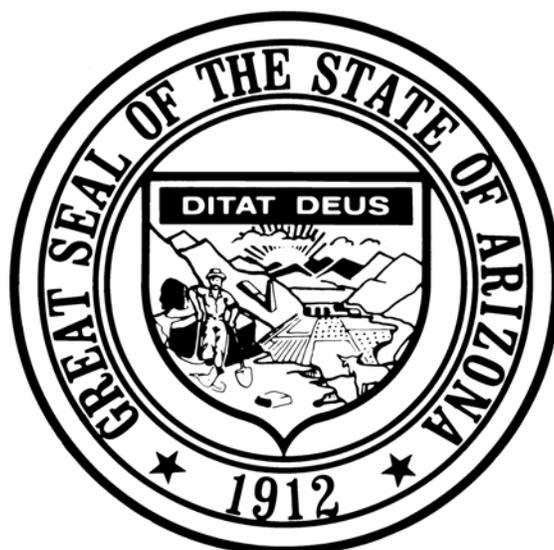


ARIZONA DNA AND FORENSIC SCIENCE RECOMMENDATIONS



**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.¹ 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

¹ 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.² 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.³

(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

² 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).

³ 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