

# MAINE INDIGENT DEFENSE CENTER

## INDIVIDUAL DEFENSE – SYSTEMIC REFORM

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EMILY H. GOULETTE, J.D.

February 24, 2025

Senator Anne Carney, Chair  
Representative Amy Kuhn, Chair  
Joint Standing Committee on Judiciary

### RE: Testimony in Opposition (as drafted) to LD 425: Conviction Integrity Units

Senator Carney, Representative Kuhn and Members of the Joint Standing Committee on Judiciary,

My name is Robert J. Ruffner, I am a former prosecutor and current defense attorney, and I am presenting this testimony in opposition to LD 425, as drafted.

Confidence in just outcomes. Our system of laws and rules are thought to have achieved a goal, that of Justice. We want to believe that the process is fair, that the right outcome is achieved and a just consequence imposed. Unfortunately, in too many cases, documented cases, that is not the result. In recognition of this many jurisdictions have created Conviction Integrity Units, to exam convictions. 100s of exonerations or miscarriages of justice have been uncovered. A Conviction Integrity Unit is a good idea.

But like the label “progressive prosecutors”, not all CIUs live up to the name, follow best practices and achieve independent and conflict free reviews.

A CIU created, staffed and answering to the Attorney General would not result in an unbiased examination of cases in the interest of fairness and justice. A review of prosecutions for prosecutorial misconduct and/or constitutional violations by prosecutors creates an inherent conflict of interest, would undermine public confidence in any outcome and could be seen as reinforcing skepticism, rather than greater confidence in our systems. A stronger CIU, though headed by an experienced defense attorney, would be staffed by prosecutors and defense attorneys alike, who would work as a team rather than adversaries to investigate potential miscarriages of justice.

This testimony contains some suggested amendments which would improve this legislation and, more importantly, take Maine one small step closer to ensuring justice for all<sup>1</sup>.

<sup>1</sup> Caveat: Even with AG agreement, petitions filed as a result of the CIU’s work would be subject to the same standard of review as today. In the case of petitions initiated by the Attorney General, Maine should adopt an

## DISCUSSION OF PROPOSED AMENDMENTS

**Staffing and Independence:** Having the Attorney General create and oversee the CIU builds in confirmation bias to the CIU. In this context, “confirmation bias” refers to the tendency for investigators reviewing old cases to unconsciously interpret evidence in a way that confirms their initial belief about a defendant’s guilt, potentially overlooking exculpatory evidence or misinterpreting ambiguous details to fit the preconceived notion of the defendant’s guilt. The fact that PDS already engages in rulemaking would allow them to easily engage in the same for the CIU.

While it is important for the CIU to be separate from and independent of the prosecution function, the process should still be collaborative. That is why the CIU should include full-time prosecutors and why proposed §2124-A, allowing the Attorney General to initiate a petition, should still be enacted.

With regard to staffing and independence the following are suggested amendments to LD 425:

*1. **Establishment.** The Executive Director of the Maine Commission on Public Defense Services (PDS) shall create the Conviction Integrity Unit. The Conviction Integrity Unit must be separate from PDS and any Public Defender offices.*

*a. The CIU must be run by a defense attorney or an attorney who has done “innocence” work.*

*b. The CIU both defense attorneys and full-time prosecutors assigned to the CIU.*

*c. The CIU should have full-time investigators assigned to the CIU.*

[NOTE: Proposed 1(a)(b)&(c) can all be adopted even if the CIU is not created by PDS.]

*7. **Annual report.** By March 1st of each year, the (head of CIU or ED of PDS) Attorney General shall prepare and transmit to the joint standing committee of the Legislature having jurisdiction over judiciary matters a report describing the activities of the Conviction Integrity Unit during the preceding calendar year. The report must include:*

*8. **Rulemaking.** The Maine Commission on Public Defense Services Attorney General may adopt rules for the operation of the Conviction Integrity Unit. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.*

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interest of justice standard, namely “the verdict is unreasonable or cannot be supported by the evidence or on any ground that there is a miscarriage of justice” for cases reviewed as a result of the CIU’s work.

**Guilty Pleas:** The vast majority of criminal cases are resolved by guilty pleas. Of the 3,658 exonerations listed on the National Registry of Exonerations<sup>2</sup> 889 involved guilty pleas. LD 425 should be amended to specifically exclude a guilty plea as a reason to not review a conviction.

To that end LD 425, §200-O(3), should be amended to include:

*D. The fact that a defendant pled guilty or is no longer incarcerated should not be a bar to review.*

**Investigating:** It is important that the CIU have a statutory duty to investigate. The use of “may” gives the impression that the CIU could choose, could be ordered, or pressured, not to investigate even if the CIU deems it appropriate to do so. Additionally, the prosecution must have confidence that materials provided or reviewed by the CIU will not be disclosed or discussed for any reason outside of the CI process.

To that end LD 425 should be amended:

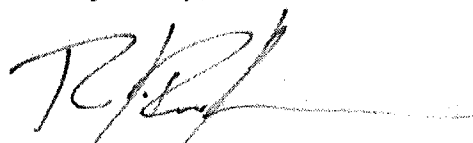
*4. Investigation. In reviewing a conviction, the Conviction Integrity Unit ~~may~~ shall conduct such investigation as it determines appropriate, including but not limited to a review of all files, evidence, work product, notes, laboratory records, personnel records and other information possessed or obtained by the State in the course of or relevant to the underlying conviction, any evidence proffered by the defendant or others, and such further facts and evidence that may be relevant, regardless of whether such facts and evidence were available or proffered by the defense at the time of trial. An investigation may include interviews of prosecutors, law enforcement, defense counsel, the defendant, witnesses and others.*

*4.a The Executive Director shall work with the Attorney General to develop formal confidentiality agreements surrounding any materials reviewed.*

For these reasons, I ask the Committee to adopt these, or similar, amendments or vote “ought not to pass” on LD 425 in the alternative.

Thank you for considering these comments.

Respectfully,



Robert J. Ruffner,  
Director  
Maine Indigent Defense Center

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<sup>2</sup> The National Registry of Exonerations is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law. It was founded in 2012 in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law. The Registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence.