



# MERCED COUNTY DISTRICT ATTORNEY'S OFFICE

## CONVICTION REVIEW UNIT – CASE REVIEW POLICY

### I.

#### INTRODUCTION

The wrongful conviction of an innocent person should be every prosecutor's greatest concern. A prosecutor's highest priority should be ensuring innocent people are never prosecuted. Even "after a conviction the prosecutor ... is bound by the ethics of his office to inform the appropriate authority of ... information that casts doubt upon the correctness of a conviction." (*Imbler v. Patchman* (1976) 424 U.S. 409, 427, fn. 25; *People v. Garcia* (1993) 17 Cal.App.4<sup>th</sup> 1169, 1179; California State Bar, Rules of Professional Conduct 3.8(f), (g).) The Merced County District Attorney's Office ("MCDA") strives to uphold its duty to protect the innocent before, during and after trial. This evaluation always commences from the time a case is presented to the MCDA through final adjudication and beyond.

The Conviction Review Unit ("CRU") of the MCDA investigates claims of factual innocence presented by defendants who were convicted of enumerated offenses in the County of Merced, California.

A defendant or attorney seeking to have a conviction reviewed should complete the Conviction Review Intake Form and submit it to the MCDA. The Conviction Review Intake form is available online at <https://www.countyofmerced.com/FormCenter/District-Attorney-4/Conviction-Review-Request-Form-36>. Please submit completed forms via regular mail or email to:

Conviction Review Unit  
Merced County District Attorney's Office  
550 W. Main St.  
Merced, CA 95340

## II.

### PURPOSE OF THIS POLICY

This written policy is intended to ensure that the MCDA has a written and well-defined policy outlining the MCDA's procedure to review claims of factual innocence. The purpose of this policy is to ensure that the MCDA analyzes all claims of factual innocence in a fair and uniform manner.

The MCDA is firmly and unequivocally committed to upholding the established rights of every defendant. This policy is not intended to create or confer any additional rights, privileges, or benefits to defendants other than those that are already mandated by existing constitutional, statutory, and decisional law.

## III.

### THE POLICY

The CRU is responsible for reviewing qualifying post-conviction claims of factual innocence. The CRU is a stand-alone unit of the MCDA staffed by dedicated senior attorneys, a volunteer defense attorney and investigators who have extensive career experience with the most serious and complex cases. The CRU is supervised by a Chief Deputy District Attorney who is a manager in MCDA and reports directly to the District Attorney.

#### **A. Standard of Review**

The CRU will analyze claims of factual innocence to determine whether there is a loss of confidence in the conviction. When determining whether there is a loss of confidence in the conviction, the CRU will consider whether there is clear and convincing evidence establishing that the defendant was convicted of an offense that he or she did not commit.<sup>1</sup>

#### **B. Application Criteria**

1. The underlying conviction on the case applicant is claiming factual innocence occurred in Merced County.

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<sup>1</sup> Rule of Professional Conduct 3.8(g).

2. Applicant must have been convicted of a serious or violent felony as defined by Penal Code sections 1192.7(c) or 667.5(c), or have been sentenced to more than five (5) years in custody;
3. There must be a claim of factual innocence;
4. Applicant must still be in custody on the case applicant is claiming factual innocence;
5. Applicant bears the burden to present new, credible, and material evidence that was not presented to the jury or was unknown to the defense at time of disposition;
6. Applicant agrees to fully cooperate with law enforcement in the investigation;
7. Applicant or designee must complete the Conviction Review Intake Form and submit it to the MCDA.

The CRU will exercise its discretion to analyze a claim of factual innocence that falls outside the above criteria if the CRU finds that the interests of justice demand review of that conviction.<sup>2</sup>

#### **IV.**

#### **SCREENING APPLICATIONS**

The CRU will review all claims submitted to determine if they meet the application criteria and have merit. When determining whether a claim has merit, the CRU will consider whether a claim alleges new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense for which he or she was convicted.<sup>3</sup> Decisions as to whether the CRU will re-open the case investigation, how the claim will be investigated, and how the claim will be resolved are made in the exercise of the CRU's sole discretion, and are not reviewable by any court. There is no timeframe by which claims presented to the CRU will be resolved, but the CRU will make every effort to expedite resolution of each claim while ensuring a complete and comprehensive review and analysis of the new, credible and material evidence presented.

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<sup>2</sup> This includes, but is not limited to, those instances that would be governed by Rule of Professional Conduct 3.8(f)(2)(ii) but would not otherwise qualify under the criteria of this policy.

<sup>3</sup> Rule of Professional Conduct 3.8(f).

The MCDA will let any Habeas Corpus and other post-conviction proceedings already in progress conclude prior to analyzing any claim of factual innocence, or request that the Habeas Corpus or other proceedings be stayed or tolled.

## V.

### INITIAL NOTIFICATION

If the submission fails to meet the application criteria or lacks merit, the CRU will notify the applicant and his or her attorney, if any. If the submission appears to meet the specified criteria and has merit, the CRU will open an investigation of the case. The CRU will notify the applicant and his or her attorney, if any, as well as the victim(s), the original prosecutor(s)<sup>4</sup> assigned to the case, and the law enforcement agency that originally investigated the case of its intention to review the applicant's claim(s). The time and manner of the notification to the victim or victim's family will be handled in the discretion of the CRU. The original prosecutor(s) as well as the supervisor of the unit where the case was assigned at the time of its prosecution will be notified of the claim and may be consulted. However, in order to ensure an impartial review of every qualifying claim presented, neither the original prosecutor(s) nor the supervisor of the unit where the matter was prosecuted will be involved in the investigation of the case conducted by the CRU.

## VI.

### FURTHER INVESTIGATION

When appropriate, the MCDA will conduct further investigation into the case, including, but not limited to, soliciting information from the applicant and his or her attorney, reviewing all evidence, conducting forensic testing, and interviewing witnesses. The MCDA will request the preservation of all evidence by the appropriate law enforcement agencies during pendency of the investigation. The CRU will attempt to work with the applicant and his or her attorney whenever possible in a cooperative and collaborative manner.

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<sup>4</sup>The term "original prosecutor(s)" as used in this policy refers to the prosecutor(s) assigned to the case at the time of its adjudication by verdict or plea.

## **VII. CONVICTION REVIEW RECOMMENDATION**

The CRU will report findings of the investigation to the District Attorney. The CRU will present a recommendation to the District Attorney, who will make the final determination whether there is a loss of confidence in the conviction.

## **VIII. DECISION & NOTIFICATION**

The MCDA will notify the applicant, his or her attorney, the victim(s) or victim(s)' family, the original prosecutor, and the affected law enforcement agencies of the final decision. If the District Attorney has lost confidence in the conviction, the MCDA will assist the defense as expeditiously as possible in any Habeas Corpus proceedings and in any exoneration process, including seeking a finding of factual innocence, if appropriate. The MCDA may also seek to assist the applicant with his or her claim for compensation, if any, pursuant Penal Code §§ 4900- 4906 where and as appropriate.