



Justice Integrity Unit Policy

I. INTRODUCTION

The Multnomah County District Attorney's Justice Integrity Unit ("JIU") works to uphold justice. The JIU ensures justice integrity in cases that the office handled in the past as well as future cases by working with relevant community stakeholders and internal committees to reform prosecutorial practices. The JIU's expansive scope of review and transparent practices are designed to remedy past injustices, recognize the potential for rehabilitation, enhance community confidence in the justice system, and to improve office practices to reduce the likelihood of errors occurring in the future. The formation of this unit demonstrates MCDA's commitment to the notion that our role as ministers of justice does not end at the conclusion of a case in the courtroom, but instead recognizes that ensuring justice integrity is an iterative process that must be proactively nurtured and protected.

As recognized by the American Bar Association, the "primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict . . . the prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants."^[1]

II. GUIDING PRINCIPLES

The policies governing this office's JIU shall be as follows:

The JIU shall be an independent unit that reports directly to the District Attorney or their designee. To fulfill its mission, the JIU will operate independently from litigation units in the office and approach its review and investigation in a non-adversarial manner to ensure that justice prevails in each and every case.

The JIU will be charged with the duties of (1) reviewing claims of innocence and remedying wrongful conviction, (2) assessing clemency claims, and (3) ensuring that sentences for past convictions are serving the interests of justice.

In performing its functions, the JIU shall be guided by the principles of:

^[1] American Bar Association, Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b).



- **Truth**

The unit will thoroughly investigate and address claims of wrongful conviction and injustice.

- **Efficacy**

The unit will examine and address sentences that no longer serve the aims of justice because they are excessive in light of today's standards and evidence regarding effective sentencing.

- **Fairness:**

The unit will ensure that access to resources of the unit are open to all, that the unit's practices center antiracism, and that each case review conducted by the unit upholds the standards expressed in this policy.

- **Use of data:**

The unit will deploy evidence-based best practices regarding public safety, recidivism and rehabilitation to assess the fairness of imposed sentences, particularly where circumstances have changed since the time of the defendant's sentencing. The unit will make data-informed decisions wherever possible.

- **Building public trust:**

The unit will work as transparently as possible, and will make efforts to fully inform victims, applicants, petitioners, and community members of the unit's work. The unit's aim shall be to build trust in the justice system through commitment to truth-finding and transparent practices.

- **Meaningful victim and survivor consultation:**

The unit will meaningfully involve and inform victims using trauma-informed practices. The unit will be respectful of victims and institute a culture of keeping victims abreast and involved in cases handled by the unit.

III. DUTIES

The JIU shall be in charge of the following duties, subject to change and refinement over time as approved by the District Attorney:

A. Innocence Claims



“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) promptly disclose that evidence to an appropriate court or authority, and (2) if the conviction was obtained in the prosecutor’s jurisdiction, (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and (ii) 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 in the prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.”

-American Bar Association, Model Rules of Professional Conduct

Actual innocence:

An actual innocence claim is one in which an individual asserts that they are innocent of the crime.

Beginning on December 1, 2021 The JIU will screen and review applications, received on a rolling basis, requesting a joint petition for reconsideration under SB 819 (2021) based on actual innocence. Until further notice and subject to the discretion of the District Attorney, the JIU will accept for review actual innocence applications that meet the following criteria:

- The applicant’s conviction(s) come from Multnomah County,
- The applicant’s conviction(s) is/are not expungeable under ORS 137.225,
- The applicant’s conviction(s) was/were sentenced as a felony/felonies,
- The applicant’s conviction was not aggravated murder, and
- The JIU can identify one or more avenues of investigation that have the potential to substantiate the applicant’s claim(s) of innocence.

In addition to the above stated criteria, the JIU in its discretion may reject applications after screening if they determine that a conviction specific final rejection, final rejection, or tentative rejection has been issued to the applicant.

The JIU may make efforts outside of the review of external applications to find and address cases of actual innocence subject to the discretion of the District Attorney.

Resolution and remedial action in cases of actual innocence:

Upon receipt of an actual innocence application, the JIU will screen the application to determine if the applicant meets the specified criteria and to determine whether the JIU has an avenue of investigation to substantiate the claims. The JIU will communicate to the applicant whether they



will accept for review or reject an application after the initial screening. Upon acceptance, the JIU will conduct a full review. After completion of the review, the JIU shall make findings and a recommendation to the District Attorney as to whether actual innocence has been demonstrated. If the determination is made by the District Attorney that relief is warranted in an actual innocence claim, the JIU shall jointly petition with the convicted person for reconsideration under SB 819 and request that the Court vacate the judgment and sentence. The District Attorney has ultimate discretion to determine whether innocence has been demonstrated and relief is warranted. The JIU shall communicate the outcome of this stage, in writing, to the applicant with an explanation as to why and how the decision was reached.

Constructive innocence:

Constructive innocence claims are those where an individual asserts that they have been wrongfully convicted due to a miscarriage of justice.

For the years 2021 and 2022, and subject to discretion of the District Attorney, the JIU will not accept external applications on the basis of constructive innocence. The JIU may make efforts to conduct internal audits and assessments to identify cases that demonstrate constructive innocence. An internal audit or assessment may involve assistance from external organizations if approved by the District Attorney. Any individual whose case is identified by the JIU as a candidate for an SB 819 joint petition for reconsideration will be notified in writing of the determination.

Examples of miscarriages of justice include cases where:

- A substantial portion of the evidence relied upon to obtain the conviction is no longer deemed credible;
- There is credible evidence that the prosecution or conviction was tainted by racial, ethnic or other protected class based discrimination, whether or not a court previously agreed with the applicant's assertion of discrimination;
- The prosecution failed to disclose material evidence in the possession of any law enforcement agency that was favorable to the defense, whether exculpatory, impeaching, or mitigating;
- The fact-finding process was so corrupted as to deny the applicant a fair adjudication of his or her guilt or innocence at trial;
- Had the office known at the time of trial what it now knows about the evidence, the office would not have chosen to prosecute the case, or would have charged the case differently.

Resolution and remedial action in cases of constructive innocence:



Once a constructive innocence case undergoes a full investigation, the JIU shall make findings and a recommendation to the District Attorney. These findings and recommendations shall include an explanation as to whether constructive innocence has been demonstrated by clear and convincing evidence. The findings shall also contain a written harm analysis, determining whether but-for the miscarriage of justice, the individual's conviction would not have been obtained. Finally, if the JIU determines that relief is warranted, there shall be a written recommendation as to what remedial action is appropriate. The final decision will be made by the District Attorney. All decisions made shall be communicated with the convicted person in writing. If the District Attorney approves of a joint petition, the JIU will, in conjunction with the convicted person or convicted person's counsel, petition the Court under SB 819 (2021) for the appropriate relief.

Innocence investigations:

JIU investigations will require looking into convictions that are decades old, where witnesses' memories have faded, and/or that involve reluctant or recanting witnesses, and therefore often require specialized knowledge and training on issues such as memory science, eyewitness identifications, and law enforcement methods that are no longer considered best practices. JIU deputies and investigators may consult with outside experts, as needed, to obtain relevant materials concerning best practices regarding conducting JIU investigations. JIU deputies and investigators should avoid confirmation bias, and probe information in police reports, witness accounts, and new evidence presented by applicants in a manner designed to uncover the truth.

JIU investigations will not be undertaken as a means of "protecting" a conviction, nor shall they be adversarial in nature. Thus, for example, investigators shall not engage in tactics designed to dissuade a recanting witness and shall not threaten to charge that witness with perjury; rather the paramount goal of a JIU investigation shall be to determine the reliability and truthfulness of the recantation. Using a high-pressure, coercive, or intimidating approach in these investigations wastes time and resources and sends a mixed message to office staff about the JIU's mission and undermines the JIU's credibility with the public.

File sharing and collaboration with external organizations:

In cases where an application is screened and the JIU has accepted review, the JIU will initiate contact with the applicant and/or their attorney(s). The JIU will work with the applicant and/or their attorneys to determine the scope of investigation, including but not limited to establishing an agreement to share case files from MCDA and obtaining appropriate authorizations and releases from the applicant. Agreements to share contents of files may be written in the form of memorandums of understanding.



When necessary, the JIU may actively collaborate with defense counsel or innocence organizations to investigate a case. In those situations, the JIU will meet with the applicant and/or their attorneys regarding the scope of the collaboration. If the JIU does not have sufficient resources to conduct their own investigation on an application received by an unrepresented individual, the JIU may enter into memorandums of understanding with external organizations so that they may complete an investigation. An external organization's conclusions must still be vetted by the JIU, and the ultimate outcome on the case will be subject to District Attorney discretion.

In cases where review by the JIU requires further investigation, the JIU will make efforts to obtain documents relevant to the investigation directly from entities involved in the original prosecution, including crime labs and police agencies, in addition to relying on information retained by the office in the original prosecution and information presented by an applicant or applicant's attorneys.

B. Excessive Sentences

“To enforce the Constitution's protection of human dignity,” we “loo[k] to the evolving standards of decency that mark the progress of a maturing society,” recognizing that “[t]he Eighth Amendment is not fastened to the obsolete.” –Justice Ginsburg in *Moore v. Texas*, quoting *Hall v. Florida*.

Excessive sentencing claims are those that allege that the sentence on a conviction was excessive and that the sentence no longer serves the interests of justice.

Beginning on December 1, 2021, and subject to the discretion of the District Attorney, the JIU will screen and review applications of this type where the following criteria are met:

- The applicant's conviction(s) come from Multnomah County,
- The applicant's conviction(s) is/are not expungeable under ORS 137.225,
- The applicant's conviction(s) was/were sentenced as a felony/felonies,
- The applicant's conviction was not aggravated murder,
- The applicant is currently incarcerated,
- The applicant has served at least 5 years of the term of incarceration on their sentence,
- The conviction was not part of a global plea deal with multiple counties,
- The applicant's conviction(s) is/are not subject to ORS 137.690 or ORS 137.719,

And any of the following statements are true:

- The applicant was sentenced as a juvenile, they have a term of incarceration remaining on their sentence, are approaching age 25 and will be transferred to adult prison; or



- The applicant committed the crime when they were under 18; or
- The applicant is over the age of 60, or has a terminal or debilitating illness (suffering from an incurable condition that is likely to lead to death within two years or suffering from an illness that requires chronic assistance with a necessary daily function, such as eating, breathing, toileting, walking, or bathing), or is currently on hospice care; or
- The applicant's conviction(s) is/are for non-person crime(s) and the sentence or sentences are longer than 10 years in total; or
- The applicant's conviction(s) is/are for person crime(s) and the sentence or sentences are longer than 16 years in total.

In addition to the above stated criteria, the JIU in its discretion may reject applications after screening if they determine that a conviction specific final rejection, final rejection, or tentative rejection has been issued to the applicant.

The JIU may make efforts outside of the review of external applications to find and address cases of excessive sentencing cases subject to the discretion of the District Attorney.

The JIU shall consider the statutory factors under Senate Bill 819 (2021) when determining whether jointly to petition under SB 819. Those factors include:

- The person's disciplinary record and record of rehabilitation;
- The person's age;
- Any evidence of diminished physical or mental condition;
- Time served;
- Any evidence of changed circumstances;
- Impact on the victim's safety of granting the petition;
- Other information that may show why continued incarceration no longer advances the interests of justice.

The JIU will also consider whether, based on data concerning average comparable sentences, the sentence was unjustifiably disproportionate to the seriousness of the person's conduct or the offense, whether the person has demonstrated substantial rehabilitation, the perspective of victims involved in the case, and whether the person's continued incarceration still meaningfully promotes public safety.

Resolution and remedial action:

Upon receipt of an excessive sentencing application, the JIU will screen the application to determine if the applicant meets the specified criteria. The JIU will communicate to the applicant whether they will accept for review or reject an application after the initial screening. Upon



acceptance of review, the JIU will conduct an assessment as to whether the office should jointly petition for sentence reconsideration under SB 819. After completion of the review, the JIU shall make a recommendation to the District Attorney as to whether a joint petition should be filed, and what relief is appropriate. The final decision will be made by the District Attorney. All decisions made shall be communicated with the convicted person in writing.

If the District Attorney approves of a joint petition, the JIU will, in conjunction with the convicted person or convicted person's counsel, petition the Court under SB 819 (2021) for the appropriate relief.

C. Collateral Consequence Claims

Collateral consequence claims are those in which an individual who has been convicted of a crime which is not eligible to be expunged under ORS 137.225 can demonstrate that there is a manifest and particularized hardship associated with their conviction, and that they have strong demonstrated evidence of rehabilitation and low risk of future criminality. The individual must be finished with all terms of imprisonment, post prison supervision, or probation to be considered for a collateral consequences claim.

Beginning December 1, 2021, and subject to the discretion of the District Attorney, the JIU will screen and review applications of this type where the following criteria are met:

- The applicant's conviction(s) come from Multnomah County,
- The applicant's conviction(s) is/are not expungeable under ORS 137.225,
- The applicant's conviction(s) was/were sentenced as a felony/felonies,
- The applicant's conviction was not aggravated murder,
- The applicant's conviction(s) is/are not registerable sex offenses and did not involve domestic violence, unless the domestic violence conviction(s) was/were committed while the applicant was a juvenile and did not involve an intimate partner,
- The applicant demonstrates substantial rehabilitation and presents as a low risk for further criminality, and
- The applicant demonstrates that their conviction causes manifest and particularized hardship.

In addition to the above stated criteria, the JIU in its discretion may reject applications after screening if they determine that a conviction specific final rejection, final rejection, or tentative rejection has been issued to the applicant.

For the purposes of this section, "substantial rehabilitation" may include any action taken by the defendant which tends to show a deliberate and intentional attempt to address the factors which motivated the underlying criminal act. "Low risk for further criminality" suggests that the



petitioner has engaged in productive and pro-social activity which suggests that they are unlikely to engage in future criminal acts. The factors to be weighted include but are not limited to:

- Completion or participation in courses of treatment, including substance abuse, mental health, anger management and other treatment.
- Full payment of any financial obligations, or demonstrated efforts to pay financial obligations.
- Rigorous compliance with all court-ordered conditions.
- Evidence of pro-social community involvement, broadly defined.
- Evidence of stable employment.
- Academic or professional certifications or accomplishments, or academic efforts.
- No subsequent criminal convictions, and other information tending to show that the applicant would be eligible for an expungement but-for their crime of conviction disqualifying them. While the fact of an arrest or criminal conviction is not categorically disqualifying, it will be weighted against the petitioner in most cases.

For the purposes of this section, “manifest and particularized hardship” means a consequence of conviction which is more severe than a typical similarly situated individual. This can include significant implications to housing, professional licensure, professional licensing, continued employment or the ability to receive necessary medical treatment or therapy.

Resolution and remedial action:

Upon receipt of a collateral consequences application, the JIU will screen the application to determine if the applicant meets the specified criteria. The JIU will communicate to the applicant whether they will accept for review or reject an application after the initial screening. Upon acceptance of review, the JIU will conduct an assessment as to whether the office should jointly petition for sentence reconsideration under SB 819. After completion of the review, the JIU shall make a recommendation to the District Attorney as to whether a joint petition should be filed, and what relief is appropriate. The JIU shall also communicate the reasons for its decision, in writing, to the applicant with an explanation as to why and how the decision was reached.

If the District Attorney approves of a joint petition, the JIU will, in conjunction with the convicted person or convicted person's counsel, petition the Court under SB 819 (2021) for the appropriate relief.

D. Clemencies, Commutations, Pardons



The JIU will serve as the principal contact with the Governor's office and assist in expressing the office's position with respect to clemency. All clemency petition matters should be routed through the JIU to ensure consistent handling.

Commutation requests:

The JIU will assess clemency petitions requesting commutation based on whether the person has demonstrated substantial rehabilitation, and whether the person's continued incarceration serves the interests of justice. This includes an assessment of:

- Information regarding the individual's original sentence and facts of their crime.
- The individual's criminal history.
- The person's disciplinary record and record of rehabilitation while incarcerated.
- The person's age, any evidence of diminished physical or mental condition, and any other factors that tend to show a lowered likelihood of future offense or dangerousness.
- The portion of the sentence served.
- Any evidence of changed circumstances.
- The impact on the victim's safety of granting the petition.

The JIU will recommend supporting only those applicants who have shown significant personal growth and excellent behavior while incarcerated, and who on balance demonstrate that the interests of justice weigh against their continued incarceration or conviction.

Pardon requests:

The JIU will assess clemency petitions requesting pardon based on the relevant criteria above, and based on whether the individual requesting pardon demonstrates substantial rehabilitation and presents as a low risk for further criminality.

For the purposes of this section, "substantial rehabilitation" suggests any action taken by the defendant which tends to demonstrate a deliberate and intentional attempt to address the factors which motivated the underlying criminal act. "Low risk for further criminality" suggests that the petitioner has engaged in productive and pro-social activity which suggests that they are unlikely to engage in future criminal acts. These factors include but are not limited to:

- Completion or participation in courses of treatment, including substance abuse, mental health, anger management and other treatment.
- Full payment of any financial obligations, or demonstrated efforts to pay financial obligations.
- Rigorous compliance with all court-ordered conditions.



- Evidence of pro-social community involvement, broadly defined.
- Evidence of stable employment.
- Academic or professional certifications or accomplishments, or academic efforts.
- No subsequent criminal convictions. While the fact of an arrest or criminal conviction is not categorically disqualifying, it will be weighted against the petitioner in most cases.

E. Forensics Use, Data, and Evidence Based Best Practices

The JIU will work with relevant experts and community partners to identify problematic uses of evidence or prosecutorial practices. If it is determined that a practice or use of certain forensic evidence is inaccurate or unreliable, the JIU may conduct internal auditing to identify cases involving the problematic evidence. The JIU may also work with the Policy Committee on writing and implementing policies and procedures to remedy the problematic practice. The JIU will attempt to capture data surrounding their work and may engage in data-based projects to improve prosecutorial practices.

F. Motions to Correct under ORS 137.172, Motions to Reduce

Unless the underlying case prosecutor wishes to handle the matter, the JIU will act as the unit to handle requests to correct erroneous terms in judgments under ORS 137.172, and motions to reduce felony sentences to misdemeanors. The JIU will determine how to proceed on such motions and handle litigation on those cases. In doing so, the JIU will consult with the prosecutor who originally handled the case to determine whether they have input on the outcome.

IV. VICTIM AND SURVIVOR CONSULTATION

The JIU will use a trauma-informed and victim-centered approach with the victims and survivors impacted by their work. The JIU will work to ensure that the unit's decisions and interactions involving victims and survivors consist of:

- Strengthening the victim's capacity to recover from traumatic events by providing timely and ongoing information, resources, services, support, and relevant contacts, at the victim's request.
- Acknowledging that earlier notification of changes in case status provides better opportunity for victim choice, preparation, and recovery.
- Empowering the victim by providing choices on whether, how, and when they are kept informed and supported.
- Ensuring that a victim advocate with specialized knowledge in trauma-informed best practices is involved in cases the JIU pursues.



- Respecting the victim's confidentiality and privacy.
- Validating victim experiences and reassuring them that their experiences are not diminished in any way because of a change in case status.
- Providing ongoing information and support for as long as the victim wishes and needs.
- Ensuring that victims are aware of all of the rights extended to them post-conviction.

Notification and Consultation Generally:

The JIU will work to ensure timely contact with victims impacted by the unit's work. Ideally, a victim should not first learn about the renewed case activity around a post-conviction claim from an untrained third party, such as the media or a representative of the prisoner. Moreover, no victim should learn about prisoner release at the last minute or after these events have already occurred. As such, the JIU will take every measure possible to make sure that notification is provided in a timely manner by a trained professional.

The JIU will provide victims and survivors with choice and respect their decision about outreach. The JIU recognizes that, in these cases, there should be an initial notification about the renewed case activity, after which individual victims and survivors determine for themselves whether and how they want to receive further information. This helps to minimize re-victimization and re-traumatization and also helps to build trust. The JIU will ensure that all victims are provided with an early opportunity to control whether, when, and how they receive future information about their case. The JIU will offer the victim the opportunity to express a notification preference, whether by mail, telephone, email, or in person. The victim shall also be offered the option to designate a third party, such as a family member, victim advocate, or attorney, to receive notice on the victim's behalf.

The JIU will allow the victim time to process all new information, as victims often experience a wide range of emotions and needs at this point in time.

The JIU will establish one person as a primary contact to whom the victim can reach out at any time. Where possible, this person should be a victim advocate. The JIU will also help the victim understand that they may contact the attorney within the JIU working on the case, and ensure that the victim has contact information for the JIU attorney. The JIU attorneys and victim advocates should be actively prepared to answer any and all questions by the victim in a timely fashion as they arise.

SB 819 Consultation Process:

The aim of the JIU shall be to meaningfully involve and inform victims in SB 819 petitions using trauma-informed contact and consultation. In furtherance of that goal, the JIU will involve



victims in SB 819 petitions earlier than statutorily required. Once an SB 819 application has been screened and accepted for review, the JIU attorneys or staff will request assistance from an investigator to gather up-to-date contact information for victims and survivors. Next the JIU will, with the assistance of staff and victim advocates, send a notification letter to the address of each victim identified by the investigator. This letter shall provide basic notification that an SB 819 application has been received and is being reviewed by the JIU. The letter will allow the victim to select the level of involvement they would like to have and to select the method of communication they prefer with the JIU. The victim advocate assigned will attempt phone contact within 4 weeks of the notification letter being sent, unless the JIU receives notification that the victim does not wish to be involved further. In cases where a victim is not reached or is non responsive, best efforts at contact must be made. Best efforts are defined as the mailing of the initial notification letter, and at least two documented phone call attempts.

In cases where the victim advocate makes contact with the victim, the victim will be provided information on the SB 819 process and a copy of the SB 819 application if requested. Depending on the victim's preference, they may also choose to have a phone call or meeting with the JIU attorney handling the application. If the victim wishes to express a position with respect to the SB 819 application, the victim's position shall be documented either by the JIU attorney or the victim advocate. The victim's position shall be considered by the JIU in making their presentation to the District Attorney about whether the office should file a joint petition for reconsideration, and shall be presented to the District Attorney. Best efforts at contact or consultation must occur before a decision to file a joint petition for reconsideration has been made.

Where the JIU and District Attorney has determined a joint petition for reconsideration will be filed, the victim shall be informed of the determination before any joint petition is filed. Once the petition is filed, the victim shall be notified of the date of the hearing for the joint petition no later than 30 days before the date of the hearing. The victim shall be provided an opportunity to participate in the hearing in whatever method the victim prefers. This may be in the form of appearing for the hearing in person or remotely, making a verbal impact statement at the hearing, submitting a written statement for the JIU attorney to read in lieu of attending, or simply requesting an update on what happens with the petition after the hearing.

Clemency Consultation Process:

The aim of the JIU shall be to meaningfully involve and inform victims in clemency petitions using trauma-informed contact and consultation. When a clemency petition is received by staff, The JIU attorneys or staff will request assistance from an investigator to gather up-to-date contact information for victims and survivors. Next the JIU will, with the assistance of staff and victim advocates, send a notification letter to the address of each victim identified by the



investigator. This letter shall provide basic notification that a clemency petition has been filed, and allow the victim to select the level of involvement they would like to have and to select the method of communication they prefer with the office. The victim advocate assigned will attempt phone contact within 4 weeks of the notification letter being sent, unless the JIU receives notification that the victim does not wish to be involved further. In cases where a victim is not reached or is non responsive, best efforts at contact must be made. Best efforts are defined as the mailing of the initial notification letter, and at least two documented phone call attempts.

In cases where the victim advocate makes contact with the victim, the victim will be provided information on the clemency process. If the victim wishes to express a position with respect to the clemency, the victim's position shall be documented either by the JIU attorney or the victim advocate. The victim's position shall be considered by the JIU in making their presentation to the District Attorney, and shall be presented to the District Attorney. Best efforts at contact or consultation must occur before a decision is made on the position of the office with regard to the clemency. If a victim wishes to submit documents or statements to the Governor's office, the JIU and victim advocates will facilitate that process.

V. INDEPENDENCE & CONFLICTS

In order to avoid confirmation bias and ensure that the JIU can meaningfully pursue its purpose, the JIU must be as independent as practicable. The ultimate decision maker on all work of the JIU is the District Attorney. To the extent possible, JIU attorneys should report directly to the District Attorney or their designee regarding their work. The JIU's reviews and determinations should be performed independent from any units or attorneys that participate in active prosecution of cases, with opportunities for other units and attorneys to have input after the JIU has completed an independent review process. In many cases, the JIU may consult with other units and attorneys for additional facts regarding a claim the unit is reviewing. This allows for the unit and the ultimate decision maker to have full information regarding a claim. In those situations, the input from the attorney outside of the JIU should be limited to fact-based information rather than influencing the ultimate decision by the JIU.

Innocence claims:

The JIU shall keep pending actual innocence or constructive innocence investigations confidential to the extent possible. JIU attorneys should not share information about pending investigations outside of the unit except where required to complete the unit's work.

If an application raises a claim of improper prosecutor conduct, and the JIU screens and accepts review of the claim, the JIU shall follow all protocols as set out below.



Claims involving improper prosecutor conduct:

An application that raises prosecutorial misconduct is defined as any application that raises credible claims that, if true, could result in discipline of the prosecutor. The role of the JIU is to assess whether a conviction still serves the interests of justice, and not to discipline prosecutors.

To the extent that a claim raises or subsequent JIU review reveals prosecutorial misconduct, the JIU shall follow all MCDA protocols related to prosecutorial misconduct and will notify the First Assistant. The JIU will not take any part in employee discipline, and the intent of this Policy is to preserve the processes that already exist with regard to employee discipline. The JIU shall not engage in investigating the conduct except for assessing whether the conviction should remain intact in light of any substantiated improper conduct.

Excessive sentencing claims, collateral consequence claims, clemency petitions:

The JIU may consult with the original prosecutor regarding their opinions on excessive sentencing claims, collateral consequence claims, and clemency petitions. This consultation shall occur after the JIU has completed its screening and review processes, but before a final recommendation is made to the District Attorney. If the original prosecutor wishes to provide input on the case, the JIU shall document the original prosecutor's position and the position may be one factor considered by the District Attorney. The original prosecutor's opinion on the outcome will not be the sole determining factor for granting or denying any such petition.

Conflicts:

If any attorney in the JIU or the JIU's line of command, except for the District Attorney, had a role in the underlying case that is under review a conflict screening shall occur. Where the Senior Deputy or Level II Deputy handled the underlying case, the First Assistant or other person designated by the District Attorney shall take over reviewing duties from the JIU. Where the First Assistant handled the underlying case, the JIU shall retain reviewing powers but shall report directly to the District Attorney or a designee approved by the District Attorney.