

# COUNTY ATTORNEY MARGARET H. OLSON

## **Criminal Division**

PATRICIA S. CASSELL  
Chief Prosecutor

JOSEPH S. HILL  
Prosecutor

IVY TELLES  
Prosecutor

JANET ELLEDGE  
Prosecutor



## **Civil Division**

DAVID L. THOMAS  
Chief Civil Deputy

JAMI R. BRACKIN  
Deputy County Attorney

HELEN E. STRACHAN  
Deputy County Attorney

RYAN P.C. STACK  
Deputy County Attorney

## **Summit County Conviction Integrity Unit Policy and Procedure**

Pursuant to [Utah Code § 78B-9-501 et seq.](#) and effective May 1, 2021 there is hereby established a Summit County Conviction Integrity Unit.

### **Mission**

The Summit County Attorney's Office (SCAO) pursues justice in each case that it reviews and prosecutes. There is no greater injustice than a person being wrongfully convicted of a crime. In an effort to address any past injustice that may have been done, the Summit County Conviction Integrity Unit (CIU) is hereby formed.

The main purpose of the CIU is to review and investigate post-conviction claims that a conviction or sentence lacks integrity and to make recommendations to the County Attorney about the disposition of those claims. It is a prosecutor's duty to protect the innocent before, during, and after a trial.

The CIU consists of a Conviction Integrity Unit Chair (Unit Chair) and a Conviction Integrity Panel (Panel). The Unit Chair organizes the work of the CIU, conducts the initial review of any applications submitted to the CIU and refers cases to the Panel for investigation of claims as necessary. The Unit Chair consults with the Panel, which reviews qualifying applications, requests any further investigation it deems relevant and necessary and makes recommendations to the County Attorney as to the disposition of the applications.

The Panel is an independent body brought together at the invitation of the County Attorney to inform decisions on applications made to the CIU. The Panel consists of seven members of the community who are not currently employed as prosecuting attorneys in any jurisdiction. The panel members may be criminal justice experts, community activists, or any other qualified individual with a proven interest in justice. These panel members participate in the review of past convictions and make recommendations to the County Attorney.

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Email: (first initial)(last name)@summitcounty.org

## **Process and Procedure**

**1. Who May Apply:** Applications to the CIU may be made by a convicted person, defense counsel, post-conviction counsel, innocence organization, or any other third party on behalf of a convicted person. All applications submitted to the SCAO will reviewed as provided for below.

**2. How to Apply:** A form is available on the Summit County Attorney's website, under the tab *Conviction Integrity Unit*. This form may be submitted online, emailed to [ciu@summitcounty.org](mailto:ciu@summitcounty.org), or mailed to the County Attorney at 6300 Justice Center Road, Park City, Utah 84098. A response acknowledging receipt will be generated to the applicant within 48 business hours. Applicants are encouraged to provide as much information as possible with the application and to complete all fields of inquiry.

**3. Criteria for Review:** Upon receipt of an application for review by the CIU, the Unit Chair will assess the application to determine whether the application meets the prerequisites for the initial review. Before the Unit Chair accepts an application for initial review, it must meet the following basic prerequisites:

- a. The conviction occurred in the Third District Court, Silver Summit Division;
- b. (i) The Summit County Attorney's Office prosecuted the case; OR  
(ii) The conviction occurred in another jurisdiction and the head of the prosecuting agency in that jurisdiction requests a review by the Summit County CIU based on a conflict of interest or because they have not established a Conviction Integrity Unit and the County Attorney and Unit Chair consent.
- c. The conviction was for a felony offense;
- d. The convicted offender is a living person at the time of the application;
- e. The direct appeals process is complete.

**4. Initial Application Review:** Priority will be given to those cases in which the convicted offender is currently incarcerated solely for the crime for which they claim factual innocence or lack of integrity regarding conviction or sentence. In the initial review, the Unit Chair will examine the application for credible and verifiable evidence of innocence or lack of integrity of the conviction or sentence, including but not limited to: professional misconduct on the part of any involved attorney; newly discovered evidence that would negate the guilt of the applicant; newly developed technology that would allow for testing of evidence not previously conducted. The applicant must agree to fully cooperate with the CIU, including waiving all procedural safeguards and privileges. If the convicted person is represented by counsel in the application process, all communication between the CIU and the convicted person must be made through counsel. If the application contains a claim that the Unit Chair determines could be credible and verifiable, the Unit Chair will proceed to a secondary review.

**5. Secondary Application Review:** If the Unit Chair determines that an application meets the criteria for a secondary review, the applicant and County Attorney will be notified and the claim will be further evaluated. The Unit Chair will review the facts and legal issues of the case by examining the case file, trial transcript, discovery, other materials contained in the SCAO's Case Management System and physical file, and any additional information readily available and necessary to make an initial assessment of the claim. If the Unit Chair determines that there has been credible and verifiable evidence presented by the applicant as required above, the Unit Chair will then present the case to the Panel to determine what, if any, further investigation should be conducted.

It is vital to maintain a cooperative relationship with individuals and organizations seeking conviction review. The Unit Chair will request additional information from the convicted person and/or applicant, if needed, and will provide information to the convicted person as the review proceeds unless there is a legal and ethical duty not to disclose. In the event that the Unit Chair determines that the application has provided credible and verifiable evidence of innocence or lack of integrity of conviction or sentence, the Unit Chair will present the case to the Panel for further consideration.

**6. Scope of Investigation and Review.** Per [Utah Code § 78B-9-503](#), the scope of review is defined as:

- (a) plausible allegations of factual innocence;
- (b) newly discovered material evidence; or
- (c) information discovered or received by the prosecution agency after trial, judgment of conviction, or sentencing that:
  - (i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or
  - (ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

**7. Conviction Integrity Panel Review:** If an application is presented to the Panel by the Unit Chair, Panel members shall be granted access to all available case materials by means of a password-protected secure drive online. The Unit Chair shall make all materials available to Panel members by uploading them onto the drive, and by making any physical evidence available for inspection to members should they ask to inspect it.

Upon receiving a case for review, the Panel will determine whether there is sufficient information to determine by a preponderance of the evidence if the application states a valid claim of innocence or that the conviction or sentence lacks integrity.

Should the Panel determine that further or additional investigation is needed, it will submit a request to the SCAO Investigator, who will conduct the requested investigation. Should there be a conflict of interest with the SCAO Investigator and the case at issue, the investigation will be assigned to conflict investigators in accordance with SCAO policy.

In order to perform their duties in an informed, objective, independent, timely, and actionable manner, the Panel shall in a timely but deliberate way inform itself about the claim made in the application; review any available, relevant, and reliable information or evidence that bears on the claim, whether or not it was available, presented, or otherwise played a role in the original conviction or subsequent appeals, retrials, etc.; take any other measures necessary to satisfy its members that it has what it needs to make appropriate findings regarding the merits of the claim; determine by majority vote based on a preponderance of the evidence whether the claim has merit; and send its findings and any recommendations it chooses to make in writing to the County Attorney.

**8. Panel Quorum.** At least five (5) of the seven (7) Panel members must participate in each proceeding. In the Unit Chair's discretion, he or she may ask the County Attorney to appoint *pro tem* members to the Panel as needed to address conflicts of interest, unavailability, or to insure a seven (7) member Panel for any particular case.

**9. Additional Parties Involved in Case Review:** If the Unit Chair determines after the initial case review that the application meets the requirements for review, the Unit Chair will notify:

- a. *Victim.* Should an application be found to meet the initial criteria, and be found to contain credible and verifiable evidence of innocence or lack of integrity of conviction or sentence, such that the application is deemed appropriate for presentation to the Panel, the Unit Chair will attempt to notify any victims or the victims' representatives. The Unit Chair shall provide the victim or victim's representative with contact information for the Panel so that the victim or victim's representative may contact the Panel for case updates or to request to make a statement. Victims may, if they choose, offer any statement, presentation, or evidence the victim wants the Panel to consider at a time the Panel deems necessary and appropriate, but should do so prior to any decision being reached by the Panel as to what recommendation will be made to the County Attorney for disposition of a claim. Any statement or presentation by the victim or victim representative shall take place at the County Attorney's Office at a time arranged by members of the Panel during which all Panel members and the victim or victim's representative may be present personally or by other means. Panel members should contact the Unit Chair to schedule the meeting in the SCAO and reserve space for the presentation to the Panel to occur. The presentation will be

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recorded with a device that allows for the subsequent uploading of the statement into the secure drive.

- b. *The Trial Prosecutor.* If the trial prosecutor is still employed with the SCAO, they will be notified of the case's referral to the Panel by the Unit Chair. The Unit Chair will attempt to inform the trial prosecutor if that attorney is no longer employed with the office. If the trial prosecutor is still employed by the SCAO, the trial prosecutor shall be informed that they are to have no contact with the Unit Chair regarding the CIU review of the application during the pendency of the application. Should the trial prosecutor be contacted by the Panel, the trial prosecutor (if still employed by the SCAO) shall cooperate with the investigation of the Panel in any way the Panel requests if they are able to do so. If the trial prosecutor is no longer employed by the SCAO, the trial prosecutor may cooperate with the panel to whatever extent they choose. The Unit Chair should make every effort to obtain contact information for the trial prosecutor and to convey that information to the Panel. The Unit Chair will provide contact information for the Panel to the trial prosecutor so that they may contact the Panel. At the time the Unit Chair contacts the trial prosecutor, the Unit Chair will also inform the trial prosecutor that they are not to access any records pertaining to the case during the pendency of the application, and will ensure that any materials that are maintained in the SCAO are removed from the trial prosecutor's access.
- c. *Trial Counsel for the Defendant.* The Unit Chair shall make every effort to contact trial counsel for the defendant, and to obtain contact information for the attorney to convey that information to the Panel in the event they should desire to contact counsel. The Unit Chair shall inform trial counsel for the defendant that the case is under review by the CIU, and provide contact information for the Panel to trial counsel for the defendant so that they may contact the panel if they desire to do so.
- d. *The Convicted Person.* Upon receipt of an application, the Unit Chair shall contact the convicted person via written correspondence mailed to the address provided on the application to inform the convicted person that the request has been received. The initial correspondence should include an explanation as to whether the application meets the criteria for initial review. If the application does not meet those criteria, an explanation should be provided as to why, as well as information regarding additional resources available to the convicted person (i.e. contact information for a Conviction Integrity Unit in an appropriate jurisdiction). If, after the initial review, the application is deemed not to have provided credible and verifiable evidence of innocence or lack of integrity of conviction or sentence as required, the Unit Chair shall send a second letter explaining that finding to the convicted person.

If, on the other hand, the application is deemed sufficient for further review by the Panel, the second letter should explain to the convicted person that the application

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is being sent to the Panel for review. The Unit Chair should also provide contact information for the Panel so that the convicted person may contact the Panel.

A convicted person may offer any statement, presentation, or evidence the convicted person wishes to introduce to the Panel at a time the Panel deems such presentation necessary and appropriate but should occur prior to any decision being reached by the Panel as to what recommendation will be made to the County Attorney for disposition of a claim. If the convicted person is not in custody, any statement or presentation by the convicted person shall take place at the SCAO at a time arranged by members of the Panel during which all members and the convicted person are available either personally or by other means. Panel members shall contact the Unit Chair to schedule the meeting in the SCAO and reserve space for the presentation to the Panel to occur. If the convicted person is in custody, the presentation shall take place at the custodial facility in which the convicted person is housed and shall be arranged by the Panel with personnel at the facility as required by the facility's policies and procedures. The presentation shall be recorded with a device that allows for the subsequent uploading of the statement into the secure drive.

- e. *Counsel for the Convicted Person*: Should the applicant be represented by counsel for purposes of the CIU review process, the Unit Chair shall direct all communication with the convicted person through counsel. The Unit Chair shall immediately contact counsel upon receipt of the application to inform counsel that review is pending, and shall contact counsel after the Unit Chair's initial review to inform counsel whether the application will be referred to the Panel for further review. The Unit Chair shall ensure that the Panel is given contact information for counsel, and that counsel is given contact information for the Panel in the event that counsel wishes to contact the Panel directly with any information they may have.

**10. Report of Panel Findings, Recommendations and Timeline:** The Panel shall prepare a report of its findings summarizing the case facts, the issues presented by the application, and the results of any investigation undertaken by the Panel or on its behalf. The report will contain the voting results (number of panelists and ratio only); a determination of whether a valid claim of innocence has been presented by a preponderance of the evidence; and the substance of any dissents; and any recommendations the Panel agrees should be sent on to the County Attorney for his or her consideration. The County Attorney will review the report from the Panel.

The Panel will issue the report in writing within 90 days of the commencement of the Panel review described in paragraph 6 above. If additional time is required for a fair and comprehensive review, the Unit Chair will notify the County Attorney, applicant, convicted person, attorney for convicted person (if any), and the victim (if any) of the delay and provide another date by which the report will be provided.

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**11. County Attorney Decision:** The ultimate decision to grant or not grant the requested relief rests with the County Attorney. The Unit Chair will notify the convicted person or their representative of the decision in writing. The Unit Chair will then document the report, recommendation, and the final decision into the SCAO's Case Management System.

**12. Standard of Review:** The County Attorney shall consider the evidence known at the time of conviction and sentencing and all additional information learned after conviction review. If the County Attorney no longer has confidence in the integrity of a conviction, the County Attorney will take whatever action is reasonably necessary to achieve justice, including, but not limited to, petitioning the court to vacate the conviction. The County Attorney will not consent to the vacation of a conviction on the grounds of factual innocence unless the evaluation of the case establishes by a preponderance of the evidence that the conviction or sentence lacks integrity. The County Attorney's decision to act on the Panel's findings should be informed by the report, but the decision by the County Attorney after findings and recommendations, if any, have been made by the Panel is entirely up to the County Attorney in the exercise of his or her discretion, consistent with applicable law and the professional standards that may apply.

**13. Discovery:** The CIU shall comply with all constitutional, statutory, and ongoing ethical obligations to promptly and fully disclose to both the convicted person and their counsel, if any has been retained, information uncovered by the post-conviction review process in addition to any preexisting information not previously disclosed. The CIU has the legal and ethical obligation to prevent disclosure of information subject to an official privilege or is otherwise confidential. In addition to basic discovery requirements, the Panel will maintain an "open file" policy, wherein the convicted person and their counsel, if any, may review the materials being considered by the Panel and may submit further information to the Panel during the review process.

**14. Testing of Forensic Evidence:** If the convicted person requests DNA testing or any other testing of forensic evidence the Unit Chair shall, in his or her initial review, first determine whether the evidence is still available and in a condition adequate for testing. If so, the Unit Chair will request of the agency with whom the evidence is kept that they preserve the evidence until further notice. The Unit Chair shall also document the location and condition of found evidence and report those facts to the Panel. The County Attorney or Chief Prosecutor shall determine whether to approve DNA testing or other forensic testing of remaining evidence if said request is made by the Panel. Decisions to test will be made on a case by case basis, based on an examination of the facts and circumstances of the case, relevance, and materiality of the further testing. Once DNA or forensic testing is complete, the Panel will examine the convicted person's claim in light of the results and any other evidence, and may conduct further investigation, if needed. In consenting to allow DNA or other forensic testing, the CIU does not concede and takes no position on the significance of any DNA or other forensic testing results.

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15. **Decisions not Reviewable in Court:** The decision to review and further investigate a claim cannot be inferred as an acceptance of the validity of the alleged innocence claim. Also, the CIU does not act as legal counsel for any person whose case is being reviewed. Decisions as to whether the CIU will re-open the case investigation, how the claim will be investigated, and how the application will be resolved are made in the exercise of the County Attorney's discretion and are not reviewable by any court. The Panel is not a judicial or administrative or other public body, but an advisory body the only function of which is to provide an internal review and recommendation to the County Attorney to inform his or her work. There is no timeframe by which claims presented to the CIU will be resolved, but the CIU will make every effort to expedite resolution of each application.
16. **Open Meetings:** Because the CIU and the Panel are not judicial, administrative, or other public bodies, the meetings of the CIU and Panel are not subject to the requirements of the Utah Open and Public Meetings Act, Utah Code § 52-4-101 et seq. The Panel at its discretion may invite members of the public, including the press, to attend its meetings when it deems appropriate and when doing so will not compromise or otherwise interfere with its deliberations or jeopardize the safety, the privacy or individual or professional rights and obligations of those involved in a claim or asked to participate in the panel's deliberations, including those asked to provide facts or legal, medical or other expert information or advice related to the claim under review.
17. **Records and Reporting:** All documents produced by the CIU are protected documents and subject to the Government Records Access and Management Act. The SCAO will maintain the following statistics:
  - a. Number of total applications.
  - b. Number of applications denied.
  - c. Number of applications where an investigation was undertaken.
  - d. Number of ongoing applications.
  - e. Number of applications where relief was granted and the nature of the relief.
  - f. Source of referrals.
  - g. Number of applications where the conviction under review was a result of:
    - i. trial; or
    - ii. plea.
  - h. Number of applications where the applicant previously filed a petition under the Post-Conviction Remedies Act.
18. **Membership of CIU:** The Unit Chair and Panel members are appointed by the County Attorney to serve four (4) volunteer year terms of service, and a maximum of two terms. Positions shall represent Park City and Snyderville Basin (three members), Eastern Summit County (three members) and one At-Large member.

The Panel membership is as follows:

Unit Chair, Roger Armstrong, Esq. (Park City)  
Eric Esquivel (Snyderville Basin)  
Mark Moffat, Esq. (Snyderville Basin)  
Evelyn Furse (Eastern Summit County, General)  
Alex Peterson, Esq. (South Summit)  
Lieutenant Kacey Bates (North Summit)  
Lizeette Zurita (At-Large)

In the event any CIU Panel member cannot participate or has a conflict of interest, the County Attorney shall appoint a *pro tem* member to the CIU to constitute at least a five (5) member Panel.

**19. Panel Confidentiality.** For each matter, each Panel member shall sign a Confidentiality Agreement and return the form to the SCAO paralegal before reviewing materials.

**20. Controlling Law.** To the extent this Policy and Procedure is inconsistent in any way with Utah Code § 78B-9-501 et seq., the Utah Code is controlling.

ESTABLISHED AND DATED this 1<sup>st</sup> day of May, 2021.

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Margaret Olson, Summit County Attorney