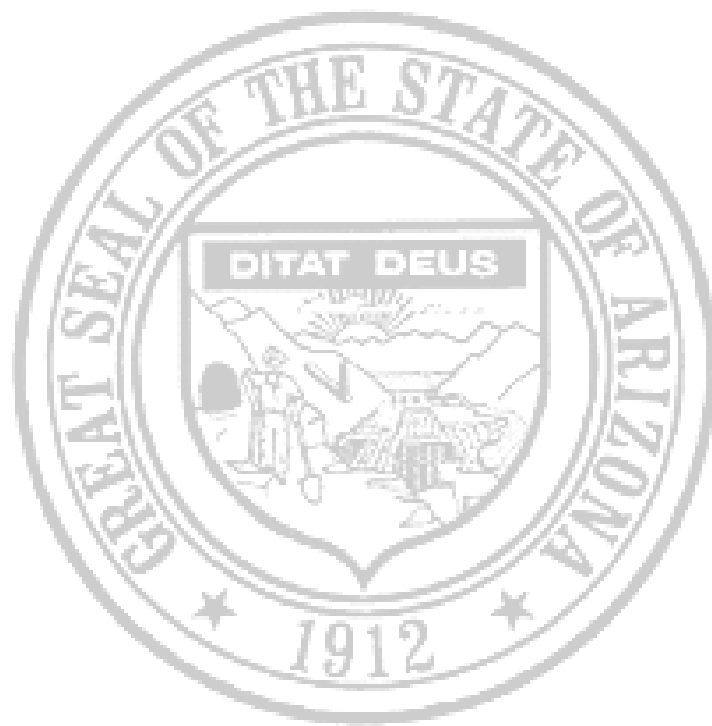


# COLD CASE TASK FORCE



*A Report to the Governor and the  
Arizona State Legislature*

December 28, 2007

# TABLE OF CONTENTS

	page
I. INTRODUCTION.....	1
II. SURVEY OF LAW ENFORCEMENT AGENCIES.....	2
III. COLLECTION AND PRESERVATION OF EVIDENCE.....	11
IV. VICTIM IMPACT.....	22
V. BEST PRACTICES.....	26
COLD CASE TASK FORCE MEMBERSHIP.....	Appendix A
RECOMMENDATIONS.....	Appendix B
COLD CASE SOLVABILITY QUESTIONNAIRE.....	Appendix C
ARIZONA DNA AND FORENSIC SCIENCE RECOMMENDATION.....	Appendix D

# **Cold Case Task Force**

## ***A Report to the Governor and the Arizona State Legislature***

### **Introduction**

During the 47<sup>th</sup> legislative session, Senate Bill 1182 was passed creating the Cold Case Task Force. Its responsibilities were to:

- *Review procedures used by law enforcement agencies in investigating and preserving cold case homicides.*
- *Review procedures used by law enforcement agencies in investigating recent homicides.*
- *Receive comment from members of victim’s families and members of the public.*

Due to the complexities of the issues presented, it was decided by the Cold Case Task Force members<sup>1</sup> that this report should focus upon the current practices of Arizona’s law enforcement community regarding cold case homicides. By doing so, a baseline would be established that would allow for measured review as law enforcement progresses with the unique challenges that “cold case” homicides present.

The Cold Case Task Force created several working groups to facilitate their review. They were:

- Survey of Law Enforcement Agencies.
- Collection and Preservation of Evidence.
- Victim Impact.
- Best Practices.

Many of the recommendations<sup>2</sup> of this Task Force may involve potential legislative solutions. It is recommended that the Arizona Criminal Justice Commission<sup>3</sup> be asked to continue with the Cold Case Task Force efforts and bring together members from the criminal justice community to facilitate the drafting of such legislation and identifying “promising practices”. By doing this, criminal justice professionals can take into account the unique challenges of cold case homicide investigations and the variability in size and resources of the different Arizona law enforcement agencies.

Research conducted for the Cold Case Task Force revealed that jurisdictions across Arizona use a variety of cold case homicide definitions. The Cold Case Task Force believes that it is important for all Arizona law enforcement agencies to use the same definition of a cold case homicide and recommend the following:

*A cold case homicide is a homicide that remains unsolved for at least one year after being reported to law enforcement and has no viable and unexplored investigatory leads.*

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<sup>1</sup> A complete listing of the Cold Case Task Force members is located in Appendix A.

<sup>2</sup> A compilation of the Recommendations can be found in Appendix B.

<sup>3</sup> Additional resources would need to be made available to ACJC.

## **Cold Case Task Force Survey of Law Enforcement Agencies**

Among other responsibilities, the Cold Case Task Force was charged with reviewing “procedures used by law enforcement agencies in investigating and preserving cold case homicides.” To aid in this review, the Cold Case Task Force received the assistance of the Arizona Criminal Justice Commission’s Statistical Analysis Center to administer a survey to all police departments, county sheriff’s offices, and tribal police departments in Arizona. The survey contained questions about how agencies define a cold case, whether agencies have a cold case unit and the makeup and responsibilities of the unit, the agencies recent experiences with cold cases, the agencies protocols for handling of cold case homicides, and policies for retaining and preserving evidence in homicide cases.

At the time this report was written, 86 percent of law enforcement agencies that were sent the survey responded. Responding agencies include all those that had at least three homicides within the last five years. Response rates varied by type of agency with 91 percent of local police departments, 80 percent of sheriff’s offices, and 65 percent of tribal agencies returning completed surveys. At the end of the survey is a complete list of the responding agencies.

What follows is a summary of the information collected from the agencies statewide, by type of agency, and by size of agency that begins to answer the question, “Where are we now?” in terms of law enforcement practices related to cold case homicides.

### **Survey Results**

To better understand the data that follows, it is important to note the variety in cold case homicide definitions used by Arizona law enforcement agencies. Most cold case homicide definitions used by Arizona law enforcement agencies can be classified into two general categories: 1) leads dependent; and 2) time dependent. All cold case definitions include the element of “unsolved” but most go on to define them by the absence of any unexplored leads (i.e., lead dependent) and/or the passage of time without an arrest (time dependent). The time dependent definitions of a cold case can be further distinguished by the amount of time that passes before the label “cold case” is placed on the investigation and ranges from zero (i.e., all unsolved cases are considered cold cases) to five years before an unsolved case is labeled a cold case. For one agency, the definition of a cold case is time dependent but the time is not clearly specified. Instead, this agency’s definition is “any case that is not solved within a reasonable period of time.”

Although the two types of definitions above describe most definitions of cold cases, there are other notable definitions being used by Arizona law enforcement agencies. A small number of agencies make a distinction between types of cold cases. Three examples of multi-category cold case classification schemes that were provided by agencies appear below.

- A case where all workable leads have been exhausted and there is no known suspect information.

- A case where there is a suspect but there is no physical evidence or direct witness information to connect the suspect to the crime and all workable leads have been exhausted.
- A case where physical evidence is available such as DNA but there are no workable leads as to the identity of the suspect (awaiting a match through CODIS).”

A cold case is by definition any murder, missing person, or suspicious death that is not being actively investigated. Cold cases usually fall in three categories:

- Unsolved: no known suspects.
- Unresolved: suspect(s) known/suspected but never successfully prosecuted.
- Unidentified: Victim identity unknown (Jane or John Doe).

Although most agencies cold case definitions can be classified into the two general categories the variety in cold case homicide definitions used by Arizona law enforcement agencies make it difficult to get a clear understanding of the number of cold case homicides statewide. Recognition of the variety in cold case definitions used also provides a context for better understanding the information that follows, particularly when considering the data on the number of cold case homicides reviewed and solved.

In an attempt to arrive at a baseline number of cold case homicides in Arizona, after the survey was sent out, a follow-up question was sent to agency respondents asking, “How many cold case homicides does your agency have right now?” Recognizing the measurement challenge created by respondents using different definitions for a cold case, the Task Force provided the following definition of a cold case to obtain consistent and comparable data across agencies, “A homicide that has not been solved within one (1) year of the case being brought to your attention.” At the time this report was written, 67 percent of the agencies that completed the original survey responded to the follow-up question. Those agencies that did report the number of cold case homicides using the definition provided by the Task Force totaled 2,095 existing cold case homicides in their jurisdictions.

The next sections of this report reviews the data provided by law enforcement agencies in Arizona statewide and by type of agency. Because of the unique jurisdictional issues facing tribal police departments, their data will be summarized separately.

### Number of Cold Case Homicides Reviewed and Solved

Survey respondents were asked to report the number of cold case homicides reviewed and solved in the past three years (Table 1). During the past three years, responding agencies reported reviewing 769 cold case homicides.

<b>Table 1: Number of Cold Cases Reviewed and Solved Past Three Years</b>			
	<b>Reviewed</b>	<b>Solved</b>	<b>Percent</b>
County Sheriffs	178	8	4.5%
Police Departments	587	40	6.8%
<b>Statewide</b>	<b>769*</b>	<b>48</b>	<b>6.2%</b>

\* This number includes four cold case homicides reviewed by one Tribal Police Department

During the same three year period, 48 homicide cold cases were solved; a rate of one out of every 16 reviewed.

When looking at these same data by type of agency, respondents working for local police departments reported that their agencies reviewed 587 cold case homicides in the past three years and solved 40; a rate of slightly less than one out of every 15 that were reviewed. In contrast, county sheriff’s offices responding to the survey reported that during the past three years, 178 cold case homicides were reviewed and eight were solved; a rate of approximately one out of every 22 reviewed.

**Cold Case Units**

Approximately 17 percent of responding agencies reported having a cold case unit that reviews homicides (Table 2). Of those agencies with a homicide cold case unit, approximately one-third have members who work exclusively on cold cases. Staffing of dedicated cold case units vary from volunteers who are retired law enforcement officers who work closely with the agency’s violent crime or homicide units to having multiple full time officers dedicated to cold cases. In two instances, an agency’s cold case unit includes representatives from the county attorney’s office. For those agencies without dedicated cold case units, cold cases can be an additional duty of staff that has full-time investigatory and/or supervisory responsibilities and reviews cold cases as their workload allows.

When looking at just local police departments, approximately 16 percent reported having a cold case unit that reviews homicides, one-fourth of which with unit members that work exclusively on homicides. Staffing of police department-based cold case

<b>Table 2: Cold Case Units</b>		
	<b>Cold Case Unit</b>	<b>Units with Dedicated Staff</b>
County Sheriffs	33.3%	50.0%
Police Departments	16.4%	25.0%
<b>Statewide</b>	<b>16.7%</b>	<b>31.3%</b>

homicide units cover the range described above, from part-time volunteers working with existing staff to dedicated cold case units with multiple full-time staff from multiple agencies.

Four of the 12 sheriff’s offices that replied to the survey reported having a cold case unit that reviews homicides. Of those sheriff’s offices with cold case units, two have members that work exclusively on cold cases. Again, the staffing of sheriff’s offices-based cold case units range from volunteer staff only to a multi-personnel, multi-agency unit.

**Protocols for Handling Cold Case Homicides**

Respondents were also asked if they have written protocols for the handling of cold case homicides (Table 3). Approximately nine percent of responding agencies reported that they have written protocols for the handling of cold case homicides. Six of the 73 police departments (eight percent) and two of the 12 responding sheriff’s offices (17 percent) reported having written protocols for cold cases. For those

<b>Table 3: Protocols for Handling Cold Case Homicides</b>	
<b>Percent of Agencies</b>	
	<b>Written Protocols in Place</b>
County Sheriffs	16.7%
Police Departments	8.2%
<b>Statewide</b>	<b>9.4%</b>

agencies that reported having written protocols, copies of the protocols were requested.

At the time this report was written, copies of seven written protocols had been received. Three agencies submitted one-page written protocols that contained very similar information including a definition of cold cases, evaluation criteria to be considered before re-opening an investigation into a cold case, and an outline of investigative procedures. The most comprehensive homicide cold case protocol included a project narrative that contained the goals of the multi-agency Cold Case Homicide Task Force, a detailed case prioritization rating scale, a list of Task Force member and collaborating agencies, a list of individuals on the Task Force and their law enforcement experience, a description of the duties and responsibilities of each Task Force member, and evaluation criteria including measurable objectives to assess the performance of the Task Force.

**Policies for Retaining and Preserving Evidence in Homicides**

Respondents were asked if their departments had policies for retaining and preserving evidence for the handling of cold case homicides (Table 4). Approximately 81 percent reported that their agency had policies for retaining and preserving evidence, and of those, 84 percent reported that those policies were in writing.

Among police departments and sheriff’s offices, 82 percent of police departments and 92 percent of sheriff’s offices reported having policies for retaining and preserving evidence in homicides. Of those agencies that have policies for preserving and retaining evidence in homicides, 82 percent of police departments and 91 percent of sheriff’s offices reported that those policies were in writing.

<b>Table 4: Policies for Retaining and Preserving Evidence</b>		
<b>Percent of Agencies</b>		
	<b>Policy in Place</b>	<b>Policy is in Writing</b>
County Sheriffs	91.7%	90.9%
Police Departments	82.2%	74.2%
<b>Statewide</b>	<b>81.3%</b>	<b>77.1%</b>

**Training and Grants**

Finally, respondents were asked about cold case training agency staff received in the past three years and whether their departments have applied for grant funding for cold case processing (Table 5). Approximately 28 percent of agencies reported that members of their staff attended cold case training seminars within the last three years and approximately nine percent reported having applied for grants during the past three years to assist with cold case processing.

When looking at these data by type of agency, 26 percent of police departments sent members of their staff to cold case training seminars in the last three years. In contrast, 67 percent of sheriff’s offices reported sending staff to cold case training seminars.

Consistent with the statewide data, a relatively small percentage of sheriff’s Offices and police departments applied for grant funding for cold case processing during the past three years (25 and eight percent, respectively).

<b>Table 5: Cold Case Training and Grants</b>		
<b>Percent of Agencies</b>		
	<b>Applied for Grant Funding</b>	<b>Attended Cold Case Training</b>
County Sheriffs	25.0%	66.7%
Police Departments	8.3%	26.0%
<b>Statewide</b>	<b>9.5%</b>	<b>28.1%</b>

### **Tribal Law Enforcement Agencies**

Although tribal law enforcement agency data was included in the statewide analyses summarized above, because they share law enforcement and prosecution responsibilities with federal agencies, their cold case survey data are analyzed separately from local police departments and county sheriff’s offices in Arizona. Due, in part, to tribal agencies referring homicide investigations to the Bureau of Indian Affairs or the Federal Bureau of Investigation only 65 percent of tribal agencies returned completed surveys.

It is likely that because of the jurisdictional reasons stated above, few tribal law enforcement agencies have active involvement in cold case homicides investigations. None of the tribal agencies that responded to the survey have cold case units, although one tribal agency reviewed four cold case homicides during the past three years. All of those cold case homicides remain unsolved.

One tribal agency reported having written protocols for the handling of cold cases, but when asked if those protocols were in writing, the agency replied that all homicides are handled by the Bureau of Indian Affairs and the Federal Bureau of Investigation.

Seven of the 11 tribal agencies that responded to our survey reported that they have policies for retaining and preserving evidence in homicides, and of the seven, five reported that those policies are in writing. Finally, no tribal agencies reported having applied for grant funding for cold case processing or sent agency staff to cold case training seminars during the past three years.

### **Results by Size of Agency**

Recognizing the likelihood of a relationship between agency size and resource availability and flexibility, survey data were also analyzed by size of agency. A distinction was made between large, medium, and small agencies, based on staffing levels provided by the responding agencies. Large agencies were defined as those with more than 200 sworn officers, medium agencies were defined as those with 50 to 200 sworn officers, and small agencies were defined as those with less than 50 sworn officers.

#### **Large Agencies**

All 11 large agencies that were sent the original cold case homicide surveys returned completed surveys. The 11 large agencies reported 1,692 homicides from 2002 – 2006 to *Crime in Arizona*, the annual crime report published by the Arizona Department of Public Safety. The highest number of homicides during that five-year period for any one agency was 916.



During the past three years, large agencies reviewed 673 cold case homicides and solved 33. Eight of the 11 agencies reported having cold case units. Although all large agencies had dedicated cold case units, staffing of these units ranged from volunteers who are retired law enforcement officers to a multi-agency, multi-personnel cold case homicide task force. Of the eight agencies with homicide cold case units, four have written protocols for the handling of cold case homicides.

All of the large agencies reported having policies for retaining and preserving evidence in homicides, and in only one agency are those policies not in writing. Finally, all but one large agency reported that staff members attended cold case training during the past three years, and eight of the 11 agencies reported having applied for grant funding for cold case processing during that same time.

### **Medium Agencies**

All 25 medium-sized agencies that were sent the original cold case homicide surveys returned completed surveys. The 25 medium-sized agencies reported 192 homicides to *Crime in Arizona* from 2002 – 2006. The highest number of homicides during that five-year period for any one agency was 35.

During the last three years, medium-sized agencies reviewed 57 cold case homicides, and solved 10. Of all of the medium-sized agencies, six (24 percent) had cold case units. The staffing of cold case units ranged from agency personnel who had cold case responsibilities in addition to their regular full-time duties to agencies that utilized retired law enforcement officers dedicated to cold case investigations. Only two medium-sized agencies reported having written protocols for the handling of cold case homicides, one with a cold case unit and one without.

Nearly all (22 of 25) of the medium-sized agencies reported having policies for retaining and preserving evidence in homicides. Of the 22 agencies that reported having policies for retaining and preserving evidence, 20 reported that those policies are in writing. Finally, 48 percent of medium-sized agencies reported that staff members attended cold case training during the past three years, but only one agency reported having applied for grant funding for cold case processing during that same time.

### **Small Agencies**

Of the 70 small agencies that were sent the original cold case homicide surveys, 60 returned completed surveys (86 percent). From 2002 – 2006, the small law enforcement agencies that responded to the survey reported 81 homicides to *Crime in Arizona*. The highest number of homicides during that five-year period for any one agency was 22.

During the last three years, the 60 small agencies that responded to the survey reviewed 39 cold case homicides and solved five. Of the small agencies that responded to the survey, only two had cold case units. In one agency, the cold case unit consists of a detective whose regular caseload includes cold case homicide responsibilities and in the other agency the investigative supervisor is responsible for reviewing cold cases. A third agency reported that at the beginning of the 2008 calendar year they will have a cold case unit under the Director of Investigations Supervisor that will be staffed part-time (16 hours per month) by two officers. Although two small agencies reported having written

protocols for the handling of cold case homicides, neither agency reported having a cold case unit.

Three-fourths of the responding small agencies reported having policies for retaining and preserving evidence in homicides. Of the 45 agencies that reported having policies for retaining and preserving evidence, 34 agencies reported that those policies were in writing. Only eight percent of responding small agencies reported that staff members attended cold case training during the past three years and no small agencies reported having applied for grant funding for cold case processing during that same time.

### **Agencies with Five or More Homicides during the last Three Years**

A reasonable argument can be made that given limited resources and competing law enforcement needs, only those agencies whose jurisdictions include areas where homicides occur with some regularity require cold case homicide units. For this reason, the survey data was also analyzed for only those agencies that experienced five or more homicides from 2002 – 2006 as reported to *Crime in Arizona*. During the five-year period of 2002 – 2006, 31 of the 96 responding agencies had five or more homicides.

The agencies that reported five or more homicides during the last five years reviewed 724 cold case homicides and solved 44 during the past three years. Approximately 39 percent of the agencies with five or more homicides in the past five years have cold case units (12 of 31). The staffing of these agencies cold case units cover the range described earlier in this report, from agency personnel who have cold case responsibilities in addition to their full-time duties, to a multi-agency, multi-personnel cold case homicide task force. Of those agencies that have cold case units, 67 percent (eight of 12) have written protocols for the handling of cold case homicides.

Of these 31 agencies, all have policies for retaining and preserving evidence in homicides and for 87 percent of the agencies those policies are in writing. Finally, of the agencies that reported five or more homicides from 2002 – 2006, 58 percent have sent members of their staff to cold case training seminars and 29 percent have applied for grant funding during the past three years for cold case processing.

### **Summary**

The Cold Case Task Force survey contained questions about how agencies define a cold case, whether agencies have a cold case unit and the makeup and responsibilities of the unit, the agencies recent experiences with cold cases, the agencies protocols for handling of cold case homicides, and policies for retaining and preserving evidence in homicide cases. Findings from the survey include:

- Although most agencies cold case definitions can be classified into two general categories, leads dependent and time dependent, the variety in cold case homicide definitions used by Arizona law enforcement agencies make it difficult to get a clear understanding of the number of cold case homicides statewide.
- Acknowledging the variety in cold case definitions used, the total number of cold case homicides reviewed in the last three years by responding

agencies was 769. During the same three-year period, 48 homicide cold cases were solved; a rate of one out of every 16 reviewed.

- Staffing of dedicated cold case units vary from volunteers who are retired law enforcement officers who work closely with agency personnel to a multi-agency, multi-personnel cold case homicide task force. For those agencies without dedicated cold case units, cold cases can be an additional duty of agency staff that has full-time investigatory and/or supervisory responsibilities and reviews cold cases only as their workload allows.
- Approximately nine percent of responding agencies reported that they have written protocols for the handling of cold case homicides. The most comprehensive homicide cold case protocol included a project narrative that contained the goals of the multi-agency Cold Case Homicide Task Force, a detailed case prioritization rating scale, a list of Task Force member and collaborating agencies, a list of individuals on the Task Force and their law enforcement experience, a description of the duties and responsibilities of each Task Force member, and evaluation criteria including measurable objectives to assess the performance of the Task Force.
- Twenty-eight percent of agencies reported that members of their staff attended cold case training seminars within the last three years and nine percent reported having applied for grants during the past three years to assist with cold case processing.
- None of the tribal agencies that responded to the survey have cold case units, which is likely due, in part, to tribal agencies referring homicide investigations to the Bureau of Indian Affairs or the Federal Bureau of Investigation

### **Participating Agencies**

#### **Large Agencies**

Chandler Police Department  
Gilbert Police Department  
Glendale Police Department  
Maricopa County Sheriff's Office  
Mesa Police Department  
Phoenix Police Department

Pima County Sheriff's Office  
Pinal County Sheriff's Office  
Scottsdale Police Department  
Tempe Police Department  
Tucson Police Department

#### **Medium-Size Agencies**

Apache Junction Police Department  
Avondale Police Department

Mohave County Sheriff's Office  
Navajo County Sheriff's Office

Buckeye Police Department  
Bullhead City Police Department  
Casa Grande Police Department  
Cochise County Sheriff's Office  
Coconino County Sheriff's Office  
Flagstaff Police Department  
Goodyear Police Department  
Kingman Police Department  
Lake Havasu City Police Department  
Marana Police Department

Nogales Police Department  
Oro Valley Police Department  
Peoria Police Department  
Prescott Police Department  
Prescott Valley Police Department  
Sierra Vista Police Department  
Surprise Police Department  
Yavapai County Sheriff's Office  
Yuma County Sheriff's Office  
Yuma Police Department

### **Small Agencies**

Arizona State Capitol Police  
Benson Police Department  
Camp Verde Marshal's Office  
Carefree Marshal's Office  
Cave Creek Marshal's Office  
Chino Valley Police Department  
Clarkdale Police Department  
Clifton Police Department  
Colorado City Marshal's Office  
Coolidge Police Department  
Cottonwood Police Department  
Douglas Police Department  
Eager Police Department  
El Mirage Police Department  
Eloy Police Department  
Fredonia Marshal's Office  
Globe Police Department  
Greenlee County Sheriff's Office  
Hayden Police Department  
Holbrook Police Department  
Jerome Police Department  
Kearny Police Department  
La Paz County Sheriff's Office

Mammoth Police Department  
Miami Police Department  
Page Police Department  
Paradise Valley Police Department  
Parker Police Department  
Patagonia Marshal's Office  
Payson Police Department  
Pima Police Department  
Pinetop-Lakeside Police Department  
Quartzsite Police Department  
Safford Police Department  
Sahuarita Police Department  
San Luis Police Department  
Santa Cruz County Sheriff's Office  
Sedona Police Department  
Somerton Police Department  
South Tucson Police Department  
Springerville Police Department  
St. Johns Police Department  
Superior Police Department  
Thatcher Police Department  
Tombstone Marshal's Office  
Wellton Police Department

### **Tribal Agencies**

Colorado River Indian Tribes  
Fort McDowell-Yavapai Nation  
Fort Mohave Indian Tribe  
Gila River Indian Community  
Havasupai Indian Tribe

Hopi Indian Tribe  
Hualapai Indian Tribe  
Quechan Indian Tribe  
White Mountain-Apache Tribe

## **Cold Case Task Force: Collection and Preservation of Evidence**

Once the initial investigation performed by law enforcement investigators has begun, there are three additional functions which are essential to the proper collection, preservation, and examination of the evidence. These three functions are: Crime Scene Processing, Medical Examiners investigation and Crime Laboratory examination.

### **Crime Scene Processing**

In Arizona the processing of Crime Scenes varies greatly depending on the size and requirements of an individual law enforcement agency. This is described as follows:

- Experienced criminal investigators are relied upon exclusively by some agencies to collect and preserve all crime scene evidence.
- Evidence personnel are used by some agencies (often one or two individuals for smaller agencies) to perform a variety of related evidence functions, including: crime scene collection and preservation; latent print development; evidence storage; and evidence transportation to the crime laboratory.
- Crime scene technicians have been established by certain agencies (usually larger metropolitan agencies) to have the responsibility for preserving and collecting all types of evidence related to crimes and crime scenes.

It is obvious that proper collection and preservation of evidence is not only essential to completing the immediate crime under investigation, but also essential to solving cold cases at a later date. This is particularly important as advances in Forensic Science bring new techniques to bear on analyzing evidence and improve existing techniques allowing the identification of microscopic amounts of material previously undetectable. Evidence previously determined to have no value in solving a criminal case at the time of investigation, many years later, yield forensic analysis results solving the crime which had become a cold case.

In order to assess evidence collection and preservation in Arizona, the subcommittee first examined the current status of policies and procedures, training and expertise among the various individuals performing crime scene evidence processing.

### *Crime Scene Processing By Experienced Criminal Investigators*

For law enforcement investigators, particularly homicide investigators, it was found that the most common form of training and competency development was in essence, an apprenticeship. This time honored method has produced many excellent homicide investigators who have solved many cases and is relied upon by law enforcement agencies from the smallest to the largest.

Under an apprenticeship program, a new homicide investigator is paired with an experienced investigator and learns the methods of handling, preserving and collecting evidence. This is a real world approach to training and, in addition, the Arizona Homicide Investigators Association (AHIA) provides regular training in a variety of areas, including evidence handling, collection, preservation, etc. In fact, AHIA Conference agendas, since 2004, reflect a number of classes and presentations that

provide specific training in areas such as new technologies in crime scene investigation, video and audio evidence preservation, mass fatality scene management, death by fire, evidence collection, blood spatter interpretation, crime scene reconstruction and real-world homicide case studies. Also, there are numerous references available providing excellent information and guidance for collecting, handling and processing evidence such as the *NIJ Cold Case Toolkit*; *the NIJ Special Report, Using DNA to Solve Cold Cases*; *the FBI Handbook of Forensic Services*; etc. However, these approaches to evidence processing capabilities do not assure that all individuals have the necessary competency, training and experience to handle all evidence in the best manner, particularly when it comes to the long term storage of evidence in cold cases. There exist in Arizona experienced homicide investigators who have the very best capabilities when it comes to evidence processing, but this is not necessarily true of all investigators.

#### *Crime Scene Processing By Evidence Personnel*

Evidence personnel, who provide a variety of evidence functions including collecting, handling and preserving evidence, obtain instruction from a range of sources. Some have apprenticed under an experienced homicide investigator, some have apprenticed under another evidence technician, some have learned by taking classes and reviewing available documents such as those mentioned previously as resources for investigators. These evidence personnel run the gamut from highly trained, experienced and capable to those placed in the function with little or no training or experience. Although these individuals have access to training and evidence processing guidelines, there is not an equivalent organization such as the Homicide Investigators Association for these individuals. The closest professional organization for evidence personnel is the International Association for Identification. This organization's primary emphasis is latent print training and certification, but it does have crime scene training courses taught by private contractors. Available courses include Fundamentals of Crime Scene Investigation and Evidence Collection; Finding Latent Print Evidence with Chemistry and Light; and Collection, Documentation and Preservation of Footwear and Tire Track Evidence. Also, an Arizona Association for Property and Evidence currently functions in Arizona, but its main focus is evidence room procedures, not evidence collection and preservation.

#### *Crime Scene Processing By Crime Scene Technicians*

Crime Scene Technicians receive structured training through classroom instruction and field exercises. Training manuals and crime scene handbooks are utilized to assure appropriate capability is developed and competency maintained.

A typical crime scene training program includes:

- Crime scene safety
- Legal requirements
- Crime scene search principles
- Crime scene photography
- Evidence recognition
- Use of alternate light sources
- Biological evidence
- Bloodstain pattern recognition

- Fingerprint development, processing and collection
- Firearms evidence
- Impression evidence such as footwear, tire tread and casting of impressions
- Trace material recovery, including glass, plastics, paint, hairs, fibers, etc
- Sex assault investigations
- Packaging and preservation of evidence
- Mock crime scenes
- Practical exercises
- Competency tests (both practical and written)

These comprehensive structured programs are typically handled by the larger Arizona police agencies such as Phoenix PD, Tucson PD, Scottsdale PD, Mesa PD, Glendale PD, etc. These programs assure that adequate training is provided and that competency is attained to properly preserve and collect all types of evidence.

### **Recommendations for Crime Scene Processing**

Currently in Arizona, each independent police agency is responsible for the level of crime scene/evidence processing capabilities in that agency. However, there are resources available to augment an agency's crime scene/evidence processing capabilities if the need arises. For example, Sheriff's Offices may provide assistance to a smaller county police department that needs assistance. In the same fashion the Department of Public Safety can provide assistance through its Special Investigations Unit (which can take over complete responsibility for the scene) or through its Crime Laboratory, which can provide forensic scene experts in specific fields such as DNA, Latent Prints, Explosives, etc.

Arizona agencies have a history of coordinating these types of joint assistance but additional steps could be taken to enhance the level of crime scene/evidence processing capabilities in Arizona. It is essential that those individuals tasked with processing crime scenes and criminal evidence have the proper training and have demonstrated competency in evidence handling, collection and preservation. Also, these individuals need regular continuing education as forensic science capabilities expand and change. Therefore, a range of recommendations include:

- Expand community college Associates Degree programs in crime scene evidence processing to provide training and expertise for all agencies in Arizona.
- Develop a mechanism to assure that all individuals processing crime scene evidence meets minimum training standards and competency tests. This mechanism would require technical expertise and funding to develop and operate the program. The program could be placed under the Peace Officer Standards and Training Agency (POST) with technical assistance from the Arizona Homicide Investigators Association and/or the DPS Crime Lab or placed at the Department of Public Safety under the auspices of its Crime Laboratory System. The program would need to combine

various components such as crime scene unit accreditation (which has recently become available); a law enforcement academy program for officers, technicians, etc., who do not have an accreditation program available: etc. This program would require Legislative funding to implement.

- Establish Crime Scene Technician Units at each of the four DPS Regional Crime Laboratories to provide trained, competent Crime Scene Technicians to those agencies throughout Arizona that do not have the resources to maintain this expertise. This would require legislative funding to implement a new program.

### **Medical Examiner's Investigation**

The Medical Examiner function in Arizona is a County responsibility and the processing of homicides is handled by each Medical Examiners Office or contracted to a separate County that has additional capacity or expertise. Currently, a number of Counties contract out the medical examination of homicides. As of the writing of this report, the Pima County Medical Examiners Office provides services to several Counties, while five Counties process their own homicide investigations. The Medical Examiners function for homicides are as follows:

- The Pima County Medical Examiners Office processes homicides in ten Counties: Pima, Apache, Gila, Graham, Greenlee, La Paz, Navajo, Pinal, Santa Cruz and Yuma.
- The Medical Examiners Offices in the following five Counties process the homicides in that county: Maricopa, Cochise, Coconino, Mohave and Yavapai.

While examining the current status of evidence collection and preservation at Medical Examiners Offices in Arizona, it was found that policies, procedures and training varied. All Medical Examiners in Arizona received their training through medical fellowships studying with experienced physicians in various locations throughout the United States. Each Medical Examiners Program/Office performing the fellowship training taught evidence collection to their own individual specifications, with collection ranging from minimal collection on most homicides to all collection on every homicide.

Medical Examiners are required by their board certifications to undergo regular continuing education which can be obtained from a number of recognized medical education resources. In addition, the National Association of Medical Examiners (NAME) and the American Academy of Forensic Science (AAFS), provides association meetings and various training opportunities.

The review of Arizona Medical Examiners also revealed that Medical Examiners adjust their evidence collection and preservation techniques based upon input from Law Enforcement Investigators, Technicians and Crime Lab Scientists. Through this mechanism, Medical Examiners seek to maximize the effectiveness of evidence collection for solving current and cold case homicides. However, as of this report, only one County in Arizona had a written evidence collection procedure manual, and it has not been revised for several years.



### **Recommendations for Medical Examiner's Investigation**

Medical Examiners Offices have a history of working cooperatively with Police Homicide Investigators and Crime Lab Scientists, but enhanced capabilities could be achieved in Arizona. A number of recommendations for enhancement include the following:

- Develop a statewide advisory committee to assure that Medical Examiners have minimum training standards and competency in the collection and preservation of evidence. This advisory committee could include; Arizona Medical Examiners and representation from a national organization such as NAME and/or AAFS.
- Consider the implementation of a statewide Medical Examiner's Office for all fifteen (15) counties. This would bring all policies, procedures, training and competency under one state agency where standards could be mandated. This would require Legislative action and sufficient funding to provide effective Medical Examiner services to all fifteen Counties.
- Consider legislation that would require all medical examiner offices in the state of Arizona to collect a DNA sample from all bodies that fall under the jurisdiction of the Medical Examiners Office and are physically examined by a medical examiner. This DNA sample shall be kept for a period of 99 years. The DNA sample shall only be released to law enforcement, another entity by permission from the next of kin or by court order.
- Establish regular meetings of Medical Examiners and Crime Lab scientists to coordinate evidence collection and implementation of the latest collection and preservation techniques. As Crime Lab Scientific capabilities continue to improve and expand, evidence collection requirements must be updated, and new state-of-the-art scientific techniques often result in significant changes regarding evidence handling, collection and preservation. These coordination meetings can be implemented through the newly established Forensic Services Advisory Committee, established under the auspices Attorney General's Office which includes all eight full service Crime Labs in Arizona - four DPS Regional Labs and four City Labs: Phoenix, Tucson, Mesa and Scottsdale. See attachment C.

### **Crime Laboratory Examination**

Crime Laboratory services are currently provided in Arizona by eight full service laboratories. The Arizona Department of Public Safety, by statute, provides forensic science services to all State, County and Local Law Enforcement Agencies. These

services provide all forensic science specialties including: DNA and Forensic Biology; Toxicology (drugs in biological specimens); Alcohol determinations (both breath and blood); Controlled Substances (analysis of illegal drugs); Latent Fingerprint processing and identification; Firearms and Toolmarks examination; Footwear and Tire Tread impression identification; Questioned Document examination; Explosives and Arson debris analysis; Hair and Fiber identification; Trace Material examination (paint, plastic, glass, soil, etc.).

In addition, DPS is one, of only four, government labs nationwide to be a partner Lab with the FBI and provide additional specialized state-of-the-art DNA services, Mitochondrial DNA. DPS provides forensic science services from Regional Laboratories in Phoenix, Tucson, Flagstaff and Lake Havasu City.

Four cities provide forensic services to their city Police Departments and these are Phoenix, Tucson, Mesa, and Scottsdale. Services vary from full service to partial services. All four cities provide core services such as DNA, Alcohol, Controlled Substances, Latent Prints, Firearms and Toolmarks, etc. DPS augments those services by providing additional forensic science specialties to the cities such as, Toxicology, Trace Material analysis etc.

An examination of evidence collection, preservation, handling and analysis, shows a fundamentally standard set of policies, procedures, training and competency among Arizona's Crime Laboratories. This is because all eight Arizona Crime Laboratories are accredited, undergoing an extensive accreditation process from the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), which functions under the umbrella of the International Standard Organization (ISO). Also, DPS, Phoenix, Tucson, Mesa and Scottsdale are part of the national Combined DNA Index System (CODIS) and, as such, must follow the Quality Assurance Standards for DNA Testing Laboratories originally promulgated by the National DNA Advisory Board and now issued by the Director of the FBI.

Both ASCLD/LAB accreditation and CODIS requirements have extensive standards regarding evidence collection, handling, preservation and analysis. In order to meet these standards each Lab has written procedures regarding evidence. Typical procedures include sections on:

- Biological evidence description/definition, including blood, urine, saliva, semen, tissue, etc.
- Evidence preservation: refrigerated, frozen, etc.
- Handling of biological evidence to avoid contamination including use of gloves, etc.
- Biological evidence and biohazard/safety procedures
- Packaging of evidence including separation and isolation of items, drying of stains, etc.
- Special handling items such as sex assault kits, blood collection kits, etc.

As a result of the accreditation and CODIS requirements, each Lab has:

- Formal written training programs
- Training/competency determinations through mock evidence exercises, competency tests, written and/or oral testing, etc.

- Ongoing yearly continuing education on the latest advances in evidence, collection, preservation and analysis as it relates to each forensic science discipline
- Regular, yearly or twice yearly, proficiency testing of scientists performing evidence processing and analysis
- Formal policies on validation, training and competency testing to implement new forensic science techniques

As a result of the focus that accreditation places on meeting standards and staying abreast of the latest advances in forensic science, crime Labs in Arizona have developed a process of cooperation. This includes regular meetings to share forensic science information, develop joint training opportunities, establish common policies, etc. This is accomplished through the following:

- The Arizona Crime Lab Directors Association which meets quarterly.
- Statewide peer groups which meet regularly in each forensic science discipline such as DNA, Firearms, Toxicology, Alcohol, etc.
- Statewide DNA Technical Leader meetings in which the DNA program leaders for each Lab meet to review DNA protocols, evidence handling, etc.
- Statewide Quality Manager meetings, in which the Quality Managers for each Crime Laboratory meet to review, discuss and improve Quality Assurance and Quality Control procedures.

Now an additional coordination process has been added, with the implementation in November of 2007 of a formal Arizona Forensic Services Advisory Committee with all eight Crime Laboratories represented and chaired by a retired Arizona Supreme Court Judge, highly knowledgeable in DNA and the legal aspects of DNA<sup>4</sup>.

### **Recommendations for Crime Laboratories Examination**

Although Arizona Crime Laboratories are well coordinated with standardized accreditation and CODIS requirements, a few growing police agencies have periodically shown a desire to start their own Crime Laboratories. This creates unaccredited forensic science functions that do not necessarily meet the standards of accreditation to assure proper evidence collections, preservation, handling or analysis. Also, in one instance a City Public Defender's Office has created a forensic science position which is not part of an accredited laboratory. Therefore, a recommendation for enhancement would be:

- Consider enacting a statute requiring that all forensic science functions in Arizona must be accredited in order to process and analyze evidence and requiring that all forensic analysts/examiners providing testimony must be from a forensic science accredited operation and must successfully complete yearly proficiency testing in order to be accepted as an expert witness in Arizona Courts.

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<sup>4</sup> Arizona DNA and Forensic Science Recommendations. Appendix D.

## **Retention of Evidence and Records of Investigations**

In order to solve cold cases, both now and in the future, the actual evidence and the records of all aspects of the criminal investigation must be preserved. However, regarding evidence and records retention, there are no uniform policies and procedures.

It is the responsibility of the individual City Police Department, Sheriff's Office or State Law Enforcement Agency to determine when evidence or records are to be retained or destroyed. This obviously varies depending on many factors, but recent advances in forensic science have shown that evidence previously believed to be of no value can now be examined in a Crime Laboratory, solving a case many years old or exonerating a wrongfully accused/convicted individual.

The one area of the Criminal Justice System which has moved toward a uniform approach to evidence retention is the Crime Laboratory component. All Crime Laboratories cut a small portion of analyzed biological stains and preserve them for future analysis if necessary. All Crime Labs in Arizona maintain these cuttings with DPS and the City of Phoenix preserving them for ninety-nine years. All Arizona Crime Labs have stated they are changing their policies and retention schedules to move to ninety-nine years.

One of the major reasons that Arizona Crime Laboratories have adopted the policy of cutting small portions of biological stains and preserving these items for 99 years is because this is relatively easy to accomplish. The "cuttings" are only a few millimeters square and thousands of "cuttings" can be stored in a reasonably small space.

This, however, is not true for the remainder of law enforcement investigations where a typical homicide/sex assault case can result in many large boxes of evidence holding clothes, sleepwear, sheets, blankets, rape kits, etc. These items rapidly fill up police evidence rooms and it is not reasonable to save every item initially collected in every investigation for 99 years.

Twenty-two States and the Federal Government have adopted Statutes regarding the retention of evidence. These Statutes have been developed to provide reasonable requirements for evidence retention, primarily in light of post conviction relief cases.

## **Recommendation for Retention of Evidence and Records**

In order to improve evidence retention in regards to cold cases and post convicted analysis, it is recommended:

- Develop reasonable standards, through a working group, for the retention of evidence in light of advances in cold case resolution; the needs of victims and victims' families; post conviction analysis and the statutes of limitations on criminal offenses.

## **Crime Laboratory Success with Cold Cases**

All Crime Laboratories in Arizona report significant involvement in cold cases, particularly unsolved homicides and sex assaults. However, Crime Labs are not always provided with the information necessary to identify all submitted cases which are cold cases; therefore, they do not routinely track cold cases.

The City of Scottsdale Crime Lab, however, did have information available showing that they reviewed all Scottsdale homicides back to 1975 and identified twenty cases where new Crime Lab analysis might provide a resolution to the cold case. These are now being examined and detectives are following up with locating witnesses, interviewing, etc.

The City of Phoenix reports significant cold case activity with the majority of cases in the sex assault area.

DPS has reviewed its records and identified in excess of 222 cold cases already analyzed from 46 law enforcement agencies. In addition DPS sent out a survey to its user agencies who have reported 546 additional cold case homicides and sex assaults. The DPS Crime Lab is now actively working with these agencies to review the cases and analyze any applicable evidence.

The DPS Crime Laboratory is working in a coordinated program with investigators and prosecutors to move forward with resolving cold cases. To that end, a detailed cold case solvability questionnaire<sup>5</sup> was developed which requires input from all three involved parties - investigators, crime lab scientists and prosecutors. This has been used successfully to resolve a number of previously unsolved cold case homicides.

Examples of a few representative cold cases solved through a team effort of Investigators and Crime Lab Scientists are:

- ✓ On the morning of March 26, 1996, the body of a white female, 26 years old was found in an alley. She was dressed only in a black t-shirt, with trauma to her face, neck, and breast area. She was last seen the previous night at a convenience store in her neighborhood. The autopsy revealed the cause of death as manual strangulation and was ruled a homicide. In April 2003, a Cold Case Unit Detective re-investigated the case, and crime scene evidence was examined by the Phoenix Police Crime Laboratory. The Crime Lab obtained a DNA Profile from a breast swab and hair removed from the victims T-shirt. The profile was entered into CODIS, and a match was made with a convicted offender sample.

In 1996, the convicted offender lived in the area where the victim was last seen and her body found, but was never a suspect in the homicide. The offender was contacted and made statements concerning his activities in 1996. The offender is a registered sex offender, with a conviction for sexual assault and attempted murder. He is currently in jail, awaiting trial on the charge of kidnapping, sexual assault, and murder concerning this cold case investigation.

- ✓ On May 27, 1987, the body of a young woman was discovered in her bedroom by her mother after she did not show up for work that morning. The victim was found lying face down in the master bedroom bound, beaten, brutally raped and strangled. An Arizona Department of Public Safety Criminalist responded to the scene that day and collected several items of evidence that would prove to be critical in the identification of the

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<sup>5</sup> Cold Case Solvability Questionnaire. Appendix C.

killer twenty years later. Early on in the investigation, a possible suspect was developed. However, numerous blood and semen stains analyzed in 1987 with the current scientific technique of enzyme typing, eliminated the primary suspect. Eventually, the case ran cold.

In August of 2003, a cold case detective re-evaluating the case contacted the DPS Southern Regional Crime Lab – Tucson, and a reanalysis of the evidence was performed using modern day DNA typing methodology. DNA analysis on semen stains from the nightgown and bedding yielded the same unidentified male profile. The DNA profile was uploaded into the Combined DNA Index System (CODIS), but no match occurred. With no hit in CODIS, the investigation forged on. The detective assigned to the case identified fifty seven suspects including neighbors, convicted sex offenders in the area, even family. No one was overlooked. Systematically, the case detective tracked down more than half of the people on that list and collected a DNA sample for comparison to the DNA profile from the semen stains.

On June 17, 2005, after DNA typing 22 individuals on that list of 57, the DPS Crime Lab matched an individual. This new suspect was the neighbor right next door to the victim at the time of her death and was now living in Florida. The suspect was arrested in Florida and extradited back to the State of Arizona, where he stood trial in 2007 and was convicted of murder.

- ✓ In 1988, a young woman in her mid 20's was brutally stabbed in her apartment. Her body was found by her boyfriend the following day nude with multiple knife wounds, to include a slit throat, almost to the point of decapitation. A sexual assault kit was collected at autopsy. In 2001, a DNA profile from an unknown male was developed from the sperm fraction of a vaginal swab and entered into CODIS. About two years later, CODIS produced a DNA match with a convicted offender that had been incarcerated on aggravated assault charges for assaulting a female dancer. This offender would have been 16 years old at the time the crime occurred in 1988. During 1988, his family lived in the same apartment complex as the victim. The suspect claimed not to recognize the victim. After more evidence was DNA tested and this case went to court, he was convicted of 1<sup>st</sup> first degree murder in 2007.
- ✓ On May 21, 1987, a female victim was laying in her bedroom where she had been sexually assaulted, beaten and strangled to death. The victim had been preparing to leave on an out-of-state trip and was found by her boyfriend when he returned from work. Investigators were unable to solve the crime at the time but they preserved evidence including a sexual assault collection kit and the cord used to strangle the victim.

In 2000, cold case investigators submitted evidence to the DPS Central Regional Crime Lab – Phoenix. The Crime Lab was able to obtain a profile on semen collected from the evidence and entered it into CODIS. A hit resulted identifying a convicted felon who had been incarcerated for sexual assault of another young woman, subsequent to the 1987 murder. The suspect's DNA was also confirmed on the cord used to strangle the victim, tying him directly to the murder. This suspect was convicted of the murder in 2005.

## **Cold Case Task Force: Victim Impact**

The Victims Subcommittee of the Cold Case Task Force endeavored to study the interaction of law enforcement agencies with the surviving families and relatives of homicide victims in cases that have “gone cold”, meaning the case status is inactive due to a lack of current information sufficient to move the investigation further toward a conclusion. The Victims Subcommittee approached this task using the following methods:

- Compiling information based on the personal and professional experience of members of the Victims Subcommittee, the Cold Case Task Force as a whole, and other members of the law enforcement and prosecutorial community in Arizona;
- A review of current literature;
- Public comment from surviving family members and friends of homicide victims in cases that are inactive or “cold.”

The Victims Subcommittee identified the following areas of concern and recommendations:

A “cold case” homicide lacks uniform definition within the law enforcement community and creates problems in communicating with surviving family members of homicide victims.

Because there is no statute of limitations on the crime of homicide, a homicide investigation is never closed until cleared by arrest or other appropriate criteria. Every unsolved homicide investigation eventually arrives at a point where there are no further leads or evidence to actively pursue. With few exceptions, law enforcement agencies have few or vague guidelines or policy on how much tolled time or what circumstances cause an active homicide investigation to become inactive or “cold.” This lack of criteria defining a “cold case” causes confusion and frustration with surviving family members. Public comment from one source indicated a law enforcement officer told them the investigation was “closed” for lack of additional evidence or leads.

### **Recommendation:**

- Law enforcement agencies should be encouraged to develop policy that provides a clear definition of criteria that transitions an active homicide investigation to inactive status. The case status must be clearly communicated to all parties of interest with clear and enduring channels of communication.

There is widespread confusion and frustration over communication with law enforcement among surviving relatives of victims of homicide where the investigation is inactive or “cold.”

The most often heard complaint or criticism of law enforcement agencies during the public comment phase of the Victims Subcommittee’s work was the confusion and frustration felt by surviving family members in their efforts to establish communication



or continuing to communicate with the investigating law enforcement agency. Many surviving family members feel guilt or blame because they believe they have not been aggressive enough or asked the right questions. Comments were also received by the subcommittee indicating that some have experienced problems obtaining information concerning the investigation from law enforcement agencies. Some comments indicated an unwillingness or reluctance on the part of law enforcement to communicate what information could be disseminated and what could not. Communications are further complicated when the surviving family members are:

- Very young.
- Grandparents.
- Adoptive or shared another legal relationship to the victim outside consanguinity.
- They were not family but shared an interpersonal relationship with the victim, such as a boyfriend, a girlfriend, or a fiancé.
- They were separated by geography or dysfunction, such as divorce or feud.

### **Recommendations:**

- Law enforcement agencies should be encouraged to develop policies and procedures that facilitate regular and orderly communication with persons of the immediate family and with persons who shared a demonstrable interpersonal relationship with a homicide victim in an investigation that has become inactive or “cold.” The Subcommittee recommends exploring the use of “primary contacts” as a means of balancing law enforcement workloads with the responsibility to disseminate information to those with a continuing need to receive the communications. The Victims Subcommittee recommends exploring the use of non-sworn case advocates facilitating the ongoing communication with surviving family members.
- Law enforcement agencies should explain to surviving family members and to those who demonstrate an interpersonal relationship with a homicide victim what details of the investigation can be shared with them and what cannot.

Inactive homicide investigation transfers from one case agent to another and retirement or resignation of case agents are the second-most cited source of communication difficulties experienced by surviving family members.

Surviving family members who offered public comment to the Victims’ Subcommittee frequently cited administrative or personnel changes within the law enforcement agency as being responsible for communication barriers. Many reported that they were surprised to learn their case agent had resigned or retired, having received no subsequent communication from the law enforcement agency. Others reported that the transfer of an investigation from one agent to another caused the end of communication from the law enforcement agency.

**Recommendation:**

- Law enforcement agencies must have adequate policies and procedures to ensure that the transfer, resignation or retirement of a case agent will not limit or terminate communication with the surviving family members. The Victims Subcommittee again particularly recommends the use of non-sworn case advocates ensuring continuity of communication during these types of transitions.

Limits placed upon receiving assistance, such as victim compensation for mental health counseling and healthcare services; do not account for the unique dynamics of “cold” homicide investigations.

Victims’ families reported experiencing various mental and physical healthcare problems associated with a homicide going unsolved for years. Traumatic grief may cause post traumatic stress disorders. The devastation, and the aftermath of a homicide is a lifelong problem for families.

Several interested persons offered public comment to the Victims Subcommittee that they felt disadvantaged by restrictions or limitations in victim compensation that arose due to time limits or other conditions that were created by the circumstances of the investigations being inactive or “cold.” Some of these involved time limitations for applications and reporting that were related to peculiarities or complexities involving “cold” homicide cases.

Comment during the public hearings included:

- ✓ One elderly woman, visibly shaking and tormented while testifying, spoke about how her daughter was brutally murdered more than twenty-years ago. She still reports having horrific and vivid nightmares.
- ✓ A young woman, who was eighteen when her mother was murdered, raised her siblings for the past ten years and is now only beginning to work on her own grief and expressed a need for counseling.
- ✓ An elderly couple whose son was murdered in 1998, and because it is a cold case, reported they are basically homebound as a result of the murder.

**Recommendations:**

- Victims’ families must have access to long-term mental health and healthcare services.
- The Arizona Criminal Justice Commission should take the necessary steps to ensure that each Crime Victim Compensation Board is well informed of their powers and abilities to compensate victims arising from the peculiarities and complexities of cold case homicides and, if possible, appeals may be heard from victims who believe they were the recipients of unfavorable compensation decisions derived by misinformed members of any Crime Victim Compensation Board.

## **METHODOLOGY**

There were five public meetings held for the Cold Case Task Force Victims Subcommittee: one each in Gila County (Globe City Hall), Maricopa County (Phoenix City Council Chambers), Pima County (Tucson Public Library, Downtown), Coconino County (Sedona City Hall), and Yuma County (Yuma Police Department). The public was invited to offer comment upon:

- how the homicide has impacted them;
- how and whether law enforcement has helped or assisted them; and,
- any recommendations they may have.

Public notices of the Victims Subcommittee meetings were posted through the Attorney General's Office and within the community where the public was invited to testify. Contact was made with the victim services and law enforcement agencies in the fifteen Arizona counties, the Director of victim services at the Governor's Office, the Arizona Department of Corrections, the US Attorney's Office; the office of the Arizona Voice for Crime Victims', the Crime Victims Legal Assistance Project; the Arizona Department of Public Safety, VOCA, adult probation departments, county attorney's offices and Mothers Against Drunk Drivers. Press releases were sent statewide asking the media to help notify individuals who may wish to testify. Additionally, a survey form was made available in the Parents of Murdered Children newsletter of which the subcommittee had eighteen respondents.

## **Cold Case Task Force: Best Practices**

The Best Practices Subcommittee of the Cold Case Task Force was charged with reviewing cold case homicide protocols used by law enforcement agencies in Arizona and nationwide and identifying effective cold case homicide practices. Informed by research conducted specifically for the Cold Case Task Force, the subcommittee narrowed their charge by focusing on the review of cold case homicide definitions and cold case homicide protocols, with further emphasis on how the protocols describe staffing of cold case units, review and prioritization of cases, and communicating with the family members of homicide victims.

Based on the subcommittee's review and discussion of material provided by Arizona law enforcement agencies and information on cold case homicide practices around the country, the subcommittee developed a clear and consistent definition of a cold case homicide that should be used by all Arizona agencies. The subcommittee also recommends that all Arizona law enforcement agencies with a cold case homicide should have a written cold case homicide protocol. Cold case homicide protocols should include, among other things, how cold case homicides are staffed by the department, policies for the annual review and prioritization of all cold case homicides, and regular and consistent communication with families of cold case homicide victims.

**This report provides a description of several promising cold case homicide practices used by law enforcement agencies in Arizona and in other states. Identifying promising practices, rather than a single “best practice,” recognizes the unique challenge of cold case homicide investigations and the variability in size and resources of Arizona law enforcement agencies. These practices should be considered for inclusion in cold case homicide protocols by all agencies, but tailored to the unique limitations and opportunities that face each agency.**

### **Defining Cold Case Homicides**

Research conducted for the Cold Case Task Force revealed that jurisdictions across Arizona use a variety of cold case homicide definitions. As described in the research report provided to the Task Force:

“Although most agencies cold case definitions can be classified into two general categories, leads dependent and time dependent, the variety in cold case homicide definitions used by Arizona law enforcement agencies make it difficult to get a clear understanding of the statewide scope of the problem of cold cases.”

The subcommittee believes that it is important for all Arizona law enforcement agencies to use the same definition of a cold case homicide and recommend the following:

**A cold case homicide is a homicide that remains unsolved for at least one year after being reported to law enforcement and has no viable and unexplored investigatory leads.**

A clear and consistent definition of a cold case homicide allows for a common understanding of the problem of cold case homicides in our state and informs how unsolved homicide cases progress in the department, including who has primary investigatory responsibility for the case. Although these are advantages of a clear and consistent definition, there are underlying concerns that require thoughtful consideration when developing a cold case homicide protocol. For example, a homicide case that becomes labeled as a cold case suggests that the primary investigatory responsibility shifts to those who specialize in cold cases (e.g., cold case investigators, cold case units, or multi-jurisdictional cold case task forces). It is important to recognize that homicide investigators develop a strong and unwavering commitment to solve homicide cases that originate under their watch, even when there are no unexplored leads and the cases remain unsolved for more than one year. Additionally, the process of investigatory responsibility shifting to a cold case unit can cause an interruption in lines of communication and trust that has been developed over time between the original homicide investigator and a victim's family. These are important issues that require the development of cold case homicide case protocols that honor the commitment and passion of homicide investigators and are sensitive to the needs of victims' family members.

### **Promising Cold Case Homicide Practices**

Through subcommittee members' review and discussion of cold case homicide practices and protocols used by Arizona law enforcement agencies and by agencies around the country, it became clear that there is no single cold case homicide "best practice" that can apply to all agencies and jurisdictions in Arizona. Arizona law enforcement agencies have responsibility for communities with populations that range from less than 500 to well over 1,000,000. Additionally, the number of sworn officers in Arizona law enforcement agencies range from less than five to over 3,000. Yet, it is important to acknowledge that homicides do occur in small towns as well as large cities. Therefore, it is the subcommittee's recommendation that every law enforcement agency that has a cold case homicide, regardless of agency size, have a written cold case homicide protocol. For those agencies that have cold case homicides and, therefore, a need for an agency-specific cold case homicide protocol, the review of information on how cold case homicides are handled around the state and country suggests some promising cold case homicide practices that should be considered for inclusion in agency protocols.

#### *Annual Review of Cold Cases and Communicating with the Victims' Family*

Two practices that the subcommittee recommends to be included in all cold case homicide protocols, regardless of agency size, are: 1) the annual review of all unsolved homicide cases; and 2) continued communication with the family of cold case homicide victims.

The annual review of unsolved homicide cases recognizes that case dynamics can change over time and new investigatory technologies might be developed that create new leads and add new information to a homicide investigation. For example, as discussed in the subcommittee and described in a Federal Bureau of Investigation Law Enforcement Bulletin on the "Cold Case Concept," time can sometimes be a valuable commodity in a

homicide investigation. Relationships evolve and friends can become adversaries leading to new witnesses willing to cooperate with the investigation. Additionally, initial fear and trauma felt by known witnesses can ebb over time, which may also lead to them revealing new information in old cases.

Continued communication with the victims' families lets them know that even though the case remains unsolved it is not forgotten and continues to be worked. One example of a promising approach to communicating with victims' families is found in the practices of the Denver Police Department's Cold Case Investigation Unit. The Denver Police Department's Victim Assistance Unit has a full-time Cold Case Victim Specialist whose sole responsibility is to work with cold case unit detectives and victims' family members to provide ongoing assistance, referrals, support, and information. For law enforcement agencies that do not have the resources for victim specialists, identifying a "spokesperson" for a victim's family with whom to maintain communication and who will share the information received with other family members allows the family to remain up to date on the status of the case and supports investigators' mission to investigate and solve homicides.

#### *Staffing Cold Case Homicide Units*

One of the most significant challenges faced by law enforcement agencies is how to effectively staff the review and investigation of cold case homicides. Information from agencies in Arizona as well as information published by the Bureau of Justice Assistance reveals a variety of methods for staffing cold case homicide units, each of which have their advantages and are sensitive to variability in agency size and resources.

#### *Retired Homicide Detectives Working Cold Cases on a Part-Time or Volunteer Basis*

Utilizing retired homicide detectives on a part-time or volunteer basis to review and investigate cold case homicides taps into the experience and wisdom of seasoned investigators without a significant additional investment of resources. Several smaller agencies in Arizona utilize this strategy for staffing cold case homicides to overcome their resource limitations.

#### *Investigators Working on Cold Cases in Addition to Other Investigative Duties*

Providing the flexibility for investigators to devote a portion of their time to cold case homicide review and investigation, especially when using homicide investigators with previous experience on the cases, allows for the historical knowledge of the investigation to be retained. This strategy also allows the original homicide investigator to stay involved in a case they are determined to solve even though they have explored all of the original leads.

#### *Cold Case Units Brought Together for a Specific Case*

Bringing together a team to investigate a specific cold case homicide is a promising strategy for those agencies that only have the occasional unsolved homicide or can bring new focus and energy to an old case.

### *A Single or Multiple Full-Time Cold Case Investigator(s)*

Identifying one or more investigator to work exclusively on cold cases allows departments to develop cold case-specific investigatory skills in their personnel. Ideally, cold case unit investigators would be the most experienced, innovative, and persistent investigators because of the inherent challenges of cold case homicides. Illustrating this point, Phoenix Police Department describes in their Cold Case Unit protocol the desired experience, skills, and abilities for cold case unit detectives, which include a minimum of five years experience investigating major felonies, significant trial experience, strong interview skills, knowledge of crime scene investigations, and thorough knowledge of current scientific technology and associated databases (i.e., Combined DNA Index System [CODIS], Automated Fingerprint Identification System [AFIS], and National Integrated Ballistics Information Network [NIBIN]).

It is worth noting that the Federal Bureau of Investigation (FBI) has also developed the Violent Criminal Apprehension Program (ViCAP)—a nationwide data information center designed to investigate, collect, collate, and analyze crimes of violence. The FBI provides the software to set up a ViCAP database free of charge. The program facilitates the continual comparison of all cases in the system on the basis of certain aspects of the crime. The purpose is to detect patterns in signature traits and modus operandi of homicides to pinpoint crimes that have been committed by the same offender within and across jurisdictions.

### *Multi-Agency Cold Case Homicide Partnerships*

Cold Case Homicide Task Forces that bring together multiple agencies to review and investigate homicide cold cases can leverage the unique skills, abilities, and responsibilities of a variety of agencies and focus their attention on very difficult cases. This is an approach that has demonstrated success in a variety of settings. For example, during the late 1980's and into the 1990's the Washington, DC Metropolitan Police Department (MPD) was faced with a rise in the number of homicides and a reduction in their homicide clearance rate. In response, the MPD formed a cold case homicide squad that included experienced and innovative MPD investigators, FBI agents, and a prosecutor from the United State's Attorneys Office. From 1992 to 1997, the MPD Cold Case Squad closed 157 previously unsolved homicides.

A few law enforcement agencies in Arizona also utilize multi-agency cold case units. For example, the Pima County Cold Case Homicide Task Force includes staff from the Pima County Sheriff's Office, the Pima County Attorney's Office, the State of Arizona Crime Lab, and the Pima County Medical Examiner's Office. In addition to capitalizing on the benefits of a multi-agency collaboration, their written cold case homicide protocol contains several notable attributes including a description of the duties and responsibilities of Task Force members, clearly stated goals, and measurable objectives that are used to monitor and evaluate Task Force performance.

Finally, another promising practice that should be considered for inclusion into cold case homicide protocols is a cold case prioritization rating scale. An annual review of all cases utilizing standard criteria for assessing the solvability of a case allows for resources to be directed to those cases where new information or new investigatory practices and technologies have increased the solvability of a case. This strategic approach to cold case review and case prioritization is conducted by the Pima County

Cold Case Homicide Task Force in a round table discussion format in which all Task Force members participate. Ranking all existing cold case homicides based on their solvability leads to a focusing of the Task Force resources and expertise on previously unsolved cases where new evidence and leads have emerged.

### **Conclusion**

The subcommittee found many promising approaches to successfully investigating and solving cold case homicides in use in Arizona and nationwide. Through a review of a variety of material and discussion, the subcommittee identified several opportunities for Arizona's law enforcement community to enhance their investigations of cold case homicides. The subcommittee developed a clear and consistent definition of a cold case homicide that is recommended for use by all Arizona agencies and is fundamental to a shared understanding of the problem of cold case homicides. Additionally, the subcommittee recommends that every Arizona law enforcement agency with a cold case homicide have a written cold case homicide protocol. Written protocols should include, among other things, policies that direct the annual review of all cold case homicides and procedures for continued communication with families of cold case homicide victims. The subcommittee also recommends several promising cold case homicide practices used by law enforcement agencies in Arizona and in other states that describe effective strategies for staffing cold case homicide investigations. These recommended practices, depending on agency size and resources available, should be strongly considered as they hold great promise for improving the outcomes of cold case homicide investigations.

Cold case homicides are one of the most significant challenges facing law enforcement agencies nation-wide. Improving the outcomes of cold case homicide investigations is a critically important task and it is hoped that the recommendations outlined above provide the Arizona law enforcement community with some of the foundational tools necessary for effectively investigating and solving cold case homicides.



## **APPENDIX A**

# **COLD CASE TASK FORCE**

## **MEMBERSHIP**

Terry Goddard, Chair; Arizona Attorney General

- Designated Chair: Richard M. Romley—former Maricopa County Attorney

Bob Brunansky; Special Agent, Office of the Attorney General

Mike Durham, Victim's Representative

Daisy Flores; County Attorney, Gila County

- Designee: Bryan Chambers, Deputy County Attorney, Gila County

Todd Griffith; Director, Department of Public Safety Crime Lab

Jack Harris, Chief, Phoenix Police Department

- Designee: Andy Anderson, Assistant Chief, Phoenix Police Department

Barbara LaWall; County Attorney, Pima County

- Designee: William D. McCollum, Deputy Pima County Attorney
- Designee: Kathleen Mayer, Deputy Pima County Attorney

Beckie Miller, Chapter Leader, Parents of Murdered Children

Ralph E. Ogden, Sheriff, Yuma County

Dr. Cindy Porterfield; Forensic Pathologist, Pima County Medical Examiner's Office

Roger Vanderpool; Director, Department of Public Safety

- Designee: David Felix, Assistant Director, Department of Public Safety

Joe Vernier; Chief, Sedona Police Department

### **Legislative Staff**

Amy Bjelland, Arizona State Senate  
Christina Estes-Werther, Arizona State Senate  
Jodi Jerich, Esq., House of Representatives  
Jessica Ripplinger, Arizona State Senate  
Kristine Stoddard, House of Representatives

### **ACJC STAFF**

Philip Stevenson; Director, Statistical Analysis  
Tony Vidale, Program Manager, Crime Victim Services

### **Attorney General Staff**

Dan Sands, Office of the Arizona Attorney General

## **APPENDIX B**

## RECOMMENDATIONS

- The Arizona Criminal Justice Commission should be asked to continue with the Cold Case Task Force efforts and bring together members from the criminal justice community to facilitate the drafting of legislation and identifying “promising practices”.
- The Cold Case Task Force believes that it is important for all Arizona law enforcement agencies to use the same definition of a cold case homicide and recommend the following:
  - A cold case homicide is a homicide that remains unsolved for at least one year after being reported to law enforcement and has no viable and unexplored investigatory leads.*
- Expand community college Associates Degree programs in crime scene evidence processing to provide training and expertise for all agencies in Arizona.
- Develop a mechanism to assure that all individuals processing crime scene evidence meets minimum training standards and competency tests. This mechanism would require technical expertise and funding to develop and operate the program. The program could be placed under the Peace Officer Standards and Training Agency (POST) with technical assistance from the Arizona Homicide Investigators Association and/or the DPS Crime Lab or placed at the Department of Public Safety under the auspices of its Crime Laboratory System. The program would need to combine various components such as crime scene unit accreditation (which has recently become available); a law enforcement academy program for officers, technicians, etc., who do not have an accreditation program available: etc. This program would require Legislative funding to implement.
- Establish Crime Scene Technician Units at each of the four DPS Regional Crime Laboratories to provide trained, competent Crime Scene Technicians to those agencies throughout Arizona that do not have the resources to maintain this expertise. This would require legislative funding to implement a new program.
- Develop a statewide advisory committee to assure that Medical Examiners have minimum training standards and competency in the collection and preservation of evidence. This advisory committee could include; Arizona Medical Examiners and representation from a national organization such as NAME and/or AAFS.
- Consider the implementation of a statewide Medical Examiners Office. This would bring all policies, procedures, training and competency under one state agency where standards could be mandated. This would require Legislative action and sufficient funding to provide effective Medical Examiner services to all fifteen Counties.

- Consider legislation that would require all medical examiner offices in the state of Arizona to collect a DNA sample from all bodies that fall under the jurisdiction of the Medical Examiners Office and are physically examined by a medical examiner. This DNA sample shall be kept for a period of 99 years. The DNA sample shall only be released to law enforcement, another entity by permission from the next of kin or by court order.
- Establish regular meetings of Medical Examiners and Crime Lab scientists to coordinate evidence collection and implementation of the latest collection and preservation techniques. As Crime Lab Scientific capabilities continue to improve and expand, evidence collection requirements must be updated, and new state-of-the-art scientific techniques often result in significant changes regarding evidence handling, collection and preservation. These coordination meetings can be implemented through the newly established Forensic Services Advisory Committee, established under the auspices Attorney General's Office which includes all eight full service Crime Labs in Arizona - four DPS Regional Labs and four City Labs: Phoenix, Tucson, Mesa and Scottsdale.
- Consider enacting a statute requiring that all forensic science functions in Arizona must be accredited in order to process and analyze evidence and requiring that all forensic analysts/examiners providing testimony must be from a forensic science accredited operation and must successfully complete yearly proficiency testing in order to be accepted as an expert witness in Arizona Courts.
- Develop reasonable standards, through a working group, for the retention of evidence in light of advances in cold case resolution; the needs of victims and victims' families; post conviction analysis and the statutes of limitations on criminal offenses.
- Law enforcement agencies should be encouraged to develop policy that provides a clear definition of criteria that transitions an active homicide investigation to inactive status. The case status must be clearly communicated to all parties in interest with clear and enduring channels of communication
- Law enforcement agencies should be encouraged to develop policies and procedures that facilitate regular and orderly communication with persons who shared an immediate family tie and persons who shared a demonstrable interpersonal relationship with a homicide victim in an investigation that has become inactive or "cold." It is recommended that "primary contacts" be explored as a means of balancing law enforcement workloads with the responsibility to disseminate information to those with a continuing need to receive the communications. It is particularly recommended that law enforcement agencies begin exploring the use of non-sworn case advocates to continue ongoing communication with surviving family members.

- Law enforcement agencies should explain to surviving family members and to those who demonstrate an interpersonal relationship with a homicide victim what details of the investigation can be shared with them and what cannot.
- Law enforcement agencies must have adequate policies and procedures to ensure that the transfer, resignation or retirement of a case agent will not limit or terminate communication with the surviving family members. The Victims Subcommittee again particularly recommends the use of non-sworn case advocates ensuring continuity of communication during these types of transitions.
- Victims' families must have access to long-term mental health and healthcare services.
- The Arizona Criminal Justice Commission should take the necessary steps to ensure that each Crime Victim Compensation Board is well informed of their powers and abilities to compensate victims arising from the peculiarities and complexities of cold case homicides and, if possible, appeals may be heard from victims who believe they were the recipients of unfavorable compensation decisions derived by misinformed members of any Crime Victim Compensation Board.
- The Cold Case task Force recommends that all Arizona law enforcement agencies with a cold case homicide should have a written cold case homicide protocol. Cold case homicide protocols should include, among other things:
  - how cold case homicides are staffed by the department;
  - policies for the annual review and prioritization of all cold case homicides; and,
  - regular and consistent communication with families of cold case homicide victims.
- The Cold Case Task Force recommends identifying promising practices, rather than a single "best practice," for it recognizes the unique challenges of cold case homicide investigations and the variability in size and resources of Arizona law enforcement agencies. These practices should be considered for inclusion in cold case homicide protocols by all agencies, but tailored to the unique limitations and opportunities that face each agency.
- The Cold Case task force recommends the annual review of cold cases and communicating with the victim's family.
- It is recommended that law enforcement agencies in Arizona develop effective strategies for staffing cold case homicide investigations.

## **APPENDIX C**

## COLD CASE SOLVABILITY QUESTIONNAIRE

1. Was this case classified as a homicide or sexual assault per A.R.S. definition at the time of incident?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If not, how was this case classified? \_\_\_\_\_

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  2. If a homicide, was the victim's body located? Yes \_\_\_\_\_ No \_\_\_\_\_
  3. If a sexual assault, was a rape kit collected? Yes \_\_\_\_\_ No \_\_\_\_\_
  4. Were there witnesses to the homicide/sexual assault? Yes \_\_\_\_\_ No \_\_\_\_\_  
Are the witnesses still available? Yes \_\_\_\_\_ No \_\_\_\_\_
  5. Is the victim of the sexual assault available and willing to testify Yes \_\_\_\_\_ No \_\_\_\_\_
  6. Is there evidence related to the homicide/sexual assault still available? Yes \_\_\_\_\_ No \_\_\_\_\_
  7. Was a Crime Laboratory analysis performed? Yes \_\_\_\_\_ No \_\_\_\_\_  
If "Yes," was any type of DNA results obtained? Yes \_\_\_\_\_ No \_\_\_\_\_
  8. Was this case presented to the County Attorney's Office for issuing? Yes \_\_\_\_\_ No \_\_\_\_\_  
If "Yes," what was their opinion? \_\_\_\_\_

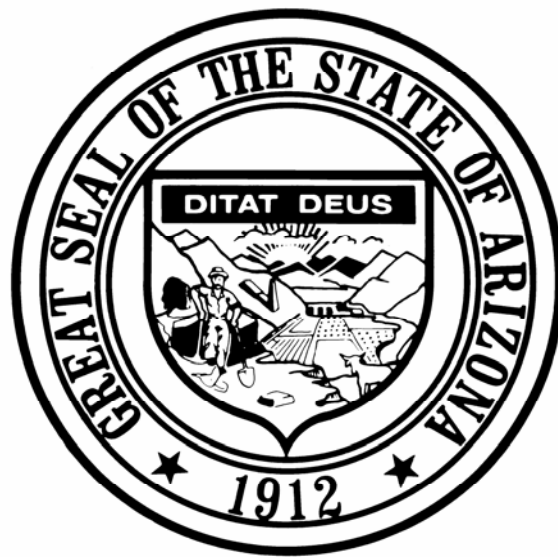
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  9. Was all the evidence related to this case reviewed? Yes \_\_\_\_\_ No \_\_\_\_\_ By what Investigator \_\_\_\_\_  
By what Crime Lab DNA Analyst \_\_\_\_\_
  10. Is the evidence viable for current scientific examination standards? Yes \_\_\_\_\_ No \_\_\_\_\_  
By what DNA Analyst \_\_\_\_\_
  11. Is the evidence viable for current prosecution standards? Yes \_\_\_\_\_ No \_\_\_\_\_  
By what Investigator or Prosecutor \_\_\_\_\_
  12. After round table review, is this a workable "cold" case? Yes \_\_\_\_\_ No \_\_\_\_\_
- Assigned Investigator \_\_\_\_\_ Date \_\_\_\_\_
- DNA Analyst \_\_\_\_\_ Date \_\_\_\_\_
- Prosecutor (If applicable) \_\_\_\_\_ Date \_\_\_\_\_



## **APPENDIX D**

# **ARIZONA DNA AND FORENSIC SCIENCE RECOMMENDATIONS**



**OFFICE OF THE ATTORNEY GENERAL  
TERRY GODDARD**

**2007**

## I. Introduction

Extraordinary developments in DNA technology over the past several years have dramatically increased the available pool of evidence that can be subjected to DNA testing. This increasing volume of evidence, together with expanded databases containing identifying information from convicted felons, has created a tremendous resource for law enforcement to help solve crimes and to protect the innocent. These improvements in DNA technology have created a need to reevaluate how crime labs operate and whether state and local policies and procedures take advantage of this technology.

Although crime laboratories in Arizona are generally held in high regard, the available resources for labs throughout the state have not kept pace with the increased demand for DNA services. Additionally, state-wide improvements in DNA lab operations are difficult to effectuate because there is no mechanism in place to ensure a cohesive state-wide approach to processing DNA evidence. Some laboratories in Arizona are owned and operated by the state, while others are owned and operated by city police departments. Because the various laboratories do not share a common funding source or a common supervising agency, there is a need for better coordination of efforts among the labs and for more uniform policies regarding information sharing.

Arizona Attorney General Terry Goddard invited representatives from state and city crime laboratories, the Maricopa County Medical Examiner's Office, local law enforcement departments, the prosecution and defense community, the judiciary, and victims' advocacy groups to participate in a state-wide DNA and Forensic Technology Task Force.<sup>6</sup> The group was asked to consider concerns raised in previous audits of state and local laboratories, including backlogs and funding problems, as well as other issues, such as information and equipment sharing among state and local laboratories, and statewide coordination of efforts to ensure that Arizona takes advantage of available funding for state and local DNA programs.

Based on recommendations from the Task Force, Attorney General Goddard recommends that a permanent state-wide Forensic Services Advisory Committee be established under the auspices of the Attorney General's Office, with support from the Arizona Criminal Justice Commission (ACJC), to facilitate statewide planning and coordination of efforts among state and local laboratories. ACJC is a legislatively created entity charged with helping coordinate criminal justice systems improvements throughout the state; ACJC currently helps coordinate meetings of laboratory directors and assists some of the laboratories with grant requests.

The Advisory Committee should include representatives of law enforcement agencies that currently operate laboratories, as well as law enforcement agencies that do not have their own laboratories. Additional committee members, as outlined in Appendix B, should include laboratory directors, a representative of an organization representing victims' families, a retired Superior Court or Appellate Court judge, and a forensic

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<sup>6</sup> Task Force members are listed in Appendix A.

scientist from a national organization such as the American Society of Crime Lab Directors or the National Forensic Science Technology Center. A Chairperson should be appointed to a two-year term.

Attorney General Goddard recommends that the proposed Forensic Services Advisory Committee be given authority to establish and monitor performance measures and to work with lab directors to coordinate long-term planning, including equipment sharing and specialization by state and local laboratories. The Advisory Committee should also be given authority to consider and address questions or concerns from law enforcement agencies that do not have their own crime lab and from the public regarding lab operations.

## **II. Background – A History of DNA Processing in Arizona**

There are eight full-service forensic laboratories that process DNA evidence in Arizona. The Arizona Department of Public Safety currently operates four state forensic laboratories. Additionally, the cities of Phoenix, Tucson, Mesa and Scottsdale have their own forensic labs operated under the direction of the police departments in those cities. The Maricopa County Medical Examiner operates a forensic laboratory but does not process DNA. All of the state and local crime laboratories in Arizona are accredited.

The supervision of forensic laboratories around the state is not centralized. Because state and local labs have different funding sources, they are accountable to different supervisory entities and are operated independently. State labs are authorized to perform services for any state or local law enforcement agency in the state; city labs generally focus on the needs of their own city law enforcement agencies, although they may also provide assistance to other jurisdictions that do not have crime labs.

Arizona's system of DNA processing is similar to that in place in many other states. (See Appendix C.) Almost all states have state-operated laboratories, either under the direction of the Governor's Office or the Attorney General's Office, and many states also have local laboratories operating under the direction of local law enforcement agencies. Twenty-eight states have one agency that supervises all laboratories within the state. Four states have placed operation and control of all laboratories under the supervision of one state agency independent from law enforcement. Other states use organizations similar to ACJC to coordinate crime lab operations. Several states have created or are considering DNA commissions or task forces to address DNA issues and to facilitate state-wide coordination of efforts. Many states do not have any formal mechanism for addressing state-wide concerns.

## **III. The Need for State-Wide Coordination of Efforts**

### ***A. Funding Issues***

The development of crime laboratories throughout the state does not reflect a systematic analysis of regional needs and priorities. The creation of local labs in various

cities throughout the state resulted from inadequacies in funding for DPS labs, coupled with a need for localized services for individual law enforcement agencies. This has created a patchwork system of DNA processing in which procedures vary from city to city within otherwise homogenous regional areas. Because the various laboratories have different funding sources and are thus answerable to different agencies, state-wide coordination of efforts can be problematic.

Increasingly sophisticated (and costly) equipment, together with an increased capability to evaluate smaller evidence samples, has heightened the need for cooperation among the various labs. The geographic proximity of multiple law enforcement agencies makes inter-agency cooperation essential in solving crimes and providing necessary laboratory services. State and local laboratories should work together to create short-term and long-term planning goals to better meet the forensic science needs of the state. Of particular significance are funding needs—the current framework may result in funding decisions by cities independent from state funding decisions for overlapping services. Additionally, the labs compete at times against one another for federal funding, and if one lab does not expend awarded federal funds, the total allotment to the state can be reduced. Centralized planning for funding would help prevent such problems.

### ***B. Performance Measures***

In the past, the various labs have used different performance measures and different methods for assessing case backlogs. Greater uniformity in both areas is necessary to measure results and provide documentation necessary to qualify for available grant monies. Greater uniformity would also help ensure that state and local monies are well-spent, and would give better context to laboratory funding requests.

### ***C. Grant Requests***

Greater coordination of efforts by state and local laboratories, as well as state and local law enforcement agencies, is necessary to ensure that Arizona takes advantage of grants available from the federal government. Federal grant monies for forensic science laboratories are increasingly tied to statewide requirements for processing DNA and preserving biological evidence. The proposed Advisory Committee would work with the various laboratories and with the Arizona Legislature to take steps needed to ensure compliance with federal mandates tied to grant funding, where such compliance is consistent with public policy in Arizona.

#### ***D. Backlog Reduction***

Backlog concerns relating to offender profiles and case processing have prevented Arizona from taking full advantage of available DNA technology.

##### **(1) Offender Profiles**

The development and expansion of databases that contain DNA profiles at the local, state and national levels have greatly enhanced law enforcement's ability to use DNA to solve cold cases and current, unsolved cases. Convicted offender databases store hundreds of thousands of potential suspect DNA profiles, against which DNA profiles developed from crime scene evidence can be compared. DNA profiles entered into the national database have enabled law enforcement to solve previously unsolved crimes and, in some cases, to exonerate prisoners who were wrongly convicted of a crime.

In Arizona, the state DPS laboratories are responsible for processing convicted offender samples for inclusion in state and national databases. Since 1993, convicted sex offenders in Arizona have been required to provide DNA samples (generally swabs taken from the inside of the mouth) to law enforcement officers. Burglars and murderers were added to the list in 2000; drug offenders were added in 2003; and as of January 1, 2004, all felons were required to submit a sample within 30 days of sentencing. As of January 1, 2008, suspects arrested for specific crimes, primarily violent offenses and dangerous crimes against children, will be required, pursuant to A.R.S. § 13-610(K), to submit DNA samples.<sup>7</sup> The expanded categories of individuals required to submit DNA samples have significantly taxed the state's ability to analyze the samples and enter the profiles into the national database. Although a significant percentage of available DNA samples have been analyzed and entered into the system, thousands of samples have yet to be analyzed and entered into the DNA database by DPS. The proposed Forensic Services Advisory Committee would work with DPS to ensure that adequate funds are secured to eliminate the offender profile backlog.<sup>8</sup>

##### **(2) Case Processing**

Case backlogs reflect pending investigations involving DNA evidence that has yet to be analyzed and entered into state and national DNA databases. Backlogs hinder investigations, particularly in cases in which there is no known suspect, because laboratories must prioritize their work, with cases scheduled for trial given first priority. When state and local laboratories are only able to process the most serious pending cases

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<sup>7</sup> A person who is required to submit a sample based on an arrest for a specified crime under A.R.S. § 13-610(K) may, if charges are dropped or if subsequently acquitted of the charges, petition the superior court in the appropriate county to have his or her DNA profile and sample expunged from the state DNA system. A.R.S. § 13-601(M).

<sup>8</sup> The legislation expanding the database to include arrestee DNA profiles includes a funding mechanism—an additional assessment to be levied on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and on any civil penalty imposed for a violation of Motor Vehicle or Fish and Game statutes. A.R.S. § 12-116.01

involving known suspects, crimes that could be solved remain on hold. Backlogs prevent law enforcement officers from taking advantage of improved DNA technology to solve not only sexual assault cases and cases involving blood evidence, but also other types of cases where there may be evidence such as saliva, skin cells or hair samples. Given high recidivism rates for many types of criminals, such as burglars, a decrease in case backlogs will not only solve crime, it will help prevent other crimes from being committed.

State and local laboratories in Arizona have historically used different measures in providing backlog data. This lack of uniformity in measuring backlogs has made it difficult to assess the severity of the backlog problem and the effectiveness of any remedial measures that may be taken. Task Force participants have agreed on a more uniform method of measuring backlogs, and the proposed Forensic Services Advisory Committee should monitor and assess backlog concerns at the various labs throughout the state. The Advisory Committee should work with the laboratories to make backlog reduction a priority and to help secure additional funding, where necessary, to eliminate backlogs.

#### **IV. Transparency and Accountability**

Although processes are in place at the local level to investigate complaints against laboratories, there is currently no central independent agency or entity to which the general public can address questions relating to perceived problems at a state or local laboratory. The proposed Forensic Services Advisory Committee would fill this void and establish a mechanism for addressing questions and/or complaints from the public relating to laboratory operations.

State and local laboratories are accredited by the American Society of Crime Laboratory Directors-Laboratory Accreditation Board (ASCLD-LAB), and all of Arizona's full-service crime labs have received this accreditation. To be accredited, laboratories must meet a comprehensive series of standards covering personnel qualifications, scientific methods and protocols, scientific equipment, laboratory facilities and quality control/assurance procedures. Additionally, all DNA Labs in Arizona are members of Combined DNA Index System (CODIS), and must comply with the Quality Assurance Standards for Forensic DNA Testing Laboratories, as a condition of membership.

Crime Labs undergo yearly facility audits and external audits. Additionally, the National Forensic Science Technology Center (NFSTC) conducts periodic Grant Program Assessment (GPA) audits, and all of the Arizona crime labs underwent such an assessment during 2007.

Arizona has thus far avoided issues of severe laboratory mismanagement and other crises that have plagued some states. *See e.g.* Fourth Report of the Independent Investigator for the Houston Police Department of Crime Laboratory and Property Room, <http://www/hpdlabinvestigation.org>. However, Arizona's laboratories face hurdles and

challenges that could lead to problems in the future, and there is a need for greater transparency and accountability relating to laboratory operations.

The proposed Forensic Sciences Advisory Committee should review and monitor the results of audits and/or investigations of Arizona's Crime Laboratories, and should work with the various laboratories to ensure that adequate funding sources are secured to ensure high quality laboratory operations.

## **V. Expanding the State DNA Database and Sharing Information Among State and Local Laboratories**

Task Force members addressed several legal issues relating to the use of DNA evidence as an investigative and evidentiary tool. Of particular interest was whether the statewide DNA database should be expanded to include DNA profiles from all arrestees, and whether lawfully obtained profiles available to one law enforcement agency should be made available to other law enforcement agencies. Based on Task Force recommendations, Attorney General Goddard recommends further study and discussion before seeking to expand the statewide database. Attorney General Goddard recommends, however, that lawfully-obtained DNA profiles be shared among the various law enforcement agencies throughout the state.

### ***A. Expanding the State Database***

DNA profiles are stored and searched at three levels. The Combined DNA Index System (CODIS) is a computer network that connects forensic DNA laboratories at the national, state, and local levels. The National DNA Act of 1994 specifies that the following types of information can be put into the national system (NDIS):

1. DNA identification records of persons convicted of crimes;
2. Analyses of DNA samples recovered from crime scenes;
3. Analyses of DNA samples recovered from unidentified human remains;
4. Analyses of DNA samples voluntarily contributed from relatives of missing persons.

Under federal law, DNA profiles of *suspects* may not be stored in NDIS. Although state and local labs are bound by federal law and regulations in determining the categories of DNA data that may be uploaded into NDIS, state and local labs may look to state law and state regulations to determine what may be stored and searched at the state level. States may choose to store and search information that cannot be stored and searched at the national level. Several states, in addition to Arizona, have chosen to include some types of arrestee DNA profiles in their state databases. *See, e.g.* Cal. Penal Code § 296, 297, La. Rev. Stat. Ann. § 15:609, Tex. Gov't Code Ann. § 411.1471, Va. Code Ann. § 19.2-310.2:1.



As noted previously, Arizona began collecting DNA samples from convicted sex offenders in 1993. The expansion of the database has greatly increased its utility. The expansion of the database to include all felons was particularly significant because of the high percentage of felony offenders who engage in other criminal activity. Criminals rarely limit themselves to one crime, and an expanded database that includes all felons is an important tool for solving crime and preventing future crimes.

Because of the continuing backlog of offender profiles that have yet to be entered into the state and national systems, Arizona has not taken full advantage of the expanded database. Until the backlog has been eliminated, there is little utility in further expanding the state database.

Task Force members did not reach a consensus on whether consideration should be given to expanding the state database to include all persons who have been arrested for a crime, but who do not fall within A.R.S. § 13-610(K). Those who disagreed with expanding the database cited privacy issues and a concern that such a database would unfairly affect individuals who are improperly arrested for a crime they did not commit. Task Force members who favored an expansion to an all-arrestee database noted that fingerprints are currently taken from all people arrested of a crime, and that the fingerprints become part of a database regardless whether the individual is ultimately convicted of a crime. Because a DNA profile, like a fingerprint profile, simply identifies an individual without providing any other information about the person, the DNA profile should be treated the same as a fingerprint profile.

Task Force members who favor an all-arrestee database acknowledged a need to increase public confidence that privacy concerns have been properly addressed. Although a DNA profile (which is essentially a string of numbers) does not contain any type of information that could be used to learn about the person's medical or genetic history, the sample from which the profile was derived could be used for that purpose. Crime labs should continue their current practice of keeping DNA samples separate from identifying information relating to the person from whom the sample was obtained, and should ensure that there are institutional safeguards in place to preclude the use of DNA samples for anything beyond providing an identifying profile.

### ***B. Sharing Information***

There is no current statewide policy concerning the use of lawfully obtained DNA profiles, in particular with regard to whether DNA profiles may be shared with law enforcement agencies throughout the state when the profile has been obtained from a suspect who has not previously been convicted of a crime. Currently, that information is used within the agency that obtained the profile, but is not being shared with other agencies throughout the state.

The current practice of limiting a sample's use to the agency that obtained the profile limits the utility of the sample. If, for example, the Phoenix Police Department has a legally-obtained sample from a suspect in a crime committed in Phoenix, that

sample is available to the Phoenix Police Department through its crime lab for other investigations within the city. If, however, the Mesa Police Department is investigating a similar crime committed in Mesa, the lawfully obtained sample kept in the Phoenix laboratory is not made available to the Mesa Police Department unless the sample is one that is required to be placed in the statewide database.

Arizona courts have not addressed the propriety of sharing this type of information among state and local law enforcement agencies. However, decisions from other states have upheld the use of DNA profiles from arrestees or suspects in investigating unrelated case. *See Smith v. State*, 744 N.E.2d 437 (Ind. 2001) (holding that there is no statutory impediment to storing DNA profile records of an arrestee in Indiana whose DNA was lawfully seized); *Washington v. State*, 653 So. 2d 362 (Fla. 1995) (DNA samples lawfully taken from a suspect can be used to investigate an unrelated case); *Bickley v. State*, 489 S.E.2d 167 (Ga. Ct. App. 1997); *Wilson v. State*, 752 A.2d 1250 (Md. Ct. Spec. App. 2000); *People v. King*, 232 A.D. 2d 111 (N.Y. App. Div. 1997).

State and local crime laboratories have been reluctant to share such information based on perceived liability issues related to privacy concerns. Those privacy concerns, however, appear to be unwarranted. As previously noted, although a DNA sample may be used to obtain personal information relating to a person's genetic make-up or disease potential, a forensic DNA profile is simply a series of numbers, and like a fingerprint, is only useful for identification purposes. Use of a DNA profile is thus comparable to use of a fingerprint profile and does not implicate privacy concerns beyond those present in compiling a fingerprint database.

Attempts to deal with problems such as terrorism and crime on a national level have highlighted the need for inter-agency sharing of information. Given the overlapping jurisdiction of state and local laboratories, and given the proximity in location from one city to the next in Arizona, cooperation and sharing of information among the various law enforcement agencies within the state is critical. Information that is available to law enforcement officers within one Arizona jurisdiction should be made available to other jurisdictions within the state. Accordingly, if a DNA sample has been lawfully obtained, either from a crime scene or by consent or court order, the profile derived from the sample should be made available to other law enforcement agencies.

## **RECOMMENDATIONS**

A statewide Forensic Services Advisory Committee should be formed under the auspices of the Arizona Attorney General and the Arizona Criminal Justice Commission to establish and monitor performance measures among state and local laboratories, to develop a more uniform system of reporting data, and to work with laboratory directors to coordinate long-term regional and statewide planning, including equipment sharing and regional specialization by state and local laboratories. The advisory committee should also be given authority to consider and address questions or concerns from law enforcement and the public regarding lab operations.

State and local laboratories should share lawfully obtained DNA profiles with other state and local laboratories. If a DNA sample has been lawfully obtained, either from the crime scene or by consent or court order, the profile derived from the sample should be made available to other law enforcement agencies.

## **Appendix A – Members of the Arizona Attorney General’s Task Force**

Bill V. Amato, Maricopa County Attorney’s Office  
Senator Timothy S. Bee, Senate Majority Leader  
John A. Blackburn, Jr., Arizona Criminal Justice Commission  
John Blackburn, Sr., Ph.d., Special Assistant County Attorney  
The Honorable Bill Brotherton, Arizona State Senator  
Dennis Burke, Office of the Governor  
Kent E. Cattani, Office of the Attorney General, Chief Counsel, Capital Litigation  
Edwin Cook, Executive Director, Arizona Prosecuting Attorney’s Advisory Counsel  
Dennis L. Donna, Mesa Police Department Chief of Police  
Debra Figarelli, DNA Technical Manager / Phoenix PDL Laboratory Services Bureau  
Steve Gallardo, Member, Arizona House of Representatives  
Steve Garrett, Forensic Services Division Manager / Scottsdale Police Department  
Todd A. Griffith, Superintendent, AZ DPS, Scientific Analysis Bureau  
Tom Hammarstrom, Executive Director, AZ Post  
Gerald E. Hardt, Program Manager/ Criminal Justice Records, AZ Criminal Justice  
Ann E. Harwood, First Assistant U.S. Attorney  
Mark Huntzinger, Forensic Division Commander; Tucson Police Department  
Philip Keen, M.D., Maricopa County Chief Medical Examiner  
Ron Kirby, Commander, Mesa Police Department, Technical Services Department  
Thomas V. Lannon, Assistant Police Chief; Phoenix Police Department  
Joyce K. Lee, Forensic Services Administrator, Mesa Police Department  
Paul McMurdie, Maricopa County Attorney’s Office  
Robert D. Myers, Legal Counsel for the Arizona Department of Corrections  
Cindi Nannetti, Maricopa County Attorney’s Office  
Susan D. Narveson, NIJ/OST Senior Program Manager  
Pat Nelson, Records Program Coordinator / Criminal Justice Records, AZ Criminal  
Richard Platt, Chief Criminal Deputy; Pinal County Attorney’s Office  
The Honorable Ronald S. Reinstein, Maricopa County Superior Court  
Micah Schmit, Pima County Deputy Attorney, SVU  
John Stookey, Defense Counsel, Osborne Maledon, PA  
Jan Strauss, Office of the Attorney General, Law Enforcement Liaison

## **Appendix B – Proposed Members of Forensic Sciences Advisory Committee**

1. The Attorney General or the Attorney General’s designee
2. The Director of Arizona Criminal Justice Commission or the Director’s designee
3. The Director of the Department of Public Safety or the Director’s designee
4. Lab directors or their designees from all state and local forensic laboratories
5. The Police Chief or the Chief’s designee of municipalities that operate a forensic laboratory
6. One Police Chief or the Chief’s designee from a municipality with a population over 200,000 that does not have a forensic laboratory
7. One Police Chief or the Chief’s designee from a municipality with a population of 200,000 or less that does not operate a forensic laboratory
8. One County Sheriff and one County Attorney from a county with a population of four hundred thousand persons or more
9. One County Sheriff and one County Attorney from a county with a population of less than four hundred thousand persons
10. A representative of an organization representing victims’ families
11. A retired Superior Court or Appellate Court Judge
12. A Forensic Scientist from a national organization such as the American Society of Crime Lab Directors (ASCLD) or the National Forensic Science Technology Center (NFSTC)

**Appendix C – Crime Laboratory Supervision in the United States**

*States With More Than One Supervising Agency for Laboratories*

*States With One Supervising Agency For All Laboratories in the State*

<u>State</u>	<u>Laboratories</u>	<u>State</u>	<u>Supervising Entity</u>
Arizona	1 state, 4 local	Alaska	Law Enforcement
California	1 state, 15 local	Alabama	Independent
Colorado	1 state, 1 local	Arkansas	Independent
Florida	1 state, 4 local	Connecticut	Law Enforcement
Illinois	1 state, 2 local	Delaware	Law Enforcement
Indiana	1 state, 1 local	Georgia	Independent
Kansas	1 state, 2 local	Hawaii	Law Enforcement
Louisiana	1 state, 4 local	Idaho	Law Enforcement
Maryland	1 state, 5 local	Iowa	Law Enforcement
Massachusetts	1 state, 1 local	Kentucky	Law Enforcement
Michigan	1 state, 1 local	Maine	Law Enforcement
Minnesota	1 state, 1 local	Mississippi	Law Enforcement
Missouri	1 state, 5 local	Montana*	Law Enforcement
Nevada	2 local	Nebraska	Law Enforcement
New Mexico	1 state, 1 local	New Hampshire	Law Enforcement
New York	2 state, 6 local	New Jersey	Law Enforcement
North Carolina*	1 state, 1 local	North Dakota*	Law Enforcement
Ohio	1 state, 6 local	Oregon	Law Enforcement
Oklahoma	1 state, 1 local	Rhode Island	Law Enforcement
Pennsylvania	1 state, 2 local	South Dakota*	Law Enforcement
South Carolina	2 local	Tennessee	Law Enforcement
Texas	2 state, 7 local	Utah	Law Enforcement
		Vermont	Law Enforcement
		Virginia	Independent
		Washington	Law Enforcement
		West Virginia	Law Enforcement
		Wisconsin*	Law Enforcement
		Wyoming	Law Enforcement

\* State laboratories supervised by the State Attorney General