



## MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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February 24, 2025

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Senator Anne Carney, Chair  
Representative Amy Kuhn, Chair  
Joint Committee on Judiciary  
5 State House Station, Room 438  
Augusta, ME 04333

### RE: MACDL Testimony in Support of LD 425: An Act to Establish a Conviction Integrity Unit in the Attorney General's Office.

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

The Maine Association of Criminal Defense Lawyers (MACDL) is a non-profit organization committed to the advancement of justice and the improvement in the practice of criminal law in Maine and is comprised of nearly 300 member attorneys across the state. Our members represent adults charged in criminal courts and young people charged as juveniles.

Based on our collective experience in representing truly innocent people who have been wrongfully convicted of crimes and recognizing the limitations of the current post-conviction review process, we **support** this important bill. Thank you to Representative Milliken for reviving this much-needed effort on behalf of our clients.

*"It is better that ten guilty persons escape than that one innocent suffer."* Sir William Blackstone.

This declaration has served as the foundation of America's criminal justice system, which puts into place myriad protections to ensure that the rights of criminal defendants are protected. One area where we have fallen flat in extending protections to the accused and convicted is in how we in Maine evaluate and, due to procedural limitations, pass over claims of actual innocence.

In Maine, defendants' rights and avenues to post-conviction review are limited. As statistics on wrongful convictions emerge from other jurisdictions in the United States—more than 2,000 wrongful convictions have been overturned across the country since 1989—Maine, since 1989, has not had a single wrongful felony conviction overturned.<sup>1</sup>

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<sup>1</sup> According to the National Registry of Exonerations, Maine has not had a single felony wrongful conviction overturned since 1989; two misdemeanor convictions resulted in eventual exoneration,

Does this mean that Maine’s judicial system is error-proof? Perhaps. But the far more likely conclusion is that Maine—being a non-capital state with restrictive rules regarding reopening of cases, no public defender system, no conviction integrity units, no state-based Innocence Project organization—has underdeveloped jurisprudence regarding post-conviction review and limited avenues of review once the initial post-conviction process—or the time limit for a motion for a new trial—has expired. There exists no actual path to allow a defendant to claim actual innocence: not just that the State could not prove the charge beyond a reasonable doubt against the accused but that the accused is *actually innocent* of the conduct alleged.

In cases in which people were found to be wrongfully convicted—and exonerated based on DNA evidence—the reasons for their convictions were eyewitness misidentification (77 percent of cases), unsound or improper forensic evidence (52 percent of cases), false confessions or admissions (23 percent of cases), and lying informants or “snitches” (16 percent of cases). Many of the wrongfully convicted also have suffered from ineffective assistance of counsel and prosecutorial or police misconduct or error, heaping injustice upon injustice.

Many of the people who were ultimately exonerated by newly discovered evidence had been sentenced to death or life sentences: they would have been executed or would have died in prison but for the introduction of new evidence—sometimes decades after their convictions—that established their actual innocence. This is terrifying.

With Maine’s current procedure, “actual” (otherwise known as “factual”) innocence is not a recognized claim in post-conviction review. For that reason, people who may in fact be innocent of the crimes for which they have been convicted are either languishing in prison or harmed for the rest of their lives by the lingering consequences of a wrongful conviction. It doesn’t take much imagination to consider how the effects of a wrongful conviction can ruin lives.

The proposed unit could initiate a review of a conviction on its own or “upon application of any person.” Though some MACDL members have expressed concern that such a unit would reside in the Attorney General’s Office, if adequate boundaries and rules are established to ensure independence of review, this is an office that, if funded and supported properly, could bring justice to many people.

Similar units across the country have had enormous success, perhaps none so much as the [Philadelphia District Attorney’s Office’s Conviction Integrity Unit](#). That unit is valued and prioritized by the head District Attorney, Larry Kasner, and is staffed with incredible attorneys and investigators. More than 35 people have been exonerated since 2018 since the creation of this Unit. This is an incredible achievement—and one that Maine should seek to emulate through investment in a similar Unit here.

This proposed bill reflects the majority amended bill (attached) that was proposed in the 130<sup>th</sup> Legislature. The fiscal note attached to that bill was approximately \$375,000 annually, which includes the employment of one specially assigned Assistant Attorney General (approx. \$141,000), one Attorney General Detective Position (approx. \$131,000), one secretary position (approx. \$77,000), and other funds to support the work of the Conviction Integrity Unit (approx. \$25,000). While this may seem like a substantial amount of money—and it is—that amount dwarfs in

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but not through the post-conviction process. By way of comparison, Massachusetts has had more than 60 exonerations since 1976.

comparison to both the lives that could be saved by the creation and funding of this unit and the costs we expend in imprisoning innocent people.

[It is estimated that Maine now expends nearly \\$117,000 to incarcerate a person in our state prisons.](#) That is an astronomical number and a conviction integrity unit could provide cost savings in a fiscal sense, as well. It is well worth the investment—not just from a financial perspective, but from a human perspective.

I know everyone around this horseshoe believes in justice. It's why you ran for office. It's the driver behind how you serve your constituents. There is no greater justice than by fixing great injustice—creating a way to release innocent people from unlawful incarceration. This bill could help us in getting there.

For these reasons, we ask this Committee to vote “ought to pass” on LD 425.

Thank you for considering our comments.

Sincerely,

A handwritten signature in blue ink, reading "Tina Heather Nadeau". The signature is fluid and cursive, with the first name "Tina" being the most prominent.

Tina Heather Nadeau, Esq.  
MACDL Executive Director

Date:

(Filing No. H- )

**JUDICIARY**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 933, L.D. 1273, “An Act To Establish Conviction Integrity Units in Maine”

Amend the bill by striking out the title and substituting the following:

**'An Act To Establish a Conviction Integrity Unit in Maine'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 5 MRSA §200-M** is enacted to read:

**§200-M. Conviction Integrity Unit**

**1. Establishment.** The Attorney General may create the Conviction Integrity Unit within the Office of the Attorney General. The Conviction Integrity Unit must be separate from the Office of the Attorney General's Criminal Division, and the director of the Conviction Integrity Unit shall report directly to the Attorney General.

**2. Purpose.** The purpose of the Conviction Integrity Unit is to review convictions obtained by the Office of the Attorney General or a district attorney to determine whether there is clear and convincing evidence of actual innocence.

**3. Review.** The Conviction Integrity Unit may, in its discretion and either upon its own initiative or upon application from any person, review a conviction that contains:

**A. Facts that suggest a plausible claim of actual innocence;**

**B. Evidence of a constitutional violation or prosecutorial misconduct; or**

**C. Facts or circumstances requiring a review in the interests of fairness or justice.**

**4. Investigation.** In reviewing a conviction, the Conviction Integrity Unit may 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 whether such facts and evidence were

1 available or proffered by the defense at the time of trial. An investigation may include  
2 interviews of defense counsel, the defendant, witnesses and others.

3 **5. Evidence of prosecutorial misconduct.** If, in the course of reviewing a conviction,  
4 the Conviction Integrity Unit determines that there is credible evidence of prosecutorial  
5 misconduct, the Conviction Integrity Unit shall submit such evidence to the Board of  
6 Overseers of the Bar.

7 **6. Report of findings and post-conviction review.** Upon completion of a review of  
8 a conviction, the Conviction Integrity Unit shall report its findings to the Attorney General.  
9 If the Attorney General determines it appropriate to do so, the Attorney General may, with  
10 the consent of the convicted individual, file a petition for post-conviction review pursuant  
11 to Title 15, chapter 305-A.

12 **7. Annual report.** By March 1st of every year, the Attorney General shall prepare  
13 and transmit to the joint standing committee of the Legislature having jurisdiction over  
14 judiciary matters a report describing the activities of the Conviction Integrity Unit during  
15 the preceding year. The report must include:

16 A. The number of applications for review received pursuant to subsection 3 and the  
17 sources of the applications; and

18 B. For each conviction reviewed:

19 (1) The identity of the prosecuting authority;

20 (2) The crime or crimes for which the individual was convicted;

21 (3) Whether the conviction was the result of a trial or plea;

22 (4) Whether any state or federal post-conviction review petitions were filed prior  
23 to review and the outcome of any such petitions;

24 (5) Findings of the review by the Conviction Integrity Unit;

25 (6) Whether a petition for post-conviction review under Title 15, chapter 305-A  
26 was filed following completion of the review under this section and the results of  
27 any such petition; and

28 (7) Whether the review resulted in a referral to the Board of Overseers of the Bar.

29 **8. Rulemaking.** The Attorney General may adopt rules for the operation of the  
30 Conviction Integrity Unit. Rules adopted pursuant to this section are routine technical rules  
31 as defined in chapter 375, subchapter 2-A.

32 **Sec. 2. 15 MRSA §2124-A** is enacted to read:

33 **§2124-A. Petition by the Attorney General**

34 With the consent of an individual under a present restraint or impediment as a direct  
35 result of a criminal judgment of this State, as described in section 2124, the Attorney  
36 General, pursuant to Title 5, section 200-M, subsection 6, may initiate an action for post-  
37 conviction review of such judgment by filing a petition in the court of original jurisdiction  
38 in the county specified in section 2123. The provisions of this chapter apply to the petition,  
39 except that a waiver as set forth in section 2128, failure to exhaust remedies as set forth in  
40 section 2126 and failure to file the petition by the deadlines as set forth in section 2128-B

do not bar such a petition. If the court determines that relief should be granted, it shall order appropriate relief, including relief set forth in section 2130.

**Sec. 3. Appropriations and allocations.** The following appropriations and allocations are made.

**ATTORNEY GENERAL, DEPARTMENT OF THE**

**Administration - Attorney General 0310**

Initiative: Establishes one Attorney General Detective position to conduct investigations for the Conviction Integrity Unit.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$125,041	\$131,105
<b>GENERAL FUND TOTAL</b>	<b>\$125,041</b>	<b>\$131,105</b>

**Administration - Attorney General 0310**

Initiative: Establishes one Assistant Attorney General position to support the Conviction Integrity Unit, including any actions that are initiated.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$135,325	\$141,888
<b>GENERAL FUND TOTAL</b>	<b>\$135,325</b>	<b>\$141,888</b>

**Administration - Attorney General 0310**

Initiative: Establishes one Secretary Associate position to support the work of the Conviction Integrity Unit.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$73,841	\$77,422
<b>GENERAL FUND TOTAL</b>	<b>\$73,841</b>	<b>\$77,422</b>

**Administration - Attorney General 0310**

Initiative: Provides All Other funding to support the work of the Conviction Integrity Unit.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
All Other	\$24,394	\$24,394
<b>GENERAL FUND TOTAL</b>	<b>\$24,394</b>	<b>\$24,394</b>

**ATTORNEY GENERAL, DEPARTMENT OF THE  
DEPARTMENT TOTALS**

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
<b>\$358,601</b>	<b>\$374,809</b>	

**DEPARTMENT TOTAL - ALL FUNDS** **\$358,601** **\$374,809**

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

### **SUMMARY**

This amendment is the majority report of the committee. It replaces the bill. It authorizes the Attorney General to establish a single Conviction Integrity Unit in the Office of the Attorney General to review convictions obtained by the Office of the Attorney General as well as any district attorney's office. The Conviction Integrity Unit must be separate from the Criminal Division, and the head of the unit reports directly to the Attorney General. The purpose of the Conviction Integrity Unit is to review convictions to determine whether there is clear and convincing evidence of actual innocence.

The Conviction Integrity Unit is authorized, in its discretion and either upon its own initiative or upon application from any person, to review a conviction that contains facts that suggest a plausible claim of actual innocence, evidence of a constitutional violation or prosecutorial misconduct or facts or circumstances requiring a review in the interests of fairness or justice.

The Conviction Integrity Unit is directed to report evidence of prosecutorial misconduct to the Board of Overseers of the Bar.

The Attorney General is directed to submit an annual report describing the activities of the Conviction Integrity Unit to the joint standing committee of the Legislature having jurisdiction over judiciary matters.

The amendment also adds an appropriations and allocations section.

### **FISCAL NOTE REQUIRED**

**(See attached)**