

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1200

INTRODUCER: Senator Bean

SUBJECT: Wrongful Convictions

DATE: January 24, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 1200 creates a statewide mechanism and standards to enable a prosecuting attorney to bring a motion before the court where a person's conviction occurred to vacate or set aside that judgment. The motion may be brought at any time. The prosecutor must have evidence or information that the convicted person is innocent.

The bill provides time-frames for a hearing on the matter, for counsel to be appointed for the convicted person if needed, for a continuance if necessary for the defense attorney, and for the process to be followed if the motion is denied.

The prosecutor shall notify the victim or the victim's family of all court dates, who each have the right to be heard at a hearing to address the motion filed.

The bill becomes effective July 1, 2022.

II. Present Situation:

Background

Conviction Integrity Review (CIR) units are divisions of prosecutorial offices that work to prevent, identify, and correct false convictions.¹ There were 74 CIR units in the United States in 2020.² One hundred twenty-nine exonerations took place in 2020, and CIR units throughout the country helped secure 61 of those exonerations.³ As of 2021, Florida had a total of 78

¹ The National Registry of Exonerations, 2020 Annual Report, March 30, 2021, page 2; available at <https://www.law.umich.edu/special/exoneration/Documents/2021AnnualReport.pdf> (last visited January 14, 2021).

² *Id.*

³ *Id.*

exonerations, including eleven defendants who had been sentenced to death.⁴ To date, Florida CIR units spearheaded the investigations and worked to get the judgments and sentences vacated in seven cases of wrongful conviction.

Currently, five state attorney's offices in Florida have established CIR⁵ units within their offices. These offices are located in the:

- Fourth Circuit, covering Duval, Clay, and Nassau Counties;
- Ninth Circuit, covering Orange and Osceola Counties;
- Thirteenth Circuit, covering Hillsborough County;
- Fifteenth Circuit, covering Palm Beach County; and
- Seventeenth Circuit, covering Broward County.⁶

All five of the CIR units have essentially the same procedures in place that includes criteria a person convicted of a felony must meet to warrant more than an initial screening. The CIR units require that a convicted person present a plausible claim of innocence, explained in the application (or petition) for the CIR unit's help. The claim must be capable of being either substantiated by credible, factual information/evidence not previously considered by the original fact finder, jury, or judge.⁷

Not all cases are accepted for a review by the CIR unit. For example, if litigation in the case is still pending, the CIR unit will not accept the case. If a CIR unit accepts a case, it conducts a thorough investigation of the case that led to the person's conviction, and the claim of innocence. Some of the units report that they rely upon an independent review panel of legal experts to work with the units to review and evaluate the cases under investigation.⁸

CIR UNIT Procedural Hurdles

The Florida Rules of Criminal Procedure do not currently provide a mechanism by which the CIR units have the ability to approach the court directly with the CIR units' evidence that a convicted person is innocent. Therefore, but for engagement with a defense attorney by the CIR units, and the willingness by the courts to entertain a defense motion even though it might be

⁴ The National Registry of Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=FL> (last visited January 14, 2022).

⁵ Sometimes referred to as Conviction Review Units (CRUs).

⁶ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/>; Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, available at <https://www.sao9.net/conviction-integrity.html>; Section 119.011 Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, available at <https://www.sao13th.com/conviction-review-unit-cru/>; Office of the State Attorney for the Fifteenth Circuit, *Conviction Review Unit*, available at <http://www.sa15.state.fl.us/stateattorney/OurOffice/divisions/indexcru.htm>; Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, available at <https://browardsao.com/conviction-review-unit/> (all sites last visited January 14, 2022).

⁷ See Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/> (last visited January 18, 2022).

⁸ See Office of the State Attorney for the Seventeenth Judicial Circuit, *Conviction Review Unit*, available at <https://browardsao.com/conviction-review-unit/> (last visited January 18, 2022).

somewhat unconventional or technically untimely, the wrongfully convicted people helped by the CIR units in Florida might still be in prison.⁹

In at least one instance, the Hillsborough CIR unit was placed in the position of being unable to completely acquiesce to a defense motion because the motion alleged matters the State Attorney was unwilling to adopt.¹⁰ This situation illustrates one reason the CIR units are seeking procedural autonomy. Review of the following cases further indicates the piecemeal method by which the cases are currently resolved.

The Work of the CIR Units in Florida

The first CIR unit was created in Florida in the Fourth Circuit. The work of the CIR unit resulted in the 2019 exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison for the 1976 Jacksonville murder of Jeanette Williams.¹¹ The CIR unit's investigation confirmed multiple alibi witnesses for the whereabouts of the two men at the time of the murder, and who further confirmed that another man, Nathaniel Lawson, admitted to committing the murder. The CIR unit's investigation was able to independently confirm Lawson's presence at the scene at the time of the shooting.¹² After a hearing on the matter, Mr. Williams' and Mr. Myers' convictions and sentences were vacated by the 4th Circuit Court on March 28, 2019. They had served 42 years and 11 months in prison.¹³

Subsequently, the CIR units have identified, investigated, and cooperated with defense attorneys to clear cases of wrongful convictions in the 4th, 9th, 13th and 17th circuits. These cases are:

- *Robert DuBoise, 2020, 13th (Hillsborough)* – Robert DuBoise was cleared of a rape and murder conviction after the 13th Circuit CIR unit found 3 slides containing DNA from the rape kit performed by the medical examiner during the autopsy. The slides had been in the medical examiner's office since 1983. Upon analysis, DuBoise was cleared as a contributor and the DNA lab results yielded a presumptive "hit" on another individual.¹⁴ Attorneys from the Innocence Project filed the motion in court which resulted in DuBoise's conviction being vacated by the judge and the state attorney dismissing all charges. DuBoise had been in prison for 37 years.¹⁵ In this case the State Attorney was unable to agree to all of the issues

⁹ Professional staff of the Senate Criminal Justice Committee consultations with Shelley Thibodeau, Director, Conviction Integrity Review Division State Attorney's Office 4th Circuit, and Arielle Demby Berger, ASA in Charge of the Conviction Review Unit, Office of the State Attorney, 17th Judicial Circuit.

¹⁰ The National Registry of Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5807> (last visited January 16, 2022).

¹¹ State Attorney's Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, March 28, 2019, p. 42, available at https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited January 14, 2022).

¹² *Id.*, at p. 4.

¹³ The Florida Senate, *Senate Bill 28 Special Master's Final Report*, January 23, 2020, at p. 1-2, available at <http://www.flsenate.gov/Session/Bill/2020/28/Analyses/2020s00028.sm.PDF> (last visited January 14, 2022).

¹⁴ He has not been named, but the State Attorney's Office said the man posed no threat to the public, suggesting he is already in custody.

¹⁵ Robert DuBoise, The National Registry of Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5807> (last visited January 16, 2022).

raised in the Motion by the Innocence Project, however the state “largely” agreed to the Motion in the state’s response.¹⁶

- *Dwayne Brown, 2020, 9th (Orange)* – Dwayne Brown’s is the first case the CIR unit joined the defense attorney in seeking to have a conviction vacated. Brown had entered a plea and was convicted in a felony cannabis case. The CIR unit determined, after “exhaustive research,” that the case “should never have been prosecuted” and that Brown had been “arrested for the wrong crime, pled to a different wrong crime, and was convicted of another wrong crime.”¹⁷
- *Leonard Cure, 2020, 17th (Broward)* – In this robbery case from 2004, the CIR unit found evidence of witness misidentification and trial defense weaknesses. After a full investigation by the CIR unit, upon review the Independent Review Panel unanimously agreed that “a complete review of the evidence presented at trial and in discovery, as well as further investigation of that evidence demonstrates that the case against Mr. Cure gives rise to a reasonable doubt as to his culpability, and that he is most likely innocent.”¹⁸ The attorney from the Innocence Project filed the motion and agreed upon the order with the court, while the state attorney’s office agreed to drop charges against Mr. Cure after the court signed the Order vacating Mr. Cure’s conviction.¹⁹
- *Tony Hopps, 2021, 13th (Hillsborough)* – After the CIR unit accepted his case for investigation and completed the investigation, the CIR unit issued its report and suggested the Innocence Project lawyers file a Rule 3.850 Motion based on newly discovered evidence. The CIR unit had not found clear and convincing evidence of Mr. Hopps’s innocence, but the state attorney’s office had determined that it could no longer stand behind the conviction.²⁰ The CIR unit found that “there was evidence not submitted at trial that calls into question the conviction. This includes issues with the time line of the robbery, the photo pack sent to the victims, and alibi witnesses that were not called at trial.”²¹ The court granted the 3.850 Motion filed by the Innocence Project, vacating Mr. Hopps’s conviction on August 23, 2021, after which the state attorney’s office dismissed the charges. Mr. Hopps spent 31 years in prison.²²
- *Dustin Duty, 2021, 4th (Duval)* – The Innocence Project of Florida and the [Miami Law Innocence Clinic](#) represented Mr. Duty in the effort to have his robbery conviction reversed. The case was ultimately reversed based on ineffective assistance of counsel, granting Mr.

¹⁶ *Id.*

¹⁷ “Man’s deportation halted after Orange-Osceola state attorney helps toss ‘illegal conviction’”, Monivette Cordero, *Orlando Sentinel*, March 5, 2020; available at

<https://www.bing.com/search?q=Man%27s+deportation+halted+March+05%2C+2020+Orlando+Sentinel&cvid=662a393816f34a5e86bcf955308e147e&aqs=edge..69i57.58524j0j4&FORM=ANAB01&PC=U531#:~:text=Orange%20...%20%2D%20Orlando%20Sentinel-.https%3A/www.orlandosentinel.com/news/crime/os%2Dne....-Mar%2006%2C%202020> (last visited January 16, 2022).

¹⁸ *State v. Cure*, Agreed Order Vacating Defendant’s Judgment and Sentence, 17th Judicial Circuit Court, Case No. 03-019405CF10A, December 11, 2020; available at [Leonard Cure Agreed Order \(filesusr.com\)](#) (last visited January 16, 2021).

¹⁹ The National Registry of Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5882> (last visited January 16, 2022).

²⁰ “Imprisoned 31 years, man to go free after doubts emerge in Florida robbery,” Dan Sullivan, *Tampa Bay Times*, August 23, 2021; available at <https://www.msn.com/en-us/news/crime/imprisoned-31-years-man-to-go-free-after-doubts-emerge-in-florida-robbery/ar-AAANetSC> (last visited January 16, 2022).

²¹ Tony Hopps CRU Report, 13th Judicial Circuit, July 2021; available at [b3f754_71500da9e78548568467612731c01c63.pdf \(filesusr.com\)](https://www.filesusr.com/attachment_data/file/337754/71500da9e78548568467612731c01c63.pdf) (last visited January 16, 2022).

²² The National Registry of Exonerations, Tony Hopps, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6028> (last visited January 16, 2022).

Duty a new trial. However, the Fourth Circuit's CIR unit stepped in to dismiss the charges against Mr. Duty. He had served nearly 8 years of a twenty year sentence.²³

III. Effect of Proposed Changes:

The bill creates s. 925.13, F.S., which provides a statewide mechanism for a prosecuting attorney from the original prosecuting attorney's office to file a motion to vacate or set aside a judgment in particular cases handled by that office, if the attorney has evidence or information that the convicted person is innocent. The motion may be filed at any time with the court in which the person was convicted. That court has the jurisdiction and authority to hear, consider, and decide the matter.

After the motion is filed, the court must schedule a hearing on the matter within 90 days. If the court deems it necessary to have an evidentiary hearing, the court must appoint counsel to represent the defendant, unless he or she already has counsel. Counsel for the defendant may request a reasonable continuance beyond the 90-day time frame of the hearing to prepare. The state and the defense may present evidence at the hearing.

The court must issue written findings of fact that resolve all claims raised in the motion. The court must grant the motion of the prosecuting attorney to vacate or set aside the judgment if the court finds there is clear and convincing evidence of actual innocence.

If the motion of the prosecuting attorney to vacate or set aside the judgment in the case is denied, it shall be considered a final order. As such, the order may be appealed by either party. There must be a statement in the order denying relief that an appeal may be taken within 30 days after the order is entered. Any party may file a motion for rehearing on the matter within 15 days after service of the order denying relief. The time for filing an appeal is tolled until an order on the motion for rehearing is entered.

The prosecuting attorney shall notify the victim or the victim's family of all court dates, who each have the right to be heard at a hearing to address the motion filed.

The bill becomes effective on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ Dustin Duty, National Registry of Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6055> (last visited January 19, 2022).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 925.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.