Potential steps the AG's Office can take to implement this recommendation are:

- evaluate current budget and staffing to determine office needs and re-allocate funding to staff the unit;
- request additional emergency funding from the legislature outside the normal budgetary process;
- request additional funding from the legislature during the normal budgetary process; and
- continue to research and apply for relevant grant funding.

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95 These two prosecutor positions do not include unit fellow(s) addressed at Long-Term Recommendation #4.

96 See Long-term Recommendation #2 below.



Identifying the necessary funding will no doubt present challenges. However, other units in the country such as Dallas, Philadelphia, Brooklyn, Queens, and Manhattan have succeeded in finding resources to fund their units.<sup>97</sup>

## *2 - Formulate and Adopt Amended Policies and Procedures for the Advisory Board*

*The purpose and the role of the Advisory Board should be revisited to consider how to best support the Minnesota CRU's mission and goals.*

Having successfully assisted in the formation of the Minnesota CRU, the Advisory Board is at a crossroads. Although Attorney General Ellison envisioned the Advisory Board would continue to assist on national best practices, evolving issues related to wrongful convictions, sentencing, and policy matters, little progress appears to have been made in those areas. One explanation for the lack of continuing progress may be the nature and format of the board meetings; all but one have been virtual and open to the public. While admirable from a transparency perspective, open and public meetings may limit frank discussion on pressing topics. Another explanation for a lack of progress is that new policies and procedures need to be formulated and adopted to define the continuing purpose and role of the Advisory Board.

Recommendations for getting past the crossroads were provided by or discussed with various board members during interviews conducted for this report. Specifically, members grappled with numerous questions:

- Now that the unit has been formed, a charter adopted, and a leader hired is there still a need for an Advisory Board?
- Assuming the Attorney General and the Unit need external support, should it continue to come from an Advisory Board or a less structured and less formal entity such as an advisory committee?
- If the Advisory Board is kept intact, should term limits and a conflict policy be adopted for its members?
- Should the Advisory Board revisit the very detailed CRU charter and consider amending it considering existing procedural, structural, and cultural barriers?
- What role should the Advisory Board serve moving forward; should it move toward case review, policy, fundraising, or providing expert assistance?
- Depending on how the role of the Advisory Board is defined, should meetings always be open to the public?

When answers or solutions were posited to the above questions, there was agreement on some issues and not on others. However, one area of consensus was a collective desire and commitment to assist the unit to ensure its continued existence and success in the future.

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<sup>97</sup> To illustrate, in the spring of 2007, the Dallas County Commissioners funded the new Conviction Review Unit after advocacy from the newly elected Dallas County District Attorney and his First Assistant. As related by the Dallas County initial CRU director, Mike Ware: In the spring of 2007, [Dallas District Attorney Craig] Watkins and [First Assistant Terri] Moore approached the Dallas County Commissioners with their request that the Commissioners fund four new positions in the District Attorney's office, which would comprise the Conviction Integrity Unit: two prosecutors, an investigator, and a paralegal. The hearings in the Commissioner's Court were contentious and spanned several meetings. One of the commissioners (an attorney) argued stridently that exonerating innocent, wrongly convicted defendants was strictly the job of the criminal defense bar. Exoneree Billy Smith spoke passionately and eloquently in favor of [the District Attorney's] proposal for the four new positions. Ultimately, it passed with a 3–2 vote. On July 12, 2007, the CIU began its work.

Mike Ware, *Dallas County Conviction Integrity Unit and the Importance of Getting It Right the First Time*, 56 N.Y.L. SCH. S. REV. 1033, 1035 (2012). Similarly, when Philadelphia District Attorney Larry Krasner took office in January 2018, he increased the number of attorneys in the Conviction Integrity Unit by 150%. As of June 2021, the unit was staffed with nine full-time attorneys, three office funded fellows, five paralegals, and investigative support from DA detectives. Philadelphia District Attorney's Office, *Overturning Convictions—and a New Era: Conviction Integrity Report January 2018 – June 2021*, <https://github.com/phillydao/phillydao-public-data/blob/main/docs/reports/Philadelphia%20CIU%20Report%202018%20-%202021.pdf>.



### 3 – Engage in Legislative Advocacy to Advance Conviction Integrity Principles

*The Minnesota CRU should play an active role in the legislative process to help prevent wrongful convictions and to eliminate procedural, structural, and cultural barriers to exonerations of innocent people incarcerated in Minnesota prisons.*

The notion that a CIU/CRU can meaningfully contribute to policy discussions and/or the legislative process is not novel. Units throughout the country are often utilized as resources in efforts to teach about and prevent wrongful convictions. Sometimes, they are even asked to actively participate in the legislative process.

As one of only a small number of statewide units, the Minnesota CRU is in a unique position to serve as a resource for legislative bodies. Its position is unique because it not only sees the procedural and structural barriers the criminal legal system has created for reviewing claims of innocence, but it also has the benefit of seeing those claims from all over the state of Minnesota through a disinterested and objective lens since the unit did not prosecute the overwhelming majority of its cases.

To effectuate this recommendation, the unit should first meet with legislative leadership within its office to discuss developing a legislative strategy. The legislative strategy could ultimately include a variety of objectives, ranging from ethics in prosecution to an omnibus bill targeting evidentiary rules known to increase the likelihood of wrongful convictions.

### 4 – Conduct Systemic Reviews of Cases Involving Known Bad Actors

*The Minnesota CRU should use data and anecdotal information from individual cases to conduct systemic reviews of cases involving known bad actors—such as prosecutors, police officers, experts, or informants—whose conduct in a case or cases was so egregious it raised significant questions to whether that individual engaged in similar conduct in other cases.<sup>98</sup>*

Systemic reviews are resource intensive, so at least one unit prosecutor and paralegal should be assigned to identify and review case information. An investigator should also be available to interview relevant witnesses and a victim advocate should be consulted if the unit determines victim notification is necessary for either investigative purposes or if postconviction relief is recommended.

In 2021, when a federal judge called a Minnesota medical examiner and his work in criminal cases “unreliable, misleading and inaccurate,”<sup>99</sup> the CRU Advisory Board requested a systemic review of all AG’s Office prosecuted cases in which the medical examiner played a role in the conviction. Since that time, the Minnesota CRU, in partnership with the Ramsey County Attorney’s Office, has already spent a considerable amount of time laying the groundwork and seeking resources for a systemic review of all cases involving the former medical examiner for autopsies from 1985 to 2019. The CRU has begun the review and has been seeking additional resources to complete the work. Because this witness played a role in so many cases, the systemic review will be extensive and could take years. The Minnesota CRU, partnering with the Ramsey County Attorney’s Office, recently submitted a grant application to help fund the work.

Other units in the country, such as the Cook County, IL CIU, the Philadelphia CIU, the Kings County, NY (Brooklyn) CRU, and the Suffolk County, NY CIB have conducted similar systemic reviews and, with varying degrees of success, have succeeded in advancing the elected prosecutor’s stated goals of justice and community safety.

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<sup>98</sup> Systemic reviews are areas that are ripe for the use of large language models. For further information on this, review a recent publication in this field: Kristen Bell et. al., *The Recon Approach: A New Direction for Machine Learning in Criminal Law*, 36 BERKELEY TECH. L.J. 821 (2021).

<sup>99</sup> Michael Goldberg, *Experts to Review 7 Murder Cases Handled by Minnesota Medical Examiner Accused of False Testimony*, AP News (Sept. 11, 2024), <https://apnews.com/article/michael-mcgee-ramsey-county-exmedical-examiner-investigation-a23663a918d25e7c0d913ac8e77fe88b>. Ramsey County Attorney’s Office, *Ramsey County Attorney Announces Plans for Final Phase of Medical Examiner Case Review* [Press release] (Sept. 11, 2024), <https://www.ramseycounty.us/sites/default/files/County%20Attorney/News%20Release%209.11.24.pdf>.

## Long-Term Recommendations (Within 12 to 24 Months)

### 1 – Conduct Interoffice and Statewide Professional Trainings on Wrongful Convictions

*Given that the Minnesota CRU's stated mission includes preventing wrongful convictions, the unit should be an integral part of professional training within the AG's Office and outside the AG's Office.*

The proverbial “elephant in the room” when it comes to conviction integrity work is the clash it creates with some historical practices in prosecution, often referred to as the old culture of prosecution. Some of those historical practices include a narrow view of constitutional duties<sup>100</sup> when assessing disclosure obligations in particular and cases in general, defining ‘justice’ as obtaining convictions, defending convictions as a matter of course, and valuing finality over accuracy. Recognizing and confronting that clash of culture takes time and requires training.

The CRU should be an integral part of training in the AG's Office, and staff should be available for various stakeholder trainings outside the AG's Office. While resources make it impractical for the unit to participate in every office training, the unit should be responsible for regular training involving conviction integrity issues. Further, the director of the unit or the assistant director of the unit should be a member of any AGO committee tasked with creating training agendas and selecting speakers for trainings.

Training priorities should include: scientific literacy; disclosure and Brady/Giglio/Napue obligations; cognitive biases in the criminal legal system, and the causes of wrongful convictions. Attorney General Ellison should implement mandatory office-wide trainings on all these priorities.

When required by subject matter, training programs should be grounded in science with the help of scientists and other experts. Training programs should also be led by those affected by wrongful convictions; prosecutors should hear from Minnesota exonerees and organizations such as Healing Justice.

### 2 – The Minnesota CRU Should Explore Sentencing Relief Options

*The Minnesota CRU should explore sentencing relief available in Minnesota, review sentencing claims submitted by applicants to the unit, and offer support when appropriate.*

As of September 30, 2024, the Minnesota CRU has received many applications for sentencing review.<sup>101</sup> However, due to its decision to prioritize innocence claims, the unit has declined to review and investigate those claims. While that decision was understandable and consistent with best practices, there are several reasons why the unit should reconsider its prioritization schema to allow for a robust review of applications it has received requesting sentencing relief. First and foremost, Attorney General Ellison, both publicly and in the CRU Charter, has pronounced his desire and commitment to the review of unjust sentences.<sup>102</sup> Second, through recent changes in the law, the Minnesota legislature has created new pathways for sentencing relief to deserving individuals.<sup>103</sup> Third, given

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<sup>100</sup> *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (requiring prosecutors to provide all material exculpatory evidence to defense before trial); *Giglio v. United States*, 405 U.S. 150 (1972) (prosecutor's failure to disclose a cooperating witness agreement violated due process); *Napue v. Illinois*, 360 U.S. 264 (1959) (prosecutor's failure to correct witness' false testimony violated the Fourteenth Amendment).

<sup>101</sup> In the Minnesota CRU's Case Tracker, “sentencing issue” is as an option for declining an application for not meeting screening criteria. The unit also has ‘flag’ applications that involve sentencing issues which may or may not affect how applications and cases are reviewed. There are 107 applications in the first category (did not meet screening criteria). The second category (later flagged as having a sentencing issue or unjust sentence) has 463 pending applications.

<sup>102</sup> The Office of Minnesota Attorney General Keith Ellison, *Minnesota Conviction Review Unit Charter*, Minnesota Attorney General's Office (2021, August 3), <https://www.ag.state.mn.us/Office/CRU/Charter.pdf>. Attorney General Ellison launches first statewide conviction review unit, Minnesota Attorney General's Office, [https://www.ag.state.mn.us/Office/Communications/2021/08/03\\_CRU.asp](https://www.ag.state.mn.us/Office/Communications/2021/08/03_CRU.asp).

<sup>103</sup> The Legislature approved a public safety and judiciary supplemental budget to address a number of issues “in the public safety realm, from prevention to rehabilitation, to everything in between.” *House, Senate Reach Agreement on Public Safety and Judiciary Legislation*, <https://www.house.mn.gov/sessiondaily/Story/18403>. Governor Tim Walz signed the legislation, bill SF 2909, into law on May 15, 2023. Specific to this Report, the bill included changes to sentencing and clemency laws, Minn. Stat. § 638, generally.

the various barriers to relief for wrongful convictions, exploring sentencing relief may prove to be the very tool needed to pry open those barriers for the better.<sup>104</sup>

The public safety and judiciary reform legislation created new pathways for the Minnesota CRU to use for requests for sentencing review and relief.<sup>105</sup> This law, which took effect recently, also dramatically overhauled the pardon system in Minnesota.<sup>106</sup> Many reforms were included in that law, however two are of particular importance here. First, the statute does away with the requirement that the Board of Pardons's decisions be unanimous, making way for the Board to approve pardons based on a majority vote, so long as the governor is in the majority. Second, the law created a new, nine-member Clemency Review Commission to hold hearings and advise the Board of Pardons, replacing a system that effectively gave the commissioner of corrections veto power over clemency applications.<sup>107</sup>

In 2023, the New York Times published a lengthy story written by Dan Barry about how the Board of Pardons is operating under the new law's reversal of the prior unanimity requirement.<sup>108</sup> The article eloquently tells the very human stories of Minnesotans trying to avail themselves of this new law while also briefly laying out the Board's power to pardon and commute sentences.<sup>109</sup> The following excerpt is apropos:

No one can expect mercy. No one has the right to be forgiven. Pardons live beyond the parameters of the criminal code's black- and-white text. They are, by nature, extraordinary. Rooted in part in the ancient doctrine that monarchs derive power directly from God, pardons are a discretionary tool often given to the executive branch — the president and the governor — to override court-ordered sanctions: to shorten a prison sentence, restore civil rights or eliminate the obligation to identify oneself as a felon. They are intended to provide relief from what Alexander Hamilton, in the Federalist Papers, called the “necessary severity” of the law — a kind of safety valve against injustices inherent in justice systems.<sup>110</sup>

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104 MEDWED, *supra* note 6, at 212.

105 See Minn. Stat. § 609.133 subd. 3 (“The prosecutor for the jurisdiction responsible for the prosecution of an individual convicted of a crime may commence a proceeding to adjust the sentence of that individual at any time after the initial sentencing provided the prosecutor does not seek to increase the period of confinement or, if the individual is serving a stayed sentence, increase the period of supervision.”). According to the Minnesota CRU and several Advisory Board members, some local prosecutors are already using this new law to provide sentencing relief. Based on that information, the long-term recommendation for sentencing relief does not specifically suggest the Minnesota CRU explore this new law as a tool. Rather, the Minnesota CRU could be a resource to local prosecutors if their assistance is requested.

106 It is important to note that pardons—forgiveness for a crime and sentence commutation—and reducing a prison sentence both fall under the umbrella of clemency, an executive branch power often controlled by governors at the state level. Although historically clemency has not been extended to prisoners with innocence claims, Daniel Medwed believes that by fine-tuning the clemency process “we can fix more mistakes in the system and provide a backup when judges and juries fail to sort the guilty from the innocent, as they so often do.” MEDWED, *supra* note 6, 212. One question for the Minnesota CRU to explore is whether the fine-tuning of the Minnesota pardon system can fix the kind of mistakes it is being asked to review.

107 Compare *Shefa v. Ellison*, 968 N.W.2d 818, 833 (Minn. 2022) (“The requirement of unanimity in the statute ensures that the governor and the Board of Pardons always work together.”), Minn. Stat. Ann. § 638.12, subd. 1(c) (“A grant of clemency must be in writing and has no force or effect if the governor or a board majority duly convened opposes the clemency.”).

108 Dan Barry, “I Want to Be Forgiven. I Just Want to Be Forgiven.” *When the Minnesota Board of Pardons meets, supplicants have 10 minutes to make the case for mercy*, N.Y. Times, October 17, 2023, <https://www.nytimes.com/2023/10/15/us/minnesota-board-of-pardons.html>.

109 *Id.*

110 *Id.*

### # 3 – The Minnesota CRU Should Produce an Annual Public Report

*In accordance with recommended best practices, the unit should prepare and publicize an annual report to promote transparency, educate the public and to serve as a tool for measuring the unit's success in identifying and rectifying miscarriages of justice.<sup>111</sup>*

Subjects covered by the annual public report may include:

- relevant data including numbers of cases received, reviewed, and investigated, number of exonerations and case corrections, and statistical breakdown of issues involved;
- relevant demographics;
- an overview of the work performed by the unit including standards of review for that work and challenges encountered;
- information regarding projects and partnerships including a description of any lawyer programs developed for *pro se* applicants; and
- information regarding changes in culture, trainings conducted by the unit, and relevant office-wide/statewide policies adopted and implemented to reflect how the unit's work affects practice on the ground.

### # 4 – The CRU Should Establish a Fellowship for Law Students

*To both help with staffing needs and exposing young lawyers to a conviction integrity culture, the Minnesota CRU should create, advertise, and administer an in-house CRU post-graduate fellowship program.*

Historical prosecution practices linked to wrongful convictions tend to be hardest to confront and change for mid-level prosecutors and career prosecutors. Understanding that reality, it behooves all elected and appointed prosecutors to implement policies and procedures designed to protect against factors known to contribute to wrongful convictions. Elected and appointed prosecutors can also safeguard new, young, and/or inexperienced prosecutors from the “old culture” indoctrination by creating innovative opportunities allowing them to be exposed to, and learn from, the work performed by conviction integrity and review units.

Most experts in this field agree that unit prosecutors should be seasoned, experienced lawyers. As a result, the unit staff should not include junior prosecutors. However, given that junior prosecutors are more likely to gravitate to the work the unit does, a fellowship program providing experience under the guidance of experienced attorneys can take advantage of junior prosecutors' interest in doing this work. Creating a fellowship in the unit is also an innovative way to safeguard against the perpetuation of certain unfavorable historical practices, thus it should advance the elected/appointed prosecutor's goals to implement both justice and safety.

The fellowship should be a 12 to 24-month fellowship, advertised during law school recruitment efforts and internally within the Office. Fellows assigned to the unit should not be assigned a unit caseload. Instead, as in other fellowships, fellows will assist in case review as well as the various projects of the unit. For instance, fellows can provide support for law students partnered with the unit, assist with the unit's annual reporting, and help interface with other junior prosecutors in any systemic review of certain problematic witnesses or types of evidence.

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111 For an example of this type of report, see *Overturing Convictions — and an Era: Philadelphia CIU Report 2018 – 2021*, PHILADELPHIA DISTRICT ATTORNEY'S OFFICE, <http://tinyurl.com/CIUreport>.

## CONCLUSION

The Minnesota CRU is a model for how statewide conviction integrity work should be done. The multitude of barriers it faces makes it difficult for non-experts in the field to recognize the attributes and day-to-day work of the unit that sets it apart from most other units. A close look at the data and the work done in the three cases where the unit has submitted publicly available reports explains the need for the unit's continued existence along with sufficient funding to pay for necessary staffing and resources.

While prosecutors are motivated to do justice by convicting the right person, and innocence lawyers are motivated to prove their clients' innocence, the Minnesota CRU is clearly motivated to discover what really happened in cases it reviews and advocate for whatever relief, if any, is appropriate.



## APPENDIX

### Completed CRU Checklist for Minnesota CRU

Table 1. Completed CRU Checklist for Minnesota CRU, September 30, 2024

Does the CRU....	Sincere CIU	CRINO
1. Report to the DA/Head of Office?	Yes	No
2. Exist within the appellate/habeas/post-conviction unit of the Office?	No	Yes
3. Have attorneys dedicated to the CRU full-time?	More	Fewer
• Have a leader who is a senior attorney and is widely respected in the Office?	Yes	No
• Have a leader with defense experience?	Yes	No
4. Include external participants		
• In policy creation?	Yes	No
• In case selection?	Yes	No
• In case investigation/review?	Yes	No
• In recommendations for action?	Yes	No
5. Have its own budget?	Yes	No
6. Have sufficient funding to thoroughly review and investigate all credible petitions within a reasonable period of time?	Faster	Slower
7. Provide training to personnel conducting CRU case reviews?	Yes	No
8. Provide training to personnel concerning learnings from case reviews?	Yes	No
9. Have written policies and procedures describing its work?	Yes	No
• Post those policies and procedures on its web site?	Yes	No
• Make those policies and procedures available upon request?	Yes	No
10. Permit individuals who participated in the underlying case to participate in CRU case reviews?	No	Yes
11. Provide any new evidence gathered during a case review to Petitioner in a timely fashion?	Yes	No
12. Have a policy on when and how to report exculpatory information gathered during a case review?	Yes	No
13. Have a policy on when and how to report credible allegations of official misconduct, either related to the petition or during the case review, from law enforcement, the prosecutors' office, or other sources?	Yes	No
14. Reject petitions of actual innocence on the basis of procedural grounds:		
• Guilty pleas	No	Yes
• Exhausted appeals	No	Yes
• Sentence status	No	Yes
• Due process claims	No	Yes
15. Make physical evidence available to Petitioner or Petitioner's counsel for testing?	Yes	No
16. Voluntarily toll appellate proceedings while conducting a case review?	Yes	No
17. Permit resubmission of a petition if credible factual information supporting innocence is found after a prior CRU review?	Yes	No
18. Communicate with the Petitioner or Petitioner's counsel throughout the assessment and investigation stages of case review?	Yes	No
19. Allow Petitioner or Petitioner's counsel to participate in case investigation?	Yes	No
20. Evaluate the totality of the circumstances as now understood, rather than assessing the reasonableness of the Office's actions at the time of the underlying case when making recommendations about a specific petition?	Yes	No
21. Communicate the rationale for its decisions to Petitioner or Petitioner's counsel before that decision is final?	Yes	No
• Is the rationale provided in writing?	Yes	No
22. Provide annual reporting on its activities and impact?	Yes	No