



OFFICE OF THE DISTRICT ATTORNEY GENERAL

GLENN R. FUNK
District Attorney General

TO: ALL ASSISTANT DISTRICT ATTORNEYS
FROM: GLENN R. FUNK
DISTRICT ATTORNEY GENERAL *GRF*
SUBJECT: **CONVICTION REVIEW UNIT**
DATE: UPDATED JANUARY 25, 2019

The Conviction Review Unit (CRU) began operations December 29, 2016, as a part of the Davidson County District Attorney's Office. The Protocols developed by this office for the establishment and operation of the CRU are as follows:

Introduction

It is the prosecutor's duty to protect the innocent before, during and after trial. The prosecutor is to seek truth and justice, not merely obtain convictions. Tennessee Supreme Court Rule 3.8 sets forth the special responsibilities of a prosecutor and includes the following:

When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to an appropriate authority, or
- (2) if the conviction was obtained in the prosecutor's jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

In an effort to promote best practices, the Office of the District Attorney General has established a Conviction Review Unit (CRU) to formalize and standardize, within the 20th Judicial District, the actions called for by Tennessee Supreme Court Rule 3.8.

CRIMINAL DIVISION • 20TH JUDICIAL DISTRICT • DAVIDSON COUNTY

Washington Square, Suite 500 • 222 2nd Avenue North • Nashville, TN 37201-1649
Tel. 615 862-5500 • Fax 615 862-5599

Eligible Cases

The conviction must have occurred in Davidson County. The application must be based on new credible and verifiable evidence of innocence. The CRU will not attempt to act as a thirteenth juror and reweigh evidence. The CRU will not consider requests for review while any appeal, petition, or writ is pending in court. The CRU retains the discretion to review any case if it is in the interest of justice to do so.

Any request coming from a convicted defendant or one other than a convicted defendant must include the convicted defendant's written approval of the request, including a completed Conviction Review Request Questionnaire form provided by the CRU which is attached.

Confidentiality Agreement

In order for the CRU to consider a request for review, the convicted defendant must agree on the following cooperation:

1. The convicted defendant will waive privilege and share anything relating to guilt or innocence in this case.
2. The convicted defendant and the CRU must both consent to disclosure of material not already in the public record before any disclosure to any third party.
3. The Office of the District Attorney General retains the right not to disclose the following:
 - a. Information that would compromise an investigation of an alternate suspect;
 - b. Information that would endanger the life of a witness; or
 - c. Information that is prohibited by law from being released.

Conviction Review Procedure

Once a case is referred to the CRU, the procedure is as follows:

1. At initial contact, the ADA assigned to evaluate conviction review applications will review the request and either:
 - a. Request additional information which may include forensic testing and proceed to step 2 after receipt of information;
 - b. Determine that further review is needed and proceed to step 3; or
 - c. Decline review if no new evidence of actual innocence is present. If review is declined, the convicted defendant will be informed of the reason(s) and will be given an opportunity to respond.
2. Review additional information and either:
 - a. Determine that further action is needed and proceed to step 3; or
 - b. Determine that no further action is needed.
3. Report to Deputy District Attorneys Roger Moore and Amy Hunter to receive approval to proceed with a full investigation. The CRU ADA will work with a District Attorney General's Office Criminal Investigator to complete the new investigation.

4. The original file, the new investigation and recommendation of the CRU ADA will be forwarded to the Deputy DAs and the District Attorney.
5. The District Attorney will make a decision after considering the recommendations of the CRU ADA and the Deputy DAS and will base that decision on all available facts.

Procedure for Requests for Forensic Testing

1. Initial investigation: The CRU will determine if evidence is available and assess its location and condition.
2. Authorization for testing: Testing of evidence must be approved by a member of the CRU. Decisions to test will be made on a case by case basis in consideration of the facts and circumstances of the case and relevance and materiality of the evidence.
3. Case review: Once testing is complete, the CRU will examine the claim and conduct further investigation if needed.

Victim Notification

In the event that the CRU decides to proceed with a full investigation, the Office of the District Attorney General will notify the victim(s) of the case pursuant to the Tennessee Crime Victims' Bill of Rights.

Conviction Review Report and Recommendation

In the event that the CRU conducts a full investigation, the CRU ADA will prepare a report summarizing the case facts, the issues presented by the application, and any investigative findings. The report will be presented to the Deputy District Attorney Generals and the District Attorney General and will contain the CRU's recommendation. The decision to recommend or not recommend that the conviction be vacated rests with the District Attorney General.

Standard for Decision to Recommend Vacating Conviction

The standard to be used is "clear and convincing evidence" as stated in Tennessee Supreme Court Rule 3.8:

When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor shall remedy the conviction.

A recommendation to vacate a conviction will be made if the District Attorney General no longer has confidence in the conviction because of clear and convincing evidence of actual innocence.

Notification to Convicted Defendant

The convicted defendant will be notified in writing of the District Attorney General's final decision.

Annual Report

The CRU will maintain records of cases reviewed and the decisions resulting from those reviews in a CRU case management system. The CRU will present an annual report to the District Attorney General.

Root Cause Analysis (RCA)

Understanding that all human systems are fallible and that risks in a system can be minimized, the Office of the District Attorney General strives to be a high reliability organization, which engages in self-monitoring and self-improving by incorporating established practices. The Office of the District Attorney General shall create and maintain protocols around the conduct of RCA to reduce non-conforming work or departures from policies and procedures revealed during the conviction review process.

Office Training Resulting from RCA

The CRU will assist with training programs to promote best practices and to reduce non-conforming work or departures from policies and procedures.

Notification of Other Agencies of Needed Changes Revealed by RCA

Criminal justice agencies providing non-conforming work or departing from policies or procedures which is revealed by RCA will be notified. The Office of the District Attorney General will offer to provide training for those criminal justice agencies.

Policy Statement

As a general policy, the CRU will not investigate, in the absence of other compelling justification, claims where the convicted defendant knew or should have known the basis of his or her current claim at the time of the conviction, or where the defendant now disavows his or her trial testimony and offers a different theory of innocence. Additionally, absent a compelling showing that a guilty or no contest plea was entered to avoid a more significant sanction, the convicted defendant must have continually maintained his or her innocence in order to merit review.

It is also the policy of the District Attorney General's Office and the CRU to preclude any member of this office that participated in the prosecution of a case that is being reviewed from the decision making process for that case.

CRU Bios

Robert W. Jones CRU Assistant District Attorney

General Jones graduated from Tennessee Technological University with a B.S. in Business Administration in 1974. He graduated from Memphis State University Law School in 1976.

In 1977, he had a private law practice until accepting a position with the Shelby County Public Defender's Office. From 1977 to 1978, he served as an attorney in General Sessions Court. From 1978 to 1980, he was a trial attorney in Criminal Court. From 1980 to 1990, he was the coordinator of the Capital Defense Team. From 1990 to 2002, he was the Deputy Public Defender serving as a full-time administrator under the Chief Public Defender. From 2002 to 2010, he served as Chief Public Defender for Shelby County.

In 2010, he retired from Shelby County Government and was then employed with the 21st Judicial District Public Defender's Office, as a trial attorney in Williamson, Hickman, Lewis and Perry Counties, a position he held until 2015. He also served as a Drug Court Team Member and DUI Court Team Member in Williamson County.

In May of 2015, he started with the Davidson County District Attorney's Office as the Team Leader for the Child Abuse Team representing the state in child sexual abuse, child physical abuse and child death cases. In July of 2016, he was tasked with leading a team to form a Conviction Review Unit for the District Attorney General's Office.

Amy M. Hunter Co-Deputy District Attorney General

General Hunter is a Co-Deputy District Attorney General at the Office of the District Attorney General for Davidson County, serving under District Attorney General Glenn Funk. Deputy Hunter was appointed as a Team Leader for Criminal Court, Division II in 2009, and remains in that position today.

She earned her B.B.A at Baylor University in 1994, and her J.D. at South Texas College of Law in 1997. She practiced as an Assistant District Attorney in McLennan County, Texas from 1997 until 2001, when she moved to Nashville and joined the Office of the District Attorney General.

Roger D. Moore
Co-Deputy District Attorney General

General Moore is a Co-Deputy District Attorney General for the 20th Judicial District in Nashville, Tennessee and has served in that office since 1990. He received his B.S. and J.D. degrees from the University of Tennessee at Knoxville.

Upon receiving his law degree, he served as a staff Attorney and Instructor of Law at the University of Tennessee College of Law Legal Clinic from 1977 to 1979. He then began the private practice of law in Knoxville and then in Jackson, Tennessee before working as an Assistant District Attorney for Henderson, Chester, and Madison Counties for eight years.

Glenn R. Funk
District Attorney General for Davidson County, Tennessee

District Attorney Glenn Funk received his B.A. cum laude from Wake Forest in 1982. He graduated from the University of Mississippi Law School in 1985.

General Funk worked in the Shelby County Public Defender's Office from June, 1985 until January, 1986. He then served as an Assistant District Attorney in Davidson County from 1986 until 1989. He was engaged in the private practice of law from 1989 until 2014.

In 2014, he was elected District Attorney General for Davidson County. One of General Funk's main goals is researching, developing and implementing best practices in the criminal justice system.

Statement from the District Attorney General Regarding the Establishment of the CRU

Establishing a CRU serves the goal of implementing best practices in the criminal justice system. The Nashville community deserves a prosecutor's office that will seriously and conscientiously consider claims of actual innocence when newly discovered evidence exists.

This office is committed to supporting victims by vigorous prosecution, while at the same time ensuring that the actual perpetrator is prosecuted, convicted and sentenced.

Acknowledgements

We are grateful for the guidance in the development of the protocols for our CRU from DAs and their CRUs in Manhattan, Brooklyn, Los Angeles and Dallas; the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School, Philadelphia, PA; the Innocence Project at Cardoza Law School, New York City, NY; the Center for Ethical Advocacy at Loyola Marymount University School of Law, Los Angeles, CA; the Center on Administration of Criminal Law at New York University Law School, New York City, NY; and the State of North Carolina Innocence Inquiry Commission, Raleigh, NC.

Endorsements

Cyrus R. Vance, Jr.
District Attorney for Manhattan
New York City, NY

“Conviction review is an essential component of any modern prosecutor’s office – it has proven to not only effectively address claims of innocence, but also ensure best professional practices are implemented office-wide to prevent wrongful convictions from occurring in the first place. I commend District Attorney General Glenn Funk for making this commitment to justice by establishing this critical unit.”

Eric Gonzalez
District Attorney for Brooklyn
Brooklyn, NY

“I commend District Attorney General Glenn Funk for his courage in joining the growing number of District Attorneys’ Offices across the country who are recognizing the importance of establishing a Conviction Review Unit as part of their mission in the pursuit of fairness and justice. Such units are necessary, not only to correct past mistakes, but to ensure better practices and procedures and the fair administration of justice going forward. In Brooklyn, we have vacated 22 wrongful convictions over the last three years, and we are proud to be a national leader in this important area.”

Robert Grace
Deputy in Charge
Conviction Review Unit
Los Angeles County District Attorney's Office
Los Angeles, CA

"The Los Angeles County District Attorney's Office commends District Attorney General Glenn Funk and the Office of the District Attorney General in Nashville, TN for the establishment of your Conviction Review Unit. The mission of any prosecutor's office is to protect the public and instill confidence in the decisions made by the criminal justice system. The creation of Conviction review Units is a necessary part of instilling that confidence and promoting a transparent and responsive justice system."

John F. Hollway
Associate Dean
Executive Director of the Center for the Fair Administration of Justice
University of Pennsylvania School of Law
Philadelphia, PA

"The reality is that prosecutors today are more than agents of law enforcement- they are ministers of justice. Jurisdictions that establish Conviction Review Units are making a public statement that their obligation to do justice is a perpetual obligation, and that it does not stop at a conviction. While certainly there are great DAs' offices around the country that do not have a CRU, District Attorney General Glenn Funk in Nashville, TN and other DAs that establish CRUs for their offices are demonstrating that their commitment to the fairness and accuracy of the criminal justice system is so strong that they will be willing to review cases that may have been decided in error, even if the prior decision was in their favor. That in itself can be thought of as a "best practice" for prosecutors across the country to follow."

Barry C. Scheck
Professor of Law
Cofounder/ Director of the Innocence Project
Yeshiva University's Benjamin Cardozo School of Law
New York City, NY

"It is a great sign that within a short time of taking office, District Attorney Funk has made it a top priority to rectify wrongful convictions by setting up a Conviction Review Unit that will have its own staff and dedicated budget. The Innocence Project looks forward to working with District Attorney Funk and the new Conviction Review Unit staff to develop protocols for the operation of the Unit that puts that vision into practice."

Laurie L. Levenson
Professor of Law
Director of the Center for Ethical Advocacy
Loyola Marymount University School of Law
Los Angeles, CA

“I applaud District Attorney General Glenn Funk’s decision to create a Conviction Review Unit for his office. This is a critical step toward ensuring that we have the fairest criminal justice system possible. It is an initiative that should lead to even more confidence in the work of the Nashville, TN District Attorney General’s Office.”

Rachel E. Barkow
Professor of Law
Director of the Center on the Administration of Criminal Law
New York University School of Law
New York City, NY

“I commend District Attorney Glenn Funk’s decision to establish a Conviction Review Unit in his office. It is critical that prosecutors’ offices ensure that our criminal justice system convicts only the guilty and not the innocent. This duty means thoroughly investigating cases before pursuing convictions, but the ethical obligation does not stop with a jury verdict. It also includes an obligation to investigate post-conviction claims of innocence. Justice is not defined by the number of convictions an office obtains. Justice is achieved only when cases’ outcomes are right. The CRU established by District Attorney Funk is a necessary oversight mechanism to make sure errors are detected and corrected.”

Lindsey Guice Smith
Executive Director
State of North Carolina Innocence Inquiry Commission
Raleigh, NC

“The North Carolina Innocence Inquiry commission is pleased that the Office of District Attorney in Nashville, TN reached out to the Commission as a resource in establishing its Conviction Review Unit. Reviewing innocence claims is an important function of the criminal justice system. The Commission looks forward to the implementation of this program.”