



## OAG-CIU FREQUENTLY ASKED QUESTIONS

### ABOUT THE OAG-CONVICTION INTEGRITY UNIT (OVERVIEW)

**Q: What does the Illinois Attorney General’s Conviction Integrity Unit (CIU) do?**

**A:** The CIU investigates **claims of actual innocence** to determine whether new, credible evidence and information substantially proves that the applicant was not the person who committed the offense of which s/he was convicted. If the CIU determines that a convicted person should be exonerated, it makes that recommendation to the Illinois Attorney General.

**Q: What does “actual innocence” mean?**

**A:** “Actual innocence” means that a person had NO criminal responsibility in the offense of which s/he was convicted and can provide new, credible evidence to substantiate his/her claim.

**Q: Is the CIU part of the post-conviction process provided under Illinois law?**

**A:** No. There are important differences between a review by the CIU and a post-conviction petition, although both exist to prevent an unjust result.

The Illinois Post-Conviction Act (725 ILCS 5/122-1 et seq.) allows convicted defendants to show that their conviction was obtained in violation of a constitutional right, such as the right to be free from unlawful searches (the Fourth Amendment), the right to remain silent when questioned by police (the Fifth Amendment), or the right to a competent lawyer (the Sixth Amendment).

The CIU was not created by statute, its investigations are not part of any court action and therefore it is not governed by court rules of procedure. The CIU functions as an arm of the Illinois Attorney General’s authority (as the chief legal officer of the state).

Due to limited resources, before the CIU acts, it determines whether a convicted person is also litigating a petition for relief under the Post-Conviction Act. If a convicted person has any pending post-conviction actions or time remaining in which to file such actions, the CIU does NOT investigate his/her claim of actual innocence. The CIU proceeds only after ALL post-conviction actions have been exhausted.

**Q: What relief can the CIU grant?**

**A:** None. The CIU screens, investigates, reviews, and makes recommendations.

When a case review demonstrates a substantial probability that the applicant is actually innocent of the offense of which s/he was convicted, the CIU makes a recommendation for exoneration to the Illinois Attorney General. If the Attorney General agrees, the recommendation is forwarded to the relevant state's attorney. The final decision to grant relief requires the cooperation of the state's attorney and judge from the county of conviction.

**Q: Must the case be solved for the CIU to recommend exoneration?**

**A:** No. A wrongfully convicted person may get relief even if the true offender is never identified or prosecuted for the crime.

## **ELIGIBILITY REQUIREMENTS/QUALIFYING FOR A CASE REVIEW**

**Q: Who may petition the CIU for a post-conviction review?**

**A:** Although specific eligibility requirements must be met, generally, any person incarcerated in an Illinois prison, who was convicted of a forcible felony by an Illinois state court, OR his/her attorney, may seek review.

**NOTE:** *“Forcible felony” means any felony that involves the use or threat of physical force or violence against any individual that results in great bodily harm or permanent disability or disfigurement, such as first or second-degree murder, criminal sexual assault, robbery, arson, kidnapping, or aggravated battery. (See 720 ILCS 5/2-8 for a complete definition)*

**Q: What are the CIU's eligibility requirements?**

**A:** In general, the claim must meet two essential criteria. First, the applicant must assert "actual innocence," which means that s/he had NO criminal responsibility in the offense of which s/he was convicted. Second, the claim of actual innocence must be based on new, credible evidence, that is, evidence NOT considered by the trier of fact during the proceedings that led to the conviction. If the evidence submitted in support of a claim of actual innocence was previously considered and rejected by a court at trial or on direct appeal, the CIU does not investigate.

To qualify for a conviction review, an applicant's claim **MUST** meet all of the following eligibility criteria:

1. The applicant must have been convicted by an Illinois state court; the applicant's case cannot be a federal case.
2. The conviction must have been for a forcible felony; misdemeanors and infractions will NOT be reviewed. **NOTE:** *"Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual that results in great bodily harm or permanent disability or disfigurement, such as first or second-degree murder, criminal sexual assault, robbery, arson, kidnaping, or aggravated battery. (See 720 ILCS 5/2-8 for a complete definition)*
3. The applicant must make a claim of actual innocence (i.e., the applicant did not commit or participate in the crime of which s/he was convicted).
4. The applicant **MUST** be incarcerated, currently serving time on the sentence imposed for the asserted claim of actual innocence.
5. There is newly discovered evidence that was NOT presented during trial NOR during post-conviction appeals (e.g., direct appeal, habeas corpus, etc.), or was not tested at trial.
6. The new evidence must be credible, verifiable and create a substantial probability of exoneration.
7. There cannot be any pending habeas corpus petitions, appeals or litigation of any kind.

**NOTE:** *The sole exception to the requirement for these criteria would be based on a showing that the investigative or fact-finding process that led to the conviction was so fundamentally flawed that the guilty verdict cannot reasonably be relied upon as accurate. Such decisions are left to the discretion of the CIU.*

**Q: Will the CIU accept an actual innocence claim from a convicted person who pled guilty?**

**A:** Yes. A person whose conviction resulted from a guilty plea is eligible for consideration. However, s/he must have had NO criminal responsibility in the offense of which s/he was convicted by an Illinois state court.

**Q: Will the CIU accept an actual innocence claim from a person convicted outside of Illinois?**

**A:** No. The CIU cannot review non-Illinois convictions.

***NOTE:** Additionally, the OAG-CIU may redirect an applicant to first apply for a post-conviction review through his/her local State's Attorney's Office (SAO) (for example, if the applicant's SAO operates an independent CIU). If an applicant has a pending post-conviction case review with their State's Attorney's Office/CIU, the OAG-CIU may defer its initial intake screening and/or subsequent review until the local State's Attorney's Office has made a determination.*

**Q: If I want the CIU to review my claim of actual innocence, do I need an attorney?**

**A:** No. You may submit an application packet with or without assistance from an attorney.

## **SUBMITTING AN APPLICATION PACKET**

**Q: How is an actual innocence case initiated with the CIU?**

**A:** **ONLY** official CIU Application Packets are considered for review. The official CIU Application Packet includes the following: 1) CIU Application and Consent Form; 2) Limited Waiver; 3) Agreement Form; 4) Applicant Data Form; and 5) Pre-Screening Questionnaire. You can obtain these documents from any of our offices (including our satellite offices) and also from libraries within IDOC facilities.

***NOTE 1:** Not all applications will qualify for a post-conviction review. Before completing a CIU Application Packet, we **strongly encourage** you to complete our Pre-Screening Questionnaire to determine if you meet our eligibility requirements.*

***NOTE 2: DO NOT SEND** additional documentation. Your Application Packet will be thoroughly screened. IF it is eligible for further review, we may notify you (in writing) to request documents that support your actual innocence claim.*

**NOTE 3:** *A SEPARATE CIU Application Packet MUST be submitted for EACH criminal case number that the applicant is seeking to have reviewed. To be clear, if you were convicted of forcible felonies in two or more separate, unrelated criminal cases and you want the CIU to review your actual innocence claims for each case, you MUST submit separate application packets for each case.*

**If you are submitting your official CIU Application Packet via U.S. Mail, please send to:**

Office of the Illinois Attorney General  
Conviction Integrity Unit  
115 S. LaSalle, 33<sup>rd</sup> Floor  
Chicago, IL 60603

**Q: When can I submit an application packet to the CIU?**

**A:** You may submit an application packet any time AFTER your conviction is **final**. A conviction is **not** final if ANY post-conviction litigation is still pending when the actual innocence claim is submitted to the CIU.

***NOTE:** Our review of an actual innocence claim does NOT extend the time prescribed to pursue other post-conviction remedies. Therefore, the CIU does not investigate innocence claims until all post-conviction litigation options have been exhausted.*

**Q: Are there any costs for submitting an application or associated with evidence collection/analysis?**

**A:** No costs are associated with the CIU's post-conviction review process.

## **INTAKE SCREENING & CASE REVIEW PROCESSES**

**Q: What happens after the CIU receives an application packet?**

**A:** The CIU first screens the claim of actual innocence to determine the convicted person's eligibility for a case review. This means the CIU evaluates an official application packet to confirm that it is complete and meets the basic criteria for establishing a valid claim of actual innocence.

If the application is incomplete, the applicant (or his/her attorney, if applicable) is notified in writing. **NOTE:** *The applicant will have **90** days from the date on the notification to respond. If that deadline expires, the applicant may resubmit an entirely new and complete application at any time.*

If the basic criteria for an actual innocence claim are NOT met, the applicant (or his/her attorney, if applicable) is notified in writing, and no further action is taken (i.e., the case is closed).

If the application packet is complete and the basic criteria are met, the CIU notifies the applicant that s/he is eligible for a case review. The case review determines whether the CIU makes a recommendation to the Attorney General for exoneration.

**Q: Can I amend my application?**

**A:** Yes. You can amend your application UNLESS we have already determined that your application is ineligible for a full case review. To amend an application, AS SOON AS POSSIBLE, please request an official CIU Amendment Request form. You will have **60** days from the date of our letter to return this form to our office.

**If you are submitting a CIU Amendment Request form via U.S. Mail, please send to:**

Office of the Illinois Attorney General  
Conviction Integrity Unit  
115 S. LaSalle, 33<sup>rd</sup> Floor  
Chicago, IL 60603

**Q: Who evaluates application packets and/or investigates actual innocence claims?**

**A:** CIU lawyers examine available materials from the criminal proceedings that led to the conviction, including but not limited to police reports, trial transcripts, and pleadings. They also conduct interviews and collaborate with other CIU staff to ensure all available evidence is properly analyzed and the case as a whole is thoroughly investigated. **NOTE:** *When feasible and deemed essential to the investigation, physical evidence is forensically analyzed.*

CIU investigators locate and interview witnesses who have been identified as supporting the claim of innocence (along with performing other investigative duties). They may also interview the applicant or the attorney(s) who represented the applicant during the original proceedings.

Additionally, the CIU may engage external consultants with expertise in DNA analysis, forensics, law enforcement, and other related fields to assist in identifying and assessing case evidence.

**NOTE:** *The CIU stands apart as an independent unit within the Office of the Attorney General. It functions outside of the OAG's Criminal Enforcement Division.*

*The CIU's assistant attorneys general (AAGs) and investigators are NOT involved in the investigation or prosecution of any pending criminal cases. Furthermore, NO AAG, law enforcement officer, or investigator who was involved in the prosecution of a case under review by the CIU plays any decision-making role in the investigation. In rare circumstances, at most, such persons might be interviewed about the historical events of a case.*

**Q: What updates can I expect to receive during the investigation of my actual innocence claim?**

**A:** An applicant does not enjoy an absolute right to have notice of the CIU's investigative activities and, in most instances, is not updated during the investigation of his/her actual innocence claim. To preserve the integrity of its investigations, the CIU reserves the right to determine whether any investigative efforts and/or results should be disclosed prior to reaching its conclusion.

***NOTE:** Sending requests for information and/or updates does not accelerate the CIU's screening or case review processes. Likewise, sending additional documentation or information to supplement your application may have the effect of slowing down our processes. **ONLY SUBMIT THE OFFICIAL CIU APPLICATION PACKET.** IF the CIU requires additional documentation or information, applicants (or their attorneys) will be notified in writing.*

**Q: How long (on average) does it take the CIU to reach a conclusion about an actual innocence claim?**

**A:** All cases are different, and many factors must be considered when reviewing an actual innocence claim, including but not limited to the age and complexity of the case, the evidence and information available to the CIU, and the number of applications being reviewed at the time.

We determine the general eligibility of an innocence claim within six (6) months of receiving an application packet. If your application is ineligible for further review, you (or your attorney, if applicable) will be notified, in writing, of the CIU's decision within that time.

It takes considerably more time, however, to conduct a thorough investigation of an actual innocence claim. Therefore, there is no "average" time within which the CIU reaches its conclusions. Regrettably, but necessarily, some claims may need to wait while the CIU evaluates and investigates other claims.

**Q: How will I know what conclusion(s) the CIU has reached?**

**A:** Applicants are notified, in writing, of the outcome of their cases.

**Q: If I disagree with the conclusion(s) reached by the CIU, what rights do I have for further review?**

**A:** None. The existence of this statewide CIU does not create or confer any legal right on those who bring claims of actual innocence. For this reason, **there is no “right” to appeal the CIU’s determinations.**

**Q: If I receive a rejection letter from the CIU but later discover new evidence/information, will the CIU review my actual innocence claim again?**

**A:** Yes. If new, credible evidence has been discovered since the closure of an applicant’s original actual innocence case, a new application packet may be submitted.

## **APPLICANT RIGHTS, RISKS, & RESPONSIBILITIES**

**Q: Must I waive any rights to have my actual innocence claim reviewed?**

**A:** No. However, our Limited Waiver allows for a more in-depth investigation into the facts alleged and may be necessary for a thorough investigation.

The CIU’s Limited Waiver asks an applicant to waive his/her right against self-incrimination pursuant to the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Illinois Constitution—as it relates **ONLY** to the case being reviewed by the CIU.

The CIU’s Limited Waiver also asks the applicant to waive attorney-client privilege for any attorney who has represented him/her in the past on the case under review or who is currently assisting him/her with a claim of actual innocence.

**Q: Can I revoke the Limited Waiver that I signed?**

**A:** Yes. You have the right to revoke the Limited Waiver at any time. You **MUST** request our official Revocation of Limited Waiver form.

**If you are submitting a Revocation of Limited Waiver via U.S. Mail, please send to:**

Office of the Illinois Attorney General  
Conviction Integrity Unit  
115 S. LaSalle, 33<sup>rd</sup> Floor  
Chicago, IL 60603

***NOTE:*** Even if an applicant revokes his/her Limited Waiver, the CIU still has discretion to investigate the actual innocence claim to the greatest extent possible without violating the applicant’s rights.



**Q: What if I don't want the CIU to continue investigating my actual innocence claim at all? Can I stop the investigation?**

**A:** No. An applicant does NOT enjoy an exclusive right to terminate the investigation of his/her actual innocence claim. That determination is left to the discretion of the CIU and is contingent on the nature of the evidence and testimony uncovered during the case review. Nevertheless, **an applicant has the right to terminate his/her participation** in the investigation of his/her actual innocence claim. Please request a Decision to Terminate Participation form and return it as soon as possible.

**If you are submitting a Decision to Terminate Participation form via U.S. Mail, please send to:**

Office of the Illinois Attorney General  
Conviction Integrity Unit  
115 S. LaSalle, 33<sup>rd</sup> Floor  
Chicago, IL 60603

**Q: What happens if the CIU's investigation of my actual innocence claim reveals that I am guilty of other crimes but was never charged? Will the CIU report that information to law enforcement authorities?**

**A:** Yes. As an arm of the Illinois Attorney General's Office, the CIU has a duty to notify proper law enforcement authorities of any individual reasonably suspected of criminal activity. Likewise, evidence uncovered by the CIU during its investigation may be shared with a prosecutorial entity.

***NOTE:** While reporting criminal activity to proper authorities is our policy and standard practice, the scope of a response varies based on the reliability of corroborating evidence on a case-by-case basis.*

**Q: What happens if the CIU's investigation of my actual innocence claim reveals that my relatives and/or friends were involved in the crime of which I was convicted but were never charged? Will the CIU report that information to law enforcement authorities?**

**A:** Yes. As an arm of the Illinois Attorney General's Office, the CIU has a duty to notify proper law enforcement authorities of any individual reasonably suspected of criminal activity. Likewise, evidence uncovered by the CIU during its investigation may be shared with a prosecutorial entity.

***NOTE:** While reporting criminal activity to proper authorities is our policy and standard practice, the scope of a response varies based on the reliability of corroborating evidence on a case-by-case basis.*

**Q: What happens if I fail to fully cooperate with the CIU's investigation?**

**A:** Applicants have a responsibility to comply with any requests from the CIU to the greatest extent possible. Failure to participate in the CIU's processes in good faith may result in termination of the CIU's assessment of eligibility or the case review.

***NOTE:** Knowingly providing false information to the CIU will automatically disqualify an application and may have additional consequences.*

## **ADDITIONAL TOPICS**

**Q: How does the CIU support crime victims?**

**A:** The CIU employs a full-time victim witness coordinator (VWC) to ensure crime victims understand our intake and case review processes. If the CIU determines that an actual innocence case warrants an investigation/review, the VWC also keeps victims apprised of critical case information, including case review initiation. Additionally, the VWC offers service provider lists to victims and their families that include local, statewide, and national resources for support.

The Illinois Attorney General's Office administers numerous crime victim programs. The VWC assists victims in accessing these resources as needed (if eligible).

**Q: What if I have questions not answered here?**

**A:** The CIU cannot provide legal advice or act as your legal representative. Should you have further questions, we encourage you to seek the assistance of an attorney. You may have additional legal remedies that would not be addressed by the CIU, so we encourage you to consult with an attorney who specializes in post-conviction litigation.