



WASHTENAW COUNTY

OFFICE OF THE PROSECUTING ATTORNEY

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MEMORANDUM

To: Washtenaw County Board of Commissioners
From: Eli Savit, Prosecuting Attorney
Date: July 23, 2021
CC: Greg Dill, County Administrator; Diane Heidt, Deputy County Administrator
Re: Conviction Integrity and Expungement Unit

As you know, one of my top priorities as Prosecuting Attorney is to stand up a Conviction Integrity and Expungement Unit (“CIEU”). Last winter, before I was sworn into office, I asked Board Leadership and County Administration to allow our office to hire an attorney as an interim CIEU Director so that we could get started on this crucial work.

I am grateful to the Board and to County Administration for their swift action in facilitating that temporary hire. I am now requesting—per previous discussions—that the Board make that temporary hire permanent. Specifically, I am requesting that the Board approve the addition of a single Assistant Prosecuting Attorney (APA) position in our office, so that we can continue to build on the work that has been started.

This memorandum provides an overview of the rationale for this request, of the work that has been done so far, and how the CIEU will function moving forward. At the outset, however, I would like to clarify that this request is **limited to creating a single permanent APA position in the office**—or, more precisely, to make permanent the temporary position that is currently in place.

This is a slight change in direction from the proposal I originally submitted. My original proposal, which I submitted prior to being sworn in as Prosecuting Attorney, envisioned the creation of two positions: (1) an APA position that would serve as CIEU Director, funded by the County, and (2) a full-time investigator that would be funded through the Sheriff’s existing budget. Since that time, the Sheriff has informed me that he is no longer able to fund a full-time investigator from his budget. I have, however, identified funding in the Prosecutor’s Office that will be able to facilitate the investigative function. Accordingly, **the net request to the Board remains the same: the creation and funding of a single APA position in the Prosecutor’s Office.** There is no need for additional funding for the investigator.

This memo proceeds in four parts. Part I outlines the proposed function of the CIEU, and places its two separate functions (conviction integrity and expungement) in broader context. Part

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II explains the funding structure—specifically, how we are now able to fulfill the CIEU’s investigative function without any additional funds from the County. Part III surveys the work that has been done thus far, on an interim basis, in the CIEU. Finally, Part IV surveys some of the concrete benefits the CIEU will provide Washtenaw County residents.

For additional context around this work, I have also included, as a separate document, a number of letters of support for the CIEU from local, state, and national organizations, experts in the field, community partners, and directly impacted people.

I. CIEU Function

The proposed CIEU will be tasked with two separate and important functions in the Prosecutor’s Office: a Conviction Integrity function and an Expungement function. Each of these is discussed in turn.

A. Conviction Integrity

The purpose of a Conviction Integrity Unit is to identify and remedy wrongful convictions. Put bluntly: the criminal justice system makes mistakes far more frequently than many of us would like to believe. “The rate of wrongful convictions in the United States is estimated to be somewhere between 2 percent and 10 percent.”¹ And the best available research indicates that **about 6% of the prisoners in state prison systems were wrongfully convicted.**²

When applied to an estimated prison population of 2.3 million, the numbers come into starker focus. There are (at the low end) 46,000 innocent people locked away, and (at the high end) 230,000 innocent people locked away.³ The reasons wrongful convictions occur varies widely. For example:

- A conviction may have been based on **scientific evidence that was generally accepted at the time, but has since been debunked.** For example, many people have been wrongfully convicted of arson (and murder) based on expert testimony from “fire investigators” who wrongly testified—based on since-debunked science—that accidental fires were intentionally set.⁴ (Incidentally, the case that is widely credited as the “classic example of a bad arson case” is that of a Michigan resident: David Lee Gavitt, who served 26 years in prison after an accidental fire killed his wife and two baby girls).⁵
- A conviction may have been based on **disproved witness testimony**—either faulty

¹ John Grisham, *Why the Innocent End up in Prison*, The Chicago Tribune (Mar. 14, 2018), available at <https://www.chicagotribune.com/opinion/commentary/ct-perspec-innocent-prisoners-innocence-project-death-row-dna-testing-prosecutors-0315-story.html>

² Innocence Project, *Research Resources*, available at <https://innocenceproject.org/research-resources/>.

³ Grisham, *supra* n. 1.

⁴ *Trial by Fire: Junk Science Sent Dad to Prison for Killing Wife, Kids*, NBC News (June 19, 2014), available at <https://www.nbcnews.com/news/investigations/trial-fire-junk-science-sent-dad-prison-killing-wife-kids-n89601>.

⁵ *Id.*

eyewitness testimony or testimony from a witness that later credibly recanted.

The former is the leading cause of wrongful convictions, and, in Michigan, guidelines for eyewitness identification procedures and policies were not updated until 2012 and then again in 2015.⁶ In the latter category, witnesses can sometimes be coerced into falsely testifying, sometimes by the real perpetrator. In addition (and of particular concern) many innocent people have been locked away as a result of the testimony of “jailhouse informants,” who often testify falsely in exchange for more lenient treatment in their own case.⁷

- A conviction may have been based on **prosecutorial or police misconduct**—e.g., destruction of evidence, or failure to turn over evidence that exonerates a defendant.
- A conviction may have been based largely on circumstantial evidence—the defendant was in the wrong place at the wrong time—but **new evidence, such as DNA evidence, later comes to light that unambiguously exonerates the defendant.**
- A conviction may have been based on a **false confession**. Though many “jurors find it impossible to believe that a suspect would confess to a serious crime he didn’t commit,” suggestive or overly harsh interrogation techniques—including the Reid technique that was formerly employed by investigative agencies in Washtenaw County—can often lead to false confessions.⁸

Indeed, “[o]f the 330 people who were exonerated by DNA evidence between 1989 to 2015, about 25 percent gave bogus confessions after lengthy interrogations.”⁹ There are even a number of exonerations of *multiple* codefendants—each of whom falsely confessed to heinous crimes they did not commit.¹⁰ Perhaps the most well-known example of an exoneration following multiple false confessions was the infamous example of the Central Park Five, in which five Black teenagers were wrongfully convicted of raping and beating a jogger in Central Park after *all* of them falsely confessed to doing so. (The crime was

⁶ State Bar of Michigan, *Michigan Police Agencies Adopt Evidence-Based Eyewitness ID Rules*, <https://www.michbar.org/news/newsdetail/nid/5408/Michigan-Police-Agencies-Adopt-Evidence-Based-Eyewitness-ID-Rules>; State Bar of Michigan Eyewitness Identification Task Force, *Law Enforcement and Eyewitness Identifications: A Policy Writing Guide* (2012, updated Dec. 22, 2015), available at https://www.michigan.gov/documents/mcoles/State_Bar_Eyewitness_Law_Enforcement_Policy_Writing_Guide_410867_7.pdf

⁷ See The Innocence Project, *Unregulated Jailhouse Informant Testimony Deeply Harms our Justice System*, (Mar. 6, 2019), available at <https://innocenceproject.org/informing-injustice/> (noting that “nearly one in five of the 367 DNA-based exoneration cases” were based, at least in part, on jailhouse informants)

⁸ The Reid technique, broadly speaking, involves subjecting a suspect to harsh treatment and questioning, then “offer[ing] sympathy and understanding, minimizing the moral (but not legal) dimension of the crime and easing the path to confession.” Douglas Starr, *This Psychologist Explains Why People Confess to Crimes They Didn’t Commit*, *Science Magazine* (Jun. 13, 2019), available at <https://www.sciencemag.org/news/2019/06/psychologist-explains-why-people-confess-crimes-they-didn-t-commit>.

⁹ Grisham, *supra* n. 1

¹⁰ See, e.g., PBS Frontline, *“Norfolk Four” Pardoned 20 Years After False Confessions* (Mar. 22, 2017), <https://www.pbs.org/wgbh/frontline/article/norfolk-four-pardoned-20-years-after-false-confessions/>.

later definitively linked by DNA evidence to the serial rapist Matias Reyes, who also confessed and told police non-public details about the crime).¹¹

Increasingly, prosecutor's offices across the country are recognizing the prevalence of wrongful convictions. That is why nearly 100 Prosecutor's Offices across the country have already created dedicated Conviction Integrity Units to investigate—and remedy—claims of actual innocence.¹² Here in Michigan, Wayne County's Conviction Integrity Unit has exonerated 28 innocent people *since 2018 alone*.¹³ (The Wayne County Conviction Integrity Unit is funded through that county's general fund, to the tune of \$660,000 per year).¹⁴

And the ranks of prosecutor's offices with Conviction Integrity Units is quickly growing, including in Michigan. In Oakland County, the County Executive last month dedicated \$350,000 to start a Conviction Integrity Unit.¹⁵ The newly elected Macomb County Prosecutor has also pledged to create a Conviction Integrity Unit.¹⁶

The reasons it is important for the conviction-integrity function to reside in prosecutor's office are threefold. *First*, prosecutors have access to *all* relevant case files, including case notes, background on expert testimony, and evidence (including evidence not submitted at trial) that might exonerate a defendant. These files are often protected by attorney work-product privilege, rendering it nearly impossible for attorneys representing a defendant to obtain them. It can take a defendant's attorneys years to receive even underlying case documents, medical records, and other relevant information. Even when defense attorneys do receive that information, the law often requires that certain information be redacted such that crucial information relating to innocence is not accessible. The prosecutor's office is thus *the* actor in the criminal system most likely to have access to evidence that could ultimately exonerate an innocent person.

Second, because the justice system prizes the finality of a verdict, prosecutors are often the only actors in the criminal legal system that can set a wrongfully convicted person free. In general, the only time a defendant can have a conviction reversed is on "direct appeal"—which must take place soon after trial. Once those appeals are "exhausted" (i.e., once a defendant has taken an immediate appeal and lost), it is extraordinarily difficult for a defendant to be set free, even in the

¹¹ See BBC News, *Central Park Five: The True Story Behind When They See Us* (Jun. 12, 2019), available at <https://www.bbc.com/news/newsbeat-48609693>.

¹² The National Registry of Exonerations, *Conviction Integrity Units*, available at <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx>.

¹³ Elisha Anderson, *Newly Elected Prosecutors Jump-Start Efforts to Investigate Innocence Claims*, The Detroit Free Press (Apr. 2, 2021), available at <https://www.freep.com/story/news/local/michigan/2021/04/02/prosecutors-michigan-conviction-integrity-units/4645892001/>.

¹⁴ Tresa Baldas, *Battler for the Wrongly Convicted Will Join Wayne County Prosecutor's Office*, The Detroit Free Press (Nov. 13, 2017), available at <https://www.freep.com/story/news/local/michigan/wayne/2017/11/13/wrongly-convicted-prosecutors-office-integrity-unit/859893001/>

¹⁵ Elisha Anderson, *Oakland County Leaders Support Launching Conviction Integrity Unit*, The Detroit Free Press (Jun. 24, 2021), available at <https://www.freep.com/story/news/local/michigan/oakland/2021/06/24/oakland-county-conviction-integrity-unit/5334670001/>

¹⁶ Anderson, *supra* n. 13.

face of new evidence demonstrating actual innocence.

There is an exception, however: A wrongfully convicted defendant can be easily set free, even years after the verdict, if the *prosecutor* goes into court and seeks to free the defendant. To do that, however, the prosecutor must be convinced that the defendant is actually innocent, which requires a re-evaluation of the evidence, including any new evidence. On average, it takes experienced attorneys who work in the innocence field 7 years to investigate and litigate claims of innocence based on non-DNA evidence;¹⁷ whereas conviction integrity units have investigated and achieved the release of wrongfully incarcerated individuals in mere months.¹⁸

This is a function, therefore, that cannot be fulfilled by any other actor in the system, making it crucial that a conviction integrity unit reside in the Prosecutor's Office.

Third, having a dedicated conviction integrity unit can help stop wrongful convictions from happening in the first place. Too frequently, prosecutors may unwittingly continue to rely on faulty evidence—even when there is an emerging consensus that such evidence is likely to lead to wrongful convictions. A conviction integrity unit, led by a lawyer with significant expertise in innocence claims, can prevent those errors from occurring. A conviction integrity unit can provide guidance and training to prosecutors about (for example):

- Advances in forensic science (e.g., ballistics evidence or arson evidence) that have cast doubt on previous convictions;
- New understandings as to how certain interrogation techniques can lead to false confessions; or
- Advances in DNA technology.

Having a conviction integrity unit embedded in a prosecutor's office can thus prevent prosecutors from relying on faulty or debunked evidence going forward—preventing wrongful convictions *before* they occur.

For more on the national context around conviction-integrity—and for why this work is now considered best practice in a prosecutor's office—please see the attached letters in support of the CIEU from Fair and Just Prosecution, the Michigan Innocence Clinic, the ACLU of Michigan and the ACLU's Washtenaw County Lawyer's Committee, and the National Organization of Exonerees, among others.

* * *

A final point on conviction integrity. As noted above, the best estimates are that approximately 6% of the inmates in state prisons are actually innocent of the crimes for which

¹⁷ The longer a wrongfully convicted person is in prison, the higher the costs to the State and to the County. *See infra* Part IV.

¹⁸ *See, e.g.,* The Guardian, *Why three men spent 36 years in prison for a crime they didn't commit* (Nov. 30, 2019), <https://www.theguardian.com/us-news/2019/nov/30/baltimore-men-exonerated-36-years-alfred-chestnut-ransom-watkins-andrew-stewart> (reporting on the November 25, 2019, exoneration of 3 men, six months after the conviction integrity unit received the application and letter on May 16, 2019).

they were convicted. Disturbing as it may be, that strongly suggests that there are a number of wrongful convictions arising from Washtenaw County—one of the more populous counties in Michigan. Without a conviction integrity unit, however, these cases may never be fully investigated.

In addition, I am aware of several specific cases out of Washtenaw County where there is at least a plausible claim of actual innocence. A single example—which I am comfortable putting in this memo because the potential exoneree is dead and the chief alternative suspect is in prison—proves the point. In 1969, a University of Michigan Law School student named Jane Mixer was murdered. The murder bore significant similarities to a string of murders of female college and graduate students in Washtenaw County around the same time. Those murders were ultimately linked to the serial killer John Collins. Collins was arrested and tried for one of the murders, and was sentenced to life without parole. Because he is already serving the maximum possible sentence, the Prosecutor’s Office never saw fit to try Collins for the other murders.

In 2002, however, a man named Gary Leiterman submitted a DNA swab to police after being charged with a felony for unauthorized possession of prescription drugs. Leiterman’s DNA “matched” with DNA that was found on Mixer’s pantyhose. Based largely on that evidence, Leiterman was charged and convicted of the murder of Jane Mixer—despite the obvious similarities between Mixer’s murder and the Collins killings.

But there was a significant caveat: A second DNA profile was also found on Mixer’s person. That DNA profile matched to a man named John Ruelas, who was *4 years old* at the time Mixer was killed, and who had no connection whatsoever to Leiterman or Mixer other than his DNA sample being in the lab at the same time as Leiterman’s DNA swab and the evidence from the Mixer case. It seems incredibly unlikely that the 4-year-old Ruelas was somehow at the scene of Mixer’s murder. On its face, the evidence thus suggests that there may have been DNA contamination in the lab—and that the Mixer samples were cross-contaminated with DNA samples from people that had nothing to do with her killing.

Compounding matters, the DNA evidence that was submitted at Leiterman’s trial in 2004 does not cohere with best DNA practices today. Some of the DNA that was found on Mixer’s body was a mixture of (1) Mixer’s own DNA, and (2) DNA from some other person or persons. At trial, the DNA analysts testified that Leiterman could not be “excluded” as the source of that DNA. But advances in DNA technology since that time indicate that Leiterman *could* have been excluded as the source of the DNA if only 2 people were present at the murder, but that he could not be excluded if 2 or more people were present. (Towards that end, it bears emphasis that the prosecution never suggested that Leiterman had any accomplices).

Ultimately, I do not know if Mr. Leiterman is innocent. We may never know. Mr. Leiterman died in prison in 2019, and the obvious alternative suspect (the serial killer John Collins) is serving life in prison without the possibility of parole. Compounding matters, the physical evidence in the case was destroyed in 2015—even though, under law, it should have been preserved. *See* MCL 770.16 (effective 2001).

What I *do* know is that Mr. Leiterman had at least a plausible claim of actual

innocence—one which was bolstered by subsequent advances in understandings of DNA lab contamination, as well as advances in DNA science itself. Had a conviction integrity unit been in place in Washtenaw County, it could have investigated Mr. Leiterman’s claim of innocence, including ensuring physical evidence was properly preserved and retested using more modern DNA testing, and come to a firmer conclusion as to whether he was actually innocent.

The conviction integrity function is one that I believe we need in Washtenaw County. Indeed, there is emerging consensus that this type of unit is needed in *every* prosecutor’s office. Towards that end, I will note that all three of the candidates for Prosecuting Attorney in our most recent Washtenaw County election pledged to start a conviction integrity unit if elected. And as emphasized, every other county in the quad-county area either has an operational conviction integrity unit, or is working to stand one up.

The reason is simple: Perhaps the worst mistake the government can make is to send someone to prison for a crime they did not commit. Correspondingly, when people are wrongfully convicted of crimes, it often means that the real perpetrators have escaped justice.¹⁹ I am thus hopeful that we will be able to join our sister offices across the state and country in standing up a permanent conviction integrity unit.

B. Expungement

The establishment of a permanent Conviction Integrity and Expungement Unit, moreover, provides a significant opportunity to help Washtenaw County residents who are newly eligible to expunge their old criminal records under state law. Although expungement has not traditionally been a function of conviction integrity units, I am committed to efficiently using resources to help Washtenaw residents. And I believe the establishment of a CIEU in Washtenaw offers an unprecedented opportunity to help residents clear their old criminal records.

On April 11th of this year, a new law went into effect that makes up to 1 million Michiganders newly eligible to expunge their old criminal records.²⁰ To be eligible for expungement, a person must have stayed out of trouble for a period of years (between 3-7 years, depending on the offense). Very serious offenses do not qualify.

A criminal record can hold people back from obtaining employment, from securing housing, and from continuing their education. And the economic impact of just a single conviction is pronounced. **A conviction for even a low-level crime—that is, a crime that does not result in a prison sentence—results in an average lifetime earnings loss of \$98,800.**²¹ For

¹⁹ I say “often” because there are some cases—like the arson cases highlighted earlier—in which there was actually *no crime committed*, and a person was wrongfully convicted for what was effectively an accident. Indeed, of the 2,820 exonerations recorded by the National Registry of Exonerations, 1,052 involve cases where individuals were convicted of crimes that did not occur. The Nat’l Registry of Exonerations, *Exoneration Detail List*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Jul. 19, 2021).

²⁰ Gus Burns, *Up to 1 Million Michiganders May Be Eligible For ‘Clean Slate’ Criminal Expungements*, MLive.com (Apr. 13, 2021), available at <https://www.mlive.com/public-interest/2021/04/up-to-1-million-michigan-residents-may-be-eligible-for-clean-slate-criminal-expungements.html>.

²¹ Terry-Ann Craigie, Ames Grawert, Cameron Kimble, & Joseph E. Stiglitz, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, The Brennan Center (Sept. 15,

those who serve some time in prison, the average lifetime earnings loss relating to conviction is even higher: **\$484,400**.²²

Michigan's expungement law offers an unprecedented opportunity to stem these losses. It gives those with a criminal record an opportunity to clear their records so that they can obtain jobs, housing, and educational opportunities. Unfortunately, Michigan's new expungement law is relatively complex and not particularly accessible to non-lawyers, and requires an application to the court. Private attorneys often charge approximately \$2,000 for expungement assistance. That is a Catch-22 for many who are seeking expungement, given that they are typically seeking to clear their old records so that they can get a job in the first place.

The Prosecutor's Office is uniquely situated to assist people with expungement (and, as outlined in further detail below, has already been doing significant work on that front). The Prosecutor's Office, through the CIEU, can do (and is doing) the following:

- **Perform criminal background checks for free**, letting people to know if they are eligible for expungement;
- **Clear up errors on the criminal background check**, which may falsely identify a person as being ineligible for expungement because they share a name or other identifying information with a person who may have committed a disqualifying offense elsewhere (this happens *far* more frequently than it should);
- **Obtain certified copies of court records at no cost to applicants**, through a partnership with County courts and Michigan Works!;
- **Assist applicants in filling out their expungement applications**; and
- **Connect applicants to pro bono lawyers who can represent them at an expungement hearing in court**, in partnership with the Public Defender's Office, Michigan Advocacy Program, and private attorneys who have volunteered to take on clients who may not be eligible for legal aid.

It is important to note that the Prosecutor's Office is the *only* entity that can efficiently and effectively perform all of these tasks free of charge. Specifically:

- The Prosecutor's Office has access to criminal-record databases, so we can perform the background checks free of charge to any resident.
- *Only* the Prosecutor's Office can clear up misinformation on a person's criminal record that could render them ineligible for expungement.
- Because the Prosecutor's Office has a relationship with the courts, we are able to obtain certified copies of court records at no charge to the applicant.

2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

²² *Id.*

- Finally, because of legal and funding restrictions, the Public Defender’s Office and Legal Aid are only able to assist people who meet stringent income-based eligibility criteria. The Prosecutor’s Office, by contrast, has no such restrictions and can provide these services free of charge to all Washtenaw County residents.

In addition, the Prosecutor’s Office has the unique capacity to help people clear their old criminal records—**even if they do not technically qualify for expungement under state law**. There are certain quirks in the law that can prevent people from clearing their old criminal records, even when they are worthy candidates. An example of a person whose record the CIEU has already cleared illustrates the point.

In 2007, Kevin Onoro—then 15 years old—opened neighbors’ unlocked cars one night and stole several low-value items. He was convicted as a juvenile of three felonies, despite the fact that the items he stole were low-value. (Indeed, one of the offenses for which he received a felony record was a theft of two \$1 bills). Kevin has never run afoul of the law since then. But in the 13 years since, he was denied apartments, jobs, and was unable to visit family in Canada because of his criminal record.

Because Mr. Onoro’s convictions were juvenile convictions, a different set of rules apply, and Mr. Onoro was not eligible for expungement under Michigan’s new law. Our interim CIEU, however, was able to help Mr. Onoro. We contacted the victims of the thefts, and asked if they would have any objection to having his record cleared (they did not). We then went into court, reopened his case, and successfully moved to dismiss all charges—thus clearing his record.

Only the Prosecutor’s Office could have filled that function, since only the Prosecutor’s Office can re-open and dismiss a case. But we were able to do so thanks to our interim CIEU—giving Kevin Onoro the new lease on life he deserves.

For more on the CIEU’s expungement work, please see the attached letters in support of the CIEU from Michigan Works! Southeast, Safe & Just Michigan and co-signing organizations, and UNIFIED HIV Health and Beyond, among others.

II. Funding and Structure of the CIEU

In my initial proposal to the Board and County leadership, I proposed the following structure for the CIEU: (1) a full-time Assistant Prosecuting Attorney, funded by the County, who would serve as the CIEU Director, and (2) a full-time investigator, funded by the Sheriff’s Office, who would investigate innocence claims. (Note that the investigator is needed only for the conviction-integrity work; there is no need for an investigator on the expungement side of things).

Since then, the Sheriff has informed me that he is no longer able to commit the budget to a CIEU investigator. I have, however, identified assets that already exist in the Prosecutor’s Office that will allow us to fulfill the CIEU’s investigative function. Specifically, we have the Prosecutor’s Civil Asset Forfeiture Fund, which currently stands at \$158,165. That should be

more than sufficient to fund an investigator, on contractual basis, for the foreseeable future. **Accordingly, I am not requesting any additional funding over and above making permanent the single APA position that has already been funded on a temporary basis.** The net cost to the County thus remains the same as in my initial proposal before I took office.

Two things have made this change in direction possible. *First*, I was not aware of the Civil Asset Forfeiture Fund before I took office, and was therefore not aware that we had funds available to pay for an investigator. *Second*, I have since discussed this matter with our Interim CIEU Director Frances Walters. I have concluded that compensating an investigator is more appropriate on a contractual, hourly-pay basis—because the innocence-investigation function is likely to be a heavier lift at some times than at others.

I recognize that there may be some concern that I may come back to the Board in a few years and request additional funding for an investigator. **I can commit now that I will not do so.** I anticipate that our forfeiture funds will be sufficient to fund investigations for the foreseeable future. If it turns out that we do need additional funding for investigation down the road, I will commit to securing the funds for that function—either from our office’s existing budget or through grants.

The CIEU, however, does need a full-time director to fulfill its functions. My request is limited to that position.

III. Report on CIEU’s Work To Date

As I have previously mentioned, I am deeply grateful to the Board and County Administration for allowing the CIEU to operate on an interim basis. I am also pleased to report that the CIEU has made significant strides during just its first five months in existence.

A. Hiring of Interim Director Frances Walters

We were tremendously fortunate to hire Frances Walters as the Interim CIEU Director. If the position is permanently funded, I intend to hire her as the permanent director. Simply put, Frances is a superstar. It is no exaggeration to say that she is one of the nation’s leading experts on innocence work.

Frances was born and raised in Washtenaw County, and attended Logan Elementary, Clague Middle School, Huron High School, Princeton University, and the University of Michigan Law School. She relocated from Washington, D.C. with her family to accept the Interim CIEU Director position. She has over eleven years of experience litigating innocence cases.

Just prior to coming to Washtenaw County, Frances served as the Legal Director at the Mid-Atlantic Innocence Project. Prior to that, she had six years of experience at the Innocence Project as both Counsel and as a Staff Attorney. Before joining the Innocence Project full-time, Frances worked in private practice at Williams & Connolly in Washington, D.C.—perhaps the

nation's leading litigation firm²³—where she practiced criminal law, represented clients in innocence proceedings, and performed pro bono legal aid work.

The Mid-Atlantic Innocence Project is one of the nation's top organizations representing clients who claim that they were wrongfully convicted of crimes. Frances's former jurisdiction encompassed Virginia, Maryland, and the District of Columbia. Her results speak for themselves. Exonerations remain relatively rare in the criminal legal system (particularly, as noted above, if a prosecutor's conviction integrity unit is not involved). But Frances has personally obtained full or partial exonerations for *eleven* separate clients through her innocence work. Just as importantly, perhaps, Frances has years of experience investigating claims of innocence—and, with over a decade of experience in this work, is able to quickly close frivolous or unprovable claims and to focus on only meritorious claims.

Frances has also served as a law professor teaching Wrongful Convictions at both George Washington University and at Georgetown University's law schools. She is a nationally recognized expert in innocence work, and has substantial expertise in cases involving both DNA and non-DNA evidence.

Since coming to our office in February, Frances has proved to be an invaluable member of our team. As discussed in further detail below, the CIEU has made significant strides on the expungement side in particular, Frances has also worked with our attorneys to provide guidance and feedback on evidentiary best practices.

What is more, Frances has identified resources to assist our office, and to help facilitate its work in the County. It was Frances that identified a potential use for a Michigan State Police grant that allowed us (with the Board's approval) to hire two temporary paralegals.

In a fitting twist, one of the paralegals we hired was Edward Sanders, who is a former "juvenile lifer" who was released from prison after serving 40 years for a conviction he obtained as a juvenile. Mr. Sanders, affectionately known as "Barakah," is now working with the CIEU to provide other people the second chance that he has been afforded. *See* <https://www.safeandjustmi.org/2021/07/08/from-prosecuted-to-working-for-the-prosecutors-office-a-story-of-continuing-transformation/> for more on Barakah's story.

B. Conviction Integrity Work

The CIEU's conviction integrity work has not yet started in earnest, as we have placed that function on the back burner until and unless the unit is permanently established and an investigator can be retained on a contractual basis.

Nevertheless, there are **already 13 cases awaiting review in which there are actual innocence claims**. Frances has already begun to dig into the 2-3 cases which present the strongest claims. In addition, there are currently **8 cases awaiting review in which applicants are asserting**

²³ In 2020, Williams & Connolly was recognized (for the third year in a row) as the nation's most selective law firm; as the nation's best law firm for White Collar Defense and Internal Investigations (for the 11th year in a row); and as the #2 law firm in the nation for appellate litigation. *See* <https://www.wc.com/News/154402/Vault-Names-Williams-Connolly-Most-Selective-Law-Firm-and-Best-Firm-for-White-Collar-Defense-Internal-Investigations>.

sentencing errors (i.e., that they are not factually innocent but that their sentence was overly harsh).

C. Expungement

Since Michigan's new expungement laws went into effect on April 11, the CIEU has been prioritizing its expungement efforts. The CIEU has built partnerships with Washtenaw County's district courts and circuit courts under which the Prosecutor's Office can quickly obtain certified copies of court records, at no charge to applicants. The CIEU has also established partnerships with Michigan Works!, the Michigan Advocacy Program, the University of Michigan, the University of Michigan Law School, and the pro bono committees at private law firms to provide representation at hearings for applicants that come through our office. For its part, the Sheriff's Office is providing fingerprinting for expungements free of charge.

All of this **allows the CIEU to offer, and advertise, free expungement services for Washtenaw County residents.** Apart from Project Clean Slate in Detroit (which offers similar services for Detroit residents), this will make Washtenaw County the only jurisdiction in the state that can offer free expungement assistance to any resident on a go-forward basis.

What is more, the CIEU has been providing information to residents about expungement in an easily accessible format. We have put out social media advertisements on Facebook and Instagram explaining the new expungement laws, and offering free assistance with expungements. Those ads—which targeted Washtenaw County—have boasted 69,365 impressions on Facebook alone. We have also created a website (<https://www.washtenaw.org/3364/Expungements>) breaking down the new expungement laws in an easily accessible format. And we have a team of interns working for the CIEU who have been distributing expungement flyers and information in businesses, churches, and community centers across Washtenaw County. We have canvassed over 1,000 businesses in Washtenaw County, and over 500 of them have either agreed to distribute expungement materials or are displaying expungement flyers.

As we emerge from the COVID-19 pandemic, we have also been doing in-person events to get the word out about expungements. Last month, we did a pop-up expungement event at the Ypsilanti Transit Center, where we performed free, instant background checks at the Bellflower Restaurant across the street. Over 60 people attended that event. Approximately 40 of them were eligible for expungement and are currently working with our office on applications. We have also been attending church services and community events (including tabling at the Ypsilanti Juneteenth event) distributing information about expungement.

And the bottom line is that these efforts have been quite successful. **As of this writing, the CIEU is currently assisting (or has assisted) 239 individuals who are seeking to expunge their old criminal records.** Because it took us some time to set up our systems, partnerships, and outreach plan, the vast majority of those—199 people—have started working with our office within the last month. The demand for expungement services in Washtenaw County is thus strong, and, with the Board's partnership, will continue to grow.

IV. Concrete Benefits to Washtenaw County Residents

It is difficult to precisely quantify the benefits to a person who has been exonerated of a crime that they did not commit, or to quantify the benefits of providing a person a “clean slate” once their record has been expunged. Nevertheless, there are some quantifiable monetary benefits to the CIEU’s function.

Conviction Integrity: Every wrongful conviction is a human tragedy. But sending an innocent person to prison also imposes concrete monetary costs. As of 2017, it **cost an average of \$36,106 per year to incarcerate a single person in the State of Michigan.**²⁴ In many cases, of course, that cost may be justified. But it is definitionally unjustified to spend money to imprison a person for a crime that they did not commit.

We do not know (partially because we do not currently maintain a conviction-integrity unit) how many wrongfully convicted people are from Washtenaw County. But some back-of-the-envelope calculations may prove helpful. Washtenaw County makes up approximately 3.7% of the State’s population.²⁵ As of 2019, Michigan had 38,053 people incarcerated in its prison system.²⁶ Assuming that Washtenaw residents are represented in the state prisons at a rate roughly equal its population share of 3.7%, that means that approximately 1,407 people are currently serving time in state prisons as a result of convictions obtained in Washtenaw County.

Recall further that the best estimates are that approximately 6% of the people in state prisons are actually innocent of the crimes for which they were convicted.²⁷ Applying that percentage to the estimated Washtenaw prisoner population, it would mean that there are approximately 84 people (6% of 1,407) serving time in state prisons because of a wrongful conviction obtained in Washtenaw County.

Assuming these numbers are roughly accurate—and I emphasize that they are simply back-of-the-envelope calculations—that means that **the State is currently spending \$3,032,904 per year (84 prisoners x \$36,106) imprisoning people as a result of wrongful convictions in Washtenaw County.**

I do not pretend that these numbers are precise; there are of course variables that have not been accounted for. Nor do I pretend that a CIEU will be able to obtain exonerations for every person who was wrongfully convicted in Washtenaw County. A conviction-integrity unit is only able to proceed based on the evidence that is available to it; there may be some cases involving a wrongful conviction in which exonerative evidence is simply unavailable. Nevertheless, I believe these numbers demonstrate that—in addition to the pronounced human cost—there is a significant

²⁴ Kristen Jordan Shamus, *Michigan Spending One-Fifth of its General Fund Budget on Prisoners*, The Detroit Free Press (Dec. 19, 2018), available at <https://www.freep.com/story/news/local/michigan/2018/12/19/prison-michigan-corrections-jail/2230794002/>.

²⁵ According to the most recent Census numbers, Washtenaw County has approximately 370,000 residents; the State of Michigan has approximately 10,000,000 residents. See https://datacommons.org/place/geold/26?utm_medium=explore&mprop=count&popt=Person&hl=en.

²⁶ Safe & Just Michigan, *The Michigan Department of Corrections by the Numbers* (Mar. 25, 2021), available at <https://www.safeandjustmi.org/2021/03/25/the-michigan-department-of-corrections-by-the-numbers/>.

²⁷ See Innocence Project, *supra* n. 2.

monetary cost to wrongful convictions that can be remedied through a CIEU.

Expungement: The analysis is a bit simpler for expungements. Recall that the estimated lost earnings arising from a criminal conviction is **\$98,800**, if the person was *not* sentenced to prison.²⁸ Assuming that the County expends just over \$100,000 on a single APA position to facilitate the CIEU (which is the approximate cost of an APA salary + benefits), that means that the net economic impact on the County would be positive if the CIEU facilitates expungements for just *two* Washtenaw residents, per year, who did not serve time in prison.

The benefit is even more pronounced if the CIEU expunges a criminal record of someone who served time in prison. Recall that the lost earning potential for such a person is **\$484,400**.²⁹ That suggests that even *one* expungement for such a person, per year, would more than justify the CIEU from an economic perspective.³⁰

As mentioned earlier, the CIEU is currently assisting or has assisted some 239 people with expungements. And that is just in the first three months since Michigan’s new “Clean Slate” laws took effect. To be sure, not all of those people are or will be eligible for expungement under the new law. Some may have even been able to hire a lawyer to facilitate expungement even absent the CIEU. But even with those caveats, I respectfully submit that the CIEU’s track record demonstrates that it will more than justify its cost—on the expungement side alone.

* * *

I will close this lengthy memo by highlighting two points.

First, as emphasized above, a CIEU reflects emerging best practices in prosecution. There is also significant community demand for these functions in the Prosecutor’s Office.

Towards that end, and to provide additional perspective on this work, I have included as a separate appendix a number of letters of support for the Washtenaw County CIEU. These letters come from a diverse array of local, state, and national organizations—as well as leaders in the field, and directly impacted people.

The appendix includes letters of support for the CIEU from:

- **ACLU of Michigan & the Washtenaw County ACLU Lawyers Committee**
- **American Friends Service Committee Michigan Criminal Justice Program**
- **Ann Arbor NAACP**
- **Fair & Just Prosecution**

²⁸ Craigie et. al., *supra* n. 21.

²⁹ *Id.*

³⁰ A caveat is in order here: the net lost earnings for someone who *did not* serve jail or prison time (\$98,800, per the research) is likely to be attributable to the stigma of the conviction alone. For someone who served time in prison, however, it is “the aggregate effect of conviction and imprisonment” that results in net lost earnings. See *id.* Spending time in prison can disrupt one’s educational and workforce trajectory and can impose additional trauma. Thus, it is probably true that not all the economic loss resulting from imprisonment can be recovered simply by expunging a formerly incarcerated person’s criminal record. Nevertheless, the effect is likely to be substantial, and certainly promises to be more substantial than a person who did not serve time in prison.

- **Friends of Restorative Justice**
- **Michigan Innocence Clinic at the University of Michigan Law School**
- **Michigan Liberation**
- **Michigan Works! Southeast**
- **National Organization of Exonerees**
- A joint letter from the following co-signing organizations:
 - **Safe & Just Michigan**
 - **Friends of Restorative Justice Washtenaw County**
 - **Michigan Citizens United for Rehabilitation of Errants (CURE)**
 - **Nation Outside**
 - **Citizens for Prison Reform**
 - **Michigan Center for Youth Justice**
 - **Interfaith Council for Peace and Justice**
 - **Voting Access for All Coalition**
- **Survivors Speak**
- **UNIFIED HIV Health and Beyond**
- **Washtenaw Regional Organizing Coalition (WeROC) & Metropolitan Organizing Strategy Enabling Strength (MOSES)**

Second, I wish to highlight human benefits of the CIEU—which, in my view, are just as important as its economic benefits. I know that I do not need to emphasize to the Board the human tragedy that is a wrongful conviction. But I will note that the families of incarcerated people suffer along with them. Many families believe that their loved ones are actually innocent of the crimes for which they were convicted. Having a conviction-integrity unit to look into innocence claims provides families with some assurance that their cries for justice are not going unheard—and that the justice system in Washtenaw County is committed to getting it right.

On the expungement side: offering people an opportunity for a “clean slate” offers concrete benefits related to housing, employment, and education. But just as importantly, it removes the stigma of a criminal conviction that can stay with a person for the rest of their life. Earlier in this memorandum, I highlighted the story of Kevin Onoro, who was saddled with three felonies for a crime he committed when he was just 15 years old. After we were able to clear his record—and again, it bears emphasis that *only* the Prosecutor’s Office was able to do that under the law—Kevin reached out to us to express his thanks.

I am reproducing, in full, his email below, which I have also attached as an appendix to this memo:

Hello Frances,

I have been meaning to do this for awhile but I unfortunately keep forgetting but I just wanted to say thank you for everything you and your office did for me. You all completely changed my outlook on life. I didn’t realize it until recently but I have basically been a depressed person since I’ve been an adult. The biggest reason being dealing with the consequences of having a felony. But I just became used to the feeling of depression, kind of like someone who is serving a life sentence but isn’t bothered by prison anymore

because they've become used to their circumstances. (If that makes sense) but With these felonies gone now I feel like I can learn to be happy again. I just wanted you to know if it wasn't for you all I'd still be in the same exact sad state of mind I was stuck in for such a long time. So I just have to say one more time, thank you so much for everything you guys did for me. It means the world to me. It's still hard for me to believe this actually happened.

*Blessings to you and all your loved ones,
Kevin Onoro*

Kevin's story is far from unique. The work of the CIEU has the capacity to change many Washtenaw County lives for the better—one person at a time.

I am grateful to the Board and to County Administration for its support to date for the CIEU, and for allowing our office to start this important work. I hope that the Board will see fit to continue that work, and to permanently create a single APA position that will facilitate it.

I am, as always, happy to answer any questions. Please do not hesitate to reach out at any time.

Appendix A

Kevin Onoro Correspondence

From: Kevin Onoro <kevinonoro@yahoo.com>

Sent: Tuesday, June 29, 2021 4:45 PM

To: Frances Walters

Subject: Thank You!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Frances,

I have been meaning to do this for awhile but I unfortunately keep forgetting but I just wanted to say thank you for everything you and your office did for me. You all completely changed my outlook on life. I didn't realize it until recently but I have basically been a depressed person since I've been an adult. The biggest reason being dealing with the consequences of having a felony. But I just became used to the feeling of depression, kind of like someone who is serving a life sentence but isn't bothered by prison anymore because they've become used to their circumstances. (If that makes sense) but With these felonies gone now I feel like I can learn to be happy again. I just wanted you to know if it wasn't for you all I'd still be in the same exact sad state of mind I was stuck in for such a long time. So I just have to say one more time, thank you so much for everything you guys did for me. It means the world to me. It's still hard for me to believe this actually happened.

Blessings to you and all your loved ones,

Kevin Onoro

Sent from [Mail](#) for Windows 10