

**OFFICE OF THE
ATTORNEY GENERAL**





Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division

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September 20, 2019

David Schumacher, Director
Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

Dear Mr. Schumacher:

David -

Enclosed please find the 2020 Supplemental Budget Request from the Attorney General's Office (AGO), which addresses critical agency and litigation needs. We are mindful of the ongoing limitations on state resources and continue to provide the best possible legal services for our clients and the people of the state of Washington working within these constraints.

The AGO greatly appreciates the funding provided in the 2019-21 biennial budget for our Child Permanency and Child Welfare work. Unfortunately, despite these additional resources, we remain unable to staff this work at a level that is anywhere close to what industry standards consider appropriate. The current caseload for Assistant Attorneys General (AAG) handling this work is over 150% above the American Bar Association's (ABA) recommended maximum caseload level for attorneys representing child welfare agencies. AAG and professional staff levels should comply with the ABA's recommendation, with a maximum average attorney caseload of 60 cases. The current AGO caseload average is 93 cases. Without additional funding from the Legislature, these unmanageable caseloads will likely negatively impact the entire child welfare system and delay safe, permanent outcomes for vulnerable children. We can and must do more to support the legal needs of DCYF in order to achieve safe and timely permanency for children and their families through reunification, adoption, or guardianship. Support for this work is my highest priority budget request this year.

Additional priorities in the AGO's 2020 Supplemental Budget Request include emergent issues such as legislative mandates, significant litigation, caseload related and other workload increases, and one technical correction. The funding requested for these items will allow us to mitigate risk, protect tax dollars, and serve the legal needs of the state and its residents. These items include:

- Funding to defend the State and recover resources (e.g., Wolf, Tobacco, Hanford);
- Funding to support increased workload (Eastern State Hospital, University of Washington, Department of Corrections, Washington Department of Fish & Wildlife); and
- A package for technical corrections relating to laws passed in the 2019 legislative session without AGO funding to provide the work, and a package for federal funding adjustments.



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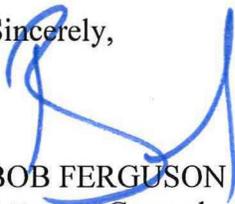
David Schumacher
September 20, 2019
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The AGO is helping to lead the Sexual Assault Kit Initiative (SAKI) to address untested and under-tested Sexual Assault Kits in Washington State. Our experience from this project, coupled with the evidence produced by testing these kits, has highlighted the need for additional resources to support the investigation of a broader scope of cold cases in our state. For these reasons, I am requesting funding to create a Cold Case Division to assist and support local law enforcement in investigating and solving cold cases. There are nearly 1,600 unsolved homicide cases in Washington and almost 1,800 unsolved sexual assault cases in the Homicide Investigation Tracking System (HITS) database. This request will enhance resolution of these cases and help provide justice and closure for victims' families and communities throughout the state.

I look forward to working with you and your office, and stand ready to provide information to assist you as you prepare the Governor's budget proposal. If you have questions about this budget request, please contact Chief Financial Officer Mark Melroy at (206) 402-7224.

Thank you for your continued assistance.

Sincerely,



BOB FERGUSON
Attorney General

Thanks!

RWF/jlg

Encl.



OFFICE OF THE ATTORNEY GENERAL

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TAB A

**AGENCY
INFORMATION**



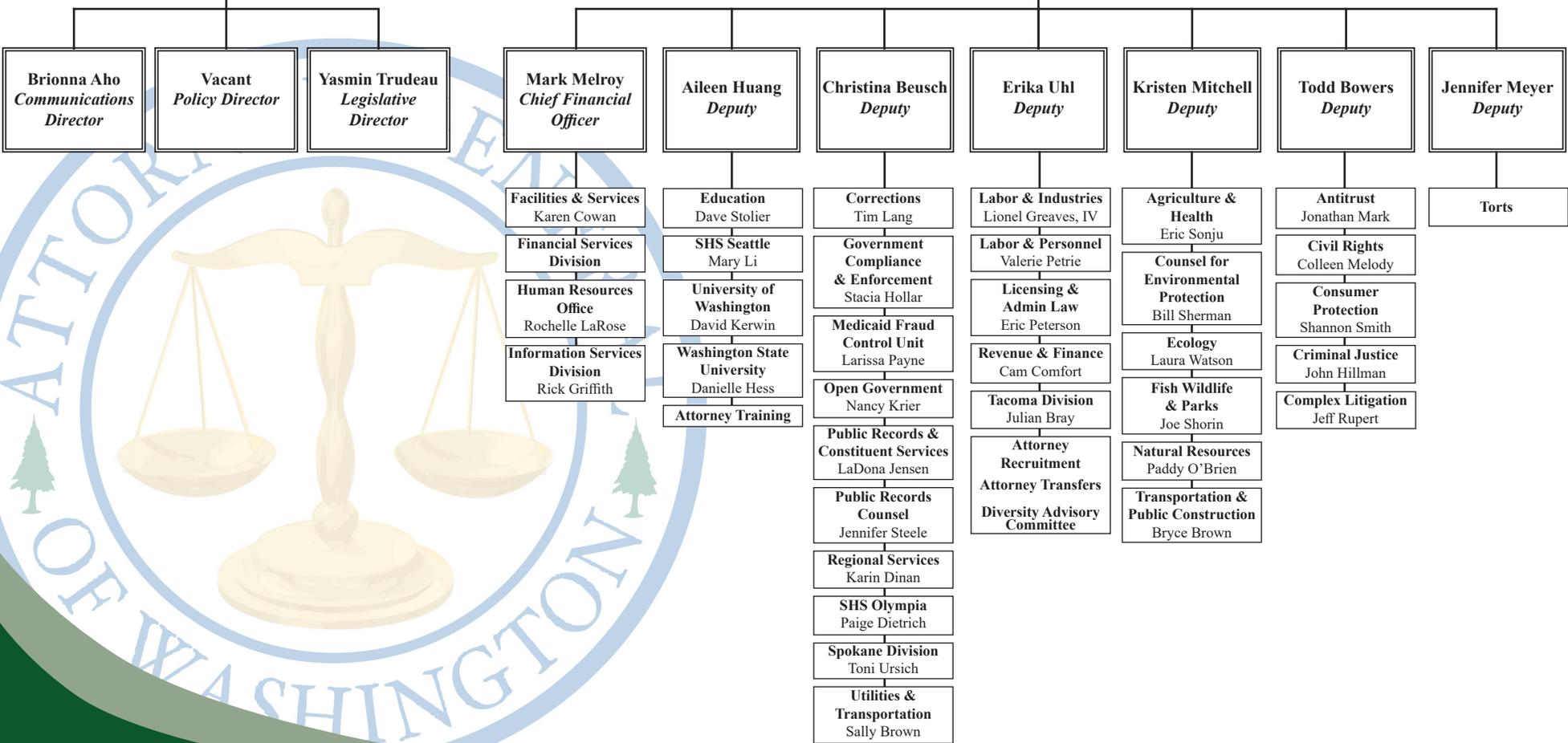
OFFICE OF THE ATTORNEY GENERAL

Bob Ferguson
Attorney General

Mike Webb
Chief of Staff

Noah Purcell
Solicitor General

Shane Esquibel
Chief Deputy



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100 - Office of Attorney General

A001 Administration

Administrative functions of the AGO includes the Attorney General's Core Leadership Team, the Solicitor General, executive support, financial services, human resources, IT services, and facilities staff. An administrative function of the AGO is the Solicitor General's issuance of Attorney General Opinions, which answer questions from members of the state Legislature, state elected officials, appointed heads of state agencies, boards and commissions, and county prosecuting attorneys. AGO opinions clarify the interpretation of statutes and regulations when the meaning is in doubt.

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Account	FY 2020	FY 2021	Biennial Total
FTE	133.6	135.0	134.3
424 Anti-Trust Revolving Account			
424-6 Non-Appropriated	\$101	\$133	\$234
17L Foreclosure Fairness Account			
17L-6 Non-Appropriated	\$21	\$21	\$42
001 General Fund - Basic Account			
001-1 State	\$3,714	\$3,506	\$7,220
001-2 Federal	\$416	\$493	\$909
001 Account Total	\$4,130	\$3,999	\$8,129
405 Legal Services Revolving Account			
405-1 State	\$13,196	\$13,505	\$26,701
441 Local Government Archives Account			
441-1 State	\$511	\$497	\$1,008
441-7 Local	\$0	\$330	\$330
441 Account Total	\$511	\$827	\$1,338
12F Man/Mobile Home Dispute Resolution			
12F-6 Non-Appropriated	\$39	\$37	\$76
19A Medicaid Fraud Penalty Account			
19A-1 State	\$151	\$161	\$312
759 Miscellaneous Program Account			
759-6 Non-Appropriated	\$138	\$138	\$276
154 New Motor Vehicle Arbitration Acct			
154-1 State	\$49	\$50	\$99

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Account	FY 2020	FY 2021	Biennial Total
489 Pension Funding Stabilization Acct			
489-1 State	\$44	\$43	\$87
111 Public Service Revolving Account			
111-1 State	\$119	\$117	\$236
828 Tobacco Prevention/Control Account			
828-1 State	\$14	\$14	\$28

Statewide Result Area: Efficient, Effective and Accountable Government

Statewide Strategy: Provide data, information, and analysis to support decision-making

Expected Results

Administration provides the issuance of Attorney General opinions which answer questions from members of the state Legislature, state elected officials, appointed heads of state agencies, boards and commissions, and county prosecuting attorneys. These questions seek clarification relating to the interpretation of statutes and regulations when the meaning is in doubt.

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A002 Civil Commitment of Sexually Violent Predators

The Sexually Violent Predator Unit (SVPU) protects the public by ensuring that the most dangerous and violent sexual predators in the state are detained, evaluated, and treated until they no longer meet Sexually Violent Predator (SVP) criteria. When a sexual offender is about to be released from confinement and appears to meet SVP criteria, the SVPU acts as the prosecuting agency to classify them as a SVP resulting in Civil commitment. Once committed, the SVPU oversees the extensive post-commitment responsibilities to ensure that SVPs are not being released before being rehabilitated. These responsibilities include appeals, annual reviews, less restrictive alternative placements, and re-commitment hearings and trials.

Account	FY 2020	FY 2021	Biennial Total
FTE	51.0	51.0	51.0
001 General Fund - Basic Account			
001-1 State	\$11,970	\$12,684	\$24,654
001-2 Federal	\$1,542	\$3,845	\$5,387
001 Account Total	\$13,512	\$16,529	\$30,041
489 Pension Funding Stabilization Acct			
489-1 State	\$1,048	\$1,040	\$2,088

Statewide Result Area: Healthy and Safe Communities
Statewide Strategy: Confine and rehabilitate offenders

Expected Results

The most dangerous and violent sexual predators in the state are detained, evaluated, and treated until they no longer constitute a threat. Consequently, fewer people are victimized, and the public is protected from those sex offenders who are most likely to reoffend.

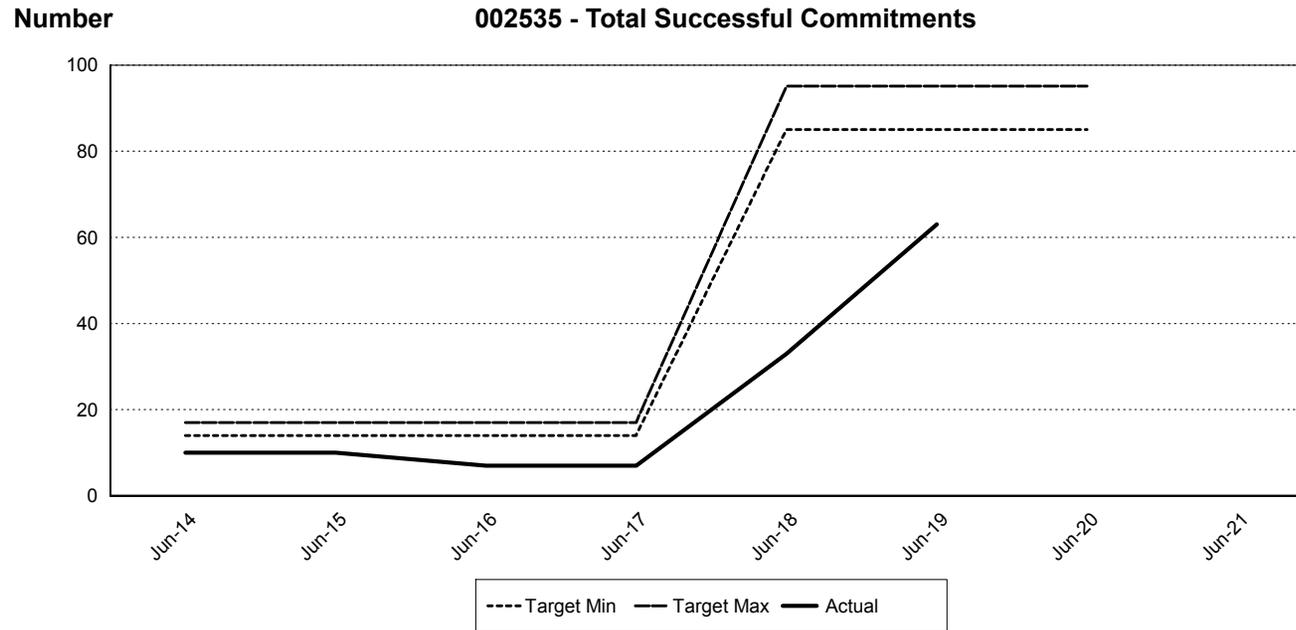
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002535				
As a result of the efforts to civilly detain, evaluate and treat sex offenders who are most likely to reoffend, fewer people are victimized and the public is protected from those individuals.				
Biennium	Period	Actual	Target Min	Target Max
2019-21	A3			
	A2		85	95
2017-19	A3	63	85	95
	A2	33	85	95
2015-17	A3	7	14	17
	A2	7	14	17
Performance Measure Status: Draft				

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A003 Criminal Investigation and Prosecution

The Criminal Litigation Unit (CLU) investigates and prosecutes all levels of criminal cases when requested by the Governor or county prosecuting attorneys. The types of cases commonly handled by the CLU include homicide, sexual assault, multi-jurisdictional crime, white-collar crime, governmental corruption cases, environmental crimes, tax fraud cases on behalf of the Department of Revenue, licensing fraud on behalf of the Department of Licensing, insurance fraud on behalf of the Office of the Insurance Commissioner, and fraudulent workers’ compensation claims and wage and hour violations on behalf of the Department of Labor and Industries. The CLU assists local prosecutors when they have a conflict of interest or need additional resources for major prosecutions. The CLU occasionally assumes responsibility for the appellate review of a criminal case that were originally brought by a county prosecutor if the case involves fundamental issues affecting the public interest and the administration of justice.

Account	FY 2020	FY 2021	Biennial Total
FTE	5.8	13.1	9.5
001 General Fund - Basic Account			
001-1 State	\$2,142	\$3,304	\$5,446
489 Pension Funding Stabilization Acct			
489-1 State	\$191	\$195	\$386

Statewide Result Area: Healthy and Safe Communities

Statewide Strategy: Enforce the law

Expected Results

When a county prosecutor has a conflict of interest or needs assistance for other reasons, there are competent, highly-skilled AGO prosecutors available to represent the county resulting in greater public protection. The AGO’s Criminal Litigation Unit (CLU) reviews important appeals and provides additional legal assistance upon request. The CLU also reviews and approves (or defends against) claims filed by persons claiming to have been wrongfully convicted and imprisoned. Crimes of fraud involving state agencies are properly investigated and prosecuted so that state agencies and other victims can recover their losses, and similar criminal activity against state agencies can be curtailed and deterred.

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002536

When a county prosecutor has a conflict of interest or needs assistance for other reasons, there are competent, highly-skilled AGO prosecutors available to represent the county resulting in greater public protection. The AGO's Criminal Litigation Unit (CRI) reviews important appeals and provides additional legal assistance upon request. CRI also reviews and approves (or defends against) claims filed by persons claiming to have been wrongfully convicted and imprisoned. Crimes of fraud involving state agencies are properly investigated and prosecuted so that state agencies and other victims can recover their losses, and similar criminal activity against state agencies can be curtailed and deterred.

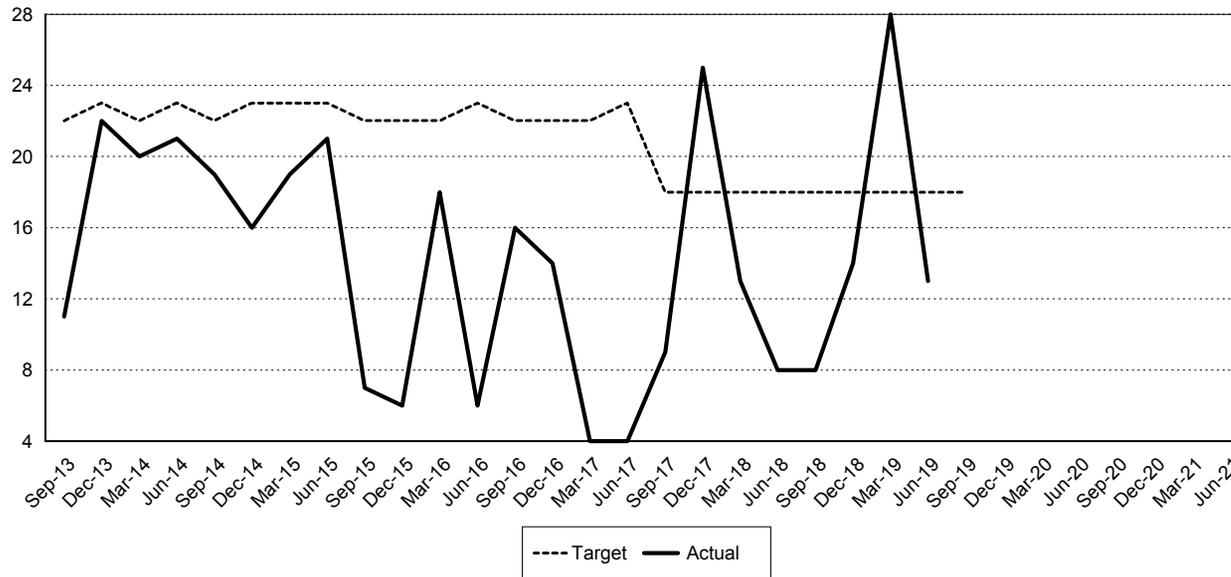
Biennium	Period	Actual	Target
2019-21	Q8		
	Q7		
	Q6		
	Q5		
	Q4		
	Q3		
	Q2		
	Q1		18
2017-19	Q8	13	18
	Q7	28	18
	Q6	14	18
	Q5	8	18
	Q4	8	18
	Q3	13	18
	Q2	25	18
	Q1	9	18
2015-17	Q8	4	23
	Q7	4	22
	Q6	14	22
	Q5	16	22

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2015-17	Q4	6	23
	Q3	18	22
	Q2	6	22
	Q1	7	22
Performance Measure Status: Draft			

Number 002536 - Criminal Cases Closed



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A004 Enforcement of Anti-Trust Laws

The AGO’s Antitrust Division (ANT) division protects the residents of Washington State from price-fixing, illegal mergers, monopolization, and other illegal, anticompetitive activities. ANT holds entities accountable when they break the law and engage in unfair competition, and ensures that consumers benefit from a competitive marketplace. By enforcing antitrust laws, ANT ensures that businesses compete fairly with each other. ANT files enforcement actions, responds to consumer complaints, provides advice to state agencies, and provides consumer education and outreach. Through these efforts, ANT ensures that consumers’ problems are addressed, money overpaid due to illegal activity is recovered, illegal activity is prevented, and businesses are educated about their responsibilities under the antitrust laws.

Account	FY 2020	FY 2021	Biennial Total
FTE	13.4	13.4	13.4
424 Anti-Trust Revolving Account			
424-6 Non-Appropriated	\$2,753	\$2,705	\$5,458

Statewide Result Area: Prosperous Economy

Statewide Strategy: Regulate the economy to ensure fairness, security and efficiency

Expected Results

The AGO’s Antitrust Division (ANT) enforces antitrust laws, protects consumers from illegal and harmful practices, and ensures a fair, efficient, and competitive marketplace for businesses. ANT enforcement actions prevent monopolies, price-fixing, and illegal mergers, and recover money for injured consumers and state agencies. Through outreach efforts, ANT educates businesses in order to prevent antitrust violations and protects Washington consumers

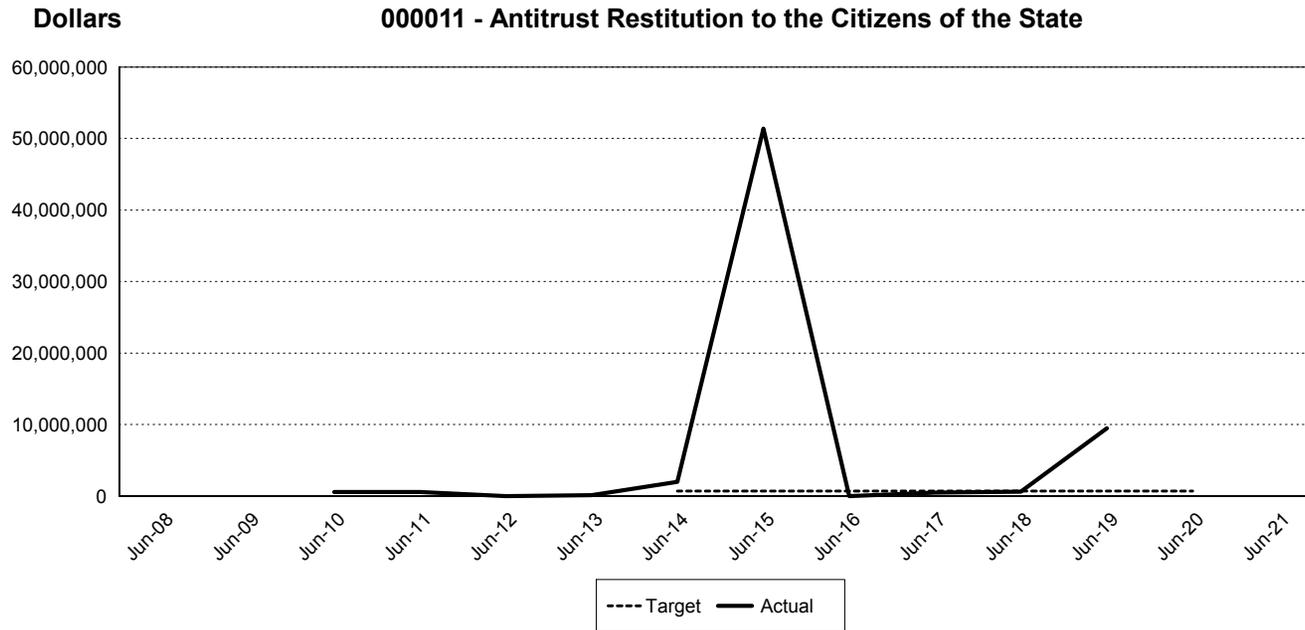
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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

<p>000011 The AGO's Antitrust Division (ANT) enforces antitrust laws, protects consumers from illegal and harmful practices, and ensures a fair, efficient, and competitive marketplace for businesses. Active investigations can result in enforcement actions/litigation that prevent monopolies, price-fixing, and illegal mergers, and recover money for injured consumers and state agencies. Through outreach efforts, ANT educates businesses in order to prevent antitrust violations and protects Washington consumers.</p>			
Biennium	Period	Actual	Target
2019-21	A3		
	A2		\$700,000
2017-19	A3	\$9,491,721	\$700,000
	A2	\$618,719	\$700,000
2015-17	A3	\$490,471	\$700,000
	A2	\$0	\$700,000
<p>Performance Measure Status: Draft</p>			

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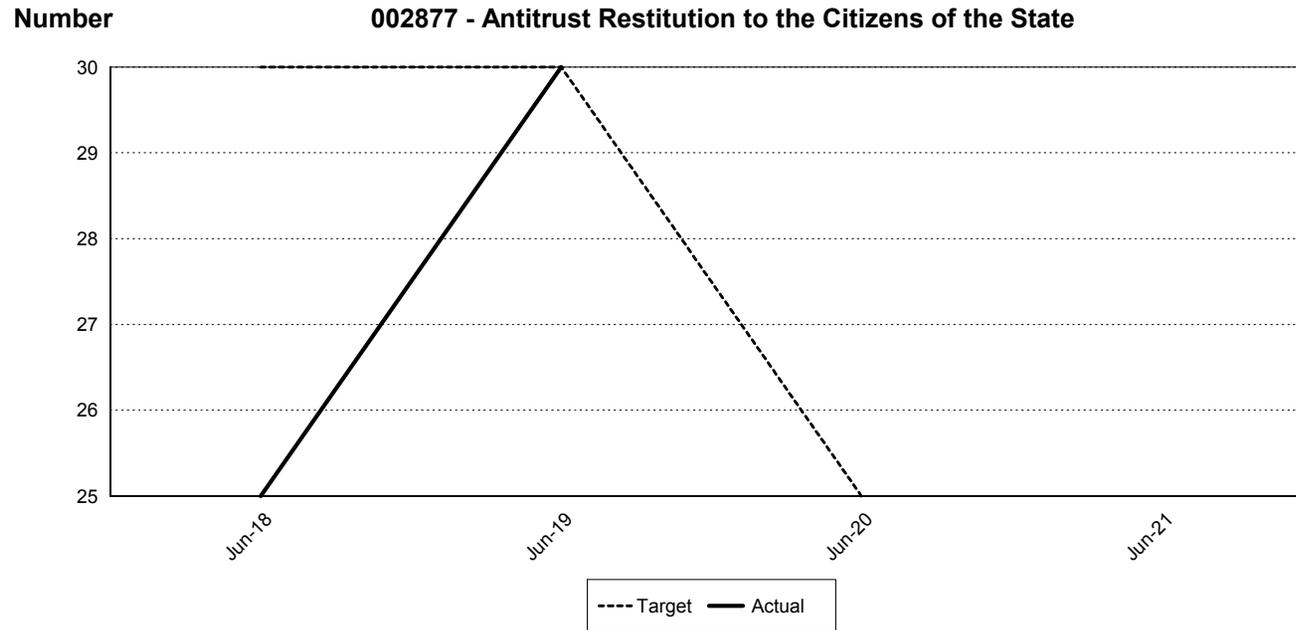
002877 The AGO’s Antitrust Division (ANT) enforces antitrust laws, protects consumers from illegal and harmful practices, and ensures a fair, efficient, and competitive marketplace for businesses. Active investigations can result in enforcement actions/litigation that prevent monopolies, price-fixing, and illegal mergers, and recover money for injured consumers and state agencies. Through outreach efforts, ANT educates businesses in order to prevent antitrust violations and protects Washington consumers.

Biennium	Period	Actual	Target
2019-21	A3		
	A2		25
2017-19	A3	30	30
	A2	25	30

Performance Measure Status: Draft

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity



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A005 Enforcement of Consumer Protection Laws

The AGO’s Consumer Protection Division (CPR) protects Washington consumers from deception, scams, and abusive practices. CPR provides a fair marketplace through vigorous civil law enforcement of the Consumer Protection Act (CPA) including education and outreach to consumers. CPR’s Consumer Resource Center fields calls and complaints from consumers around the state, informally resolving complaints and recovering millions of dollars for consumers. CPR attorneys promote compliance with the CPA by obtaining injunctions and monetary judgments against violators including direct consumer restitution. CPR’s Foreclosure Compliance Program enforces the Foreclosure Fairness Act to help homeowners. CPR also houses the Lemon Law program which promotes timely and effective new motor vehicle warranty service through mandatory arbitration. CPR’s Manufactured House Dispute Resolution Unit fosters compliance with the Manufactured Housing Landlord Tenant Act.

Account	FY 2020	FY 2021	Biennial Total
FTE	135.8	133.3	134.6
17L Foreclosure Fairness Account			
17L-6 Non-Appropriated	\$482	\$492	\$974
001 General Fund - Basic Account			
001-1 State	\$3,988	\$3,543	\$7,531
12F Man/Mobile Home Dispute Resolution			
12F-6 Non-Appropriated	\$1,022	\$948	\$1,970
759 Miscellaneous Program Account			
759-6 Non-Appropriated	\$4,862	\$4,862	\$9,724
154 New Motor Vehicle Arbitration Acct			
154-1 State	\$1,363	\$1,374	\$2,737

Statewide Result Area: Prosperous Economy
Statewide Strategy: Provide consumer protection

Expected Results

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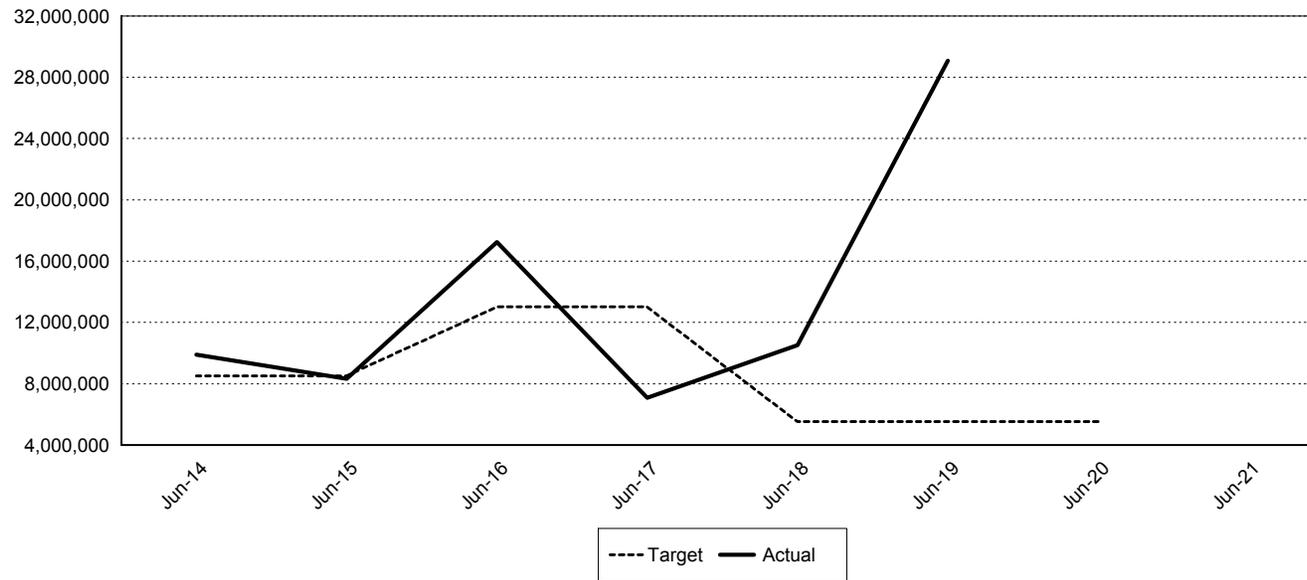
The AGO’s Consumer Protection Division’s (CPR) activities are expected to foster a fair, competitive and non-deceptive marketplace, prevent consumer harm, promote voluntary compliance with economic regulation by businesses, and resolve disputes between buyers and sellers in the marketplace. CPR is expected to recover a portion of operational costs through its litigation activity. CPR is expected to promote timely and effective new motor vehicle warranty service through mandatory arbitration, and foster compliance with the Manufactured Housing Landlord Tenant Act.

002534			
The AGO’s Consumer Protection Division’s (CPR) activities are expected to foster a fair, competitive and non-deceptive marketplace, prevent consumer harm, promote voluntary compliance with economic regulation by businesses, and resolve disputes between buyers and sellers in the marketplace. CPR is expected to recover a portion of operational costs through its litigation activity. CPR is expected to promote timely and effective new motor vehicle warranty service through mandatory arbitration, and foster compliance with the Manufactured Housing Landlord Tenant Act.			
Biennium	Period	Actual	Target
2019-21	A3		
	A2		\$5,500,000
2017-19	A3	\$29,075,298	\$5,500,000
	A2	\$10,517,092	\$5,500,000
2015-17	A3	\$7,085,773	\$13,000,000
	A2	\$17,241,222	\$13,000,000
Performance Measure Status: Draft			

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Dollars 002534 - Direct Restitution Provided to Consumers through Litigation and Complaint Resolution



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A006 Executive Ethics Board

The Executive Ethics Board (EEB) is an independent board with five members appointed by the Governor. The EEB promotes integrity, confidence, and public trust in state government through education, interpretation, and enforcement of the Ethics in compliance with the Public Service Act (Act). The AGO provides staff and administrative support for the EEB. EEB members meet on a regular basis to interpret the Act for all state agencies, provide advice to agencies regarding ethical issues, promulgate rules to implement the Act, and take enforcement action against state employees who violate the Act. EEB staff investigate complaints filed by public employees and citizens, provide ethics training to state agencies, and provide advice regarding ethics in the workplace. Ethics training enables state officers and employees to perform their public responsibilities and conduct the business of the state appropriately.

Account	FY 2020	FY 2021	Biennial Total
FTE	6.2	6.2	6.2
405 Legal Services Revolving Account			
405-1 State	\$1,010	\$1,034	\$2,044

Statewide Result Area: Efficient, Effective and Accountable Government

Statewide Strategy: Support democratic processes and government accountability

Expected Results

The Executive Ethics Board investigates complaints filed by public employees and citizens regarding ethical violations established in the Public Service Act, and prosecutes cases to completion. By completing investigations and resolving cases in a timely manner, state agencies, state employees, and the public are better served, and public trust and confidence in state government increases.

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000018			
The Executive Ethics Board investigates complaints filed by public employees and citizens regarding ethical violations established in the Public Service Act, and prosecutes cases to completion. By completing investigations and resolving cases in a timely manner, state agencies, state employees, and the public are better served, and public trust and confidence in state government increases.			
Biennium	Period	Actual	Target
2019-21	Q8		
	Q7		
	Q6		
	Q5		
	Q4		
	Q3		
	Q2		
	Q1		180
2017-19	Q8	113	180
	Q7	152	180
	Q6	166	180
	Q5	151	180
	Q4	135	180
	Q3	137	180
	Q2	147	180
	Q1	115	180
2015-17	Q8	273	180
	Q7	230	180
	Q6	408	180
	Q5	388	180
	Q4	370	180
	Q3	326	180
	Q2	196	180

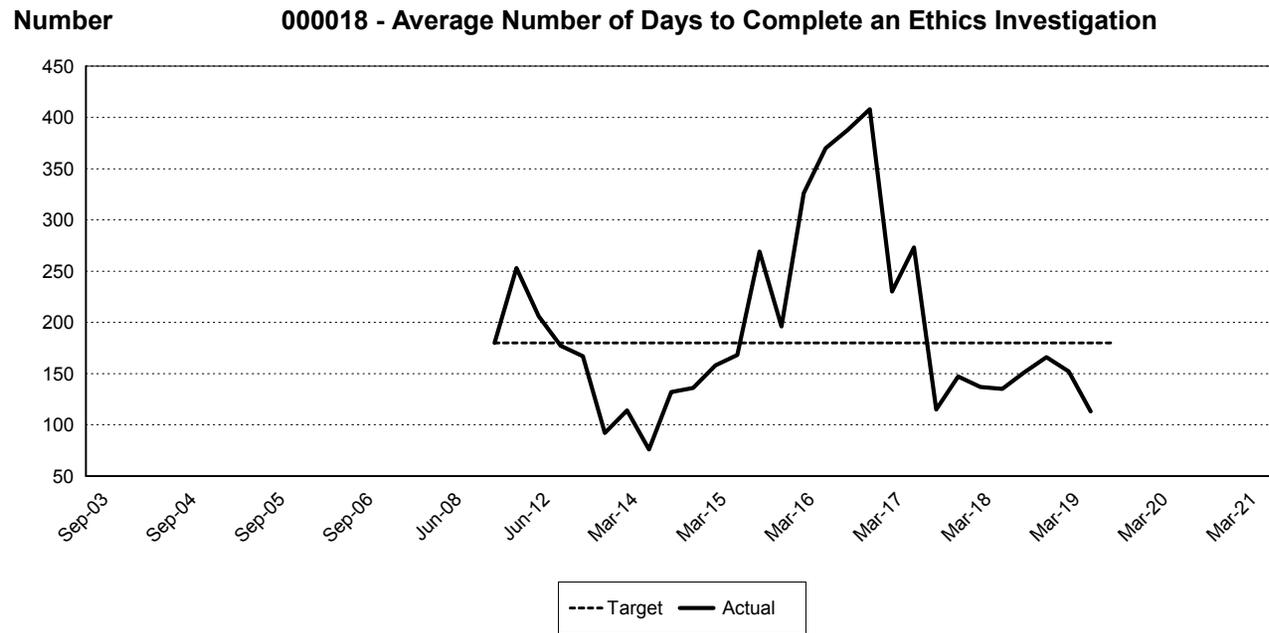
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2015-17	Q1	269	180
Performance Measure Status: Draft			

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity



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A007 Homicide Investigation Tracking System

The Homicide Investigation Tracking System (HITS) system provides assistance to law enforcement by providing them with greater access to information, advice, and assistance resulting in enhanced and speedier investigation of violent crimes. As a result, suspects are pursued more quickly leading to better public protections.

Account	FY 2020	FY 2021	Biennial Total
FTE	9.0	15.0	12.0
001 General Fund - Basic Account			
001-1 State	\$1,299	\$2,199	\$3,498
489 Pension Funding Stabilization Acct			
489-1 State	\$116	\$119	\$235

Statewide Result Area: Healthy and Safe Communities

Statewide Strategy: Enforce the law

Expected Results

Homicide Investigation Tracking System (HITS) investigators and its data warehouse provide resources to local, state, and federal law enforcement agencies by giving them access to violent crime data and analyses across jurisdictions. The HITS unit provides law enforcement analysis of crime data related to murder, rape, and other serious offenses. The usefulness of the HITS system is directly affected by the quality and quantity of crime data entered into the system, and HITS investigators work closely with law enforcement to ensure all information is correctly captured. HITS provides direct investigative assistance, including case reviews and search results, to law enforcement agencies upon their request. As a result, violent offenders are identified and apprehended improving public safety and preventing crime.

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

000021 Homicide Investigation Tracking System (HITS) investigators and its data warehouse provide resources to local, state, and federal law enforcement agencies by giving them access to violent crime data and analyses across jurisdictions. The HITS unit provides law enforcement analysis of crime data related to murder, rape, and other serious offenses. The usefulness of the HITS system is directly affected by the quality and quantity of crime data entered into the system. HITS investigators work closely with law enforcement to ensure all information is correctly captured. HITS provides direct investigative assistance that includes case reviews and search results to law enforcement agencies upon their request. As a result, violent offenders are identified and apprehended improving public safety and preventing crime.

Biennium	Period	Actual	Target
2019-21	Q8		
	Q7		
	Q6		
	Q5		
	Q4		
	Q3		
	Q2		
	Q1		253
2017-19	Q8	207	253
	Q7	193	253
	Q6	225	253
	Q5	199	253
	Q4	219	253
	Q3	235	253
	Q2	215	253
	Q1	164	253
2015-17	Q8	235	253
	Q7	248	253
	Q6	252	253
	Q5	290	253

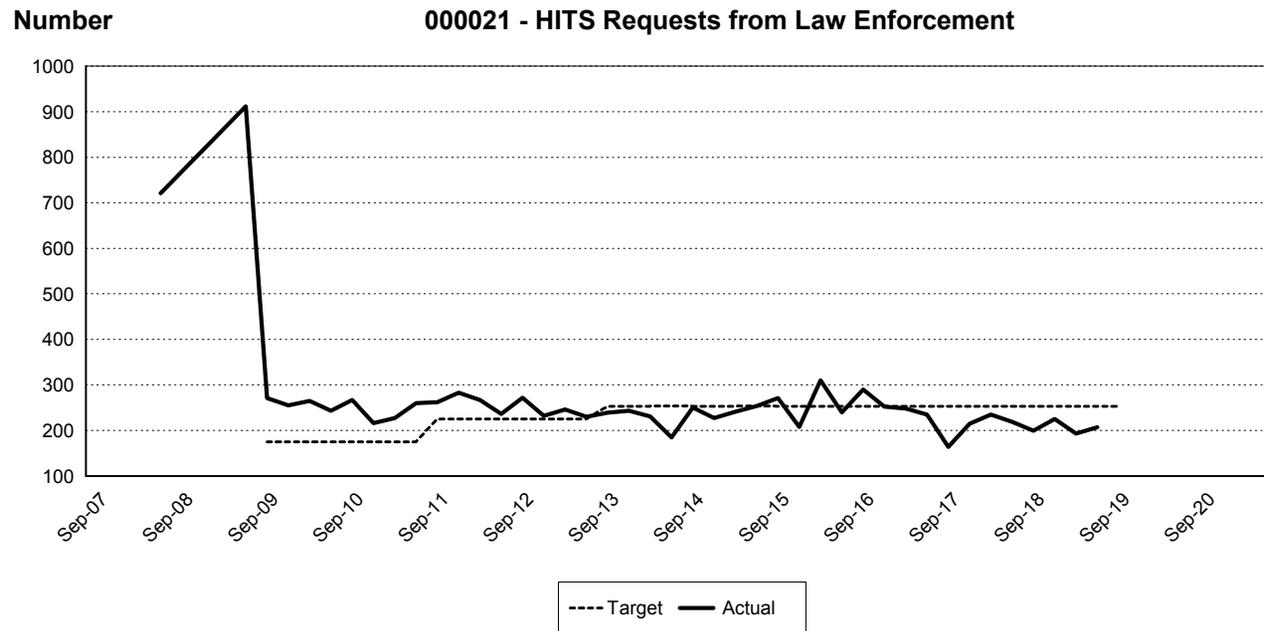
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2015-17	Q4	240	253
	Q3	310	253
	Q2	208	253
	Q1	271	253
Performance Measure Status: Draft			

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A008 Investigation and Defense of Tort Lawsuits

The AGO’s Torts Division protects taxpayers by providing high quality and effective legal defense to the state in tort claims and lawsuits. Torts improves government efficiency by measuring the speed with which lawsuits resolve, and measuring success in resolving cases through early resolution. Torts also tracks “zero-payout cases” and appellate outcomes. Torts maintains a high rate of case appeal litigation success.

Account	FY 2020	FY 2021	Biennial Total
FTE	0.1	0.1	0.1

Statewide Result Area: Efficient, Effective and Accountable Government

Statewide Strategy: Provide data, information, and analysis to support decision-making

Expected Results

The AGO’s Torts Division protects taxpayers by vigorously defending tort claims and lawsuits against the state, state agencies, boards, commissions, and officers and employees acting within the scope of their employment. Torts consists of experienced litigators and trained legal professionals who provide high quality and efficient legal services to the state. Torts promotes government efficiency by employing concerted efforts to resolve claims and lawsuits at the earliest possible stages through the early resolution program, motions practice, direct negotiation and mediated settlement. Torts maintains a high rate of litigation success with many lawsuits dismissed with zero payout. Torts also maintains a high rate of case appeal litigation success.

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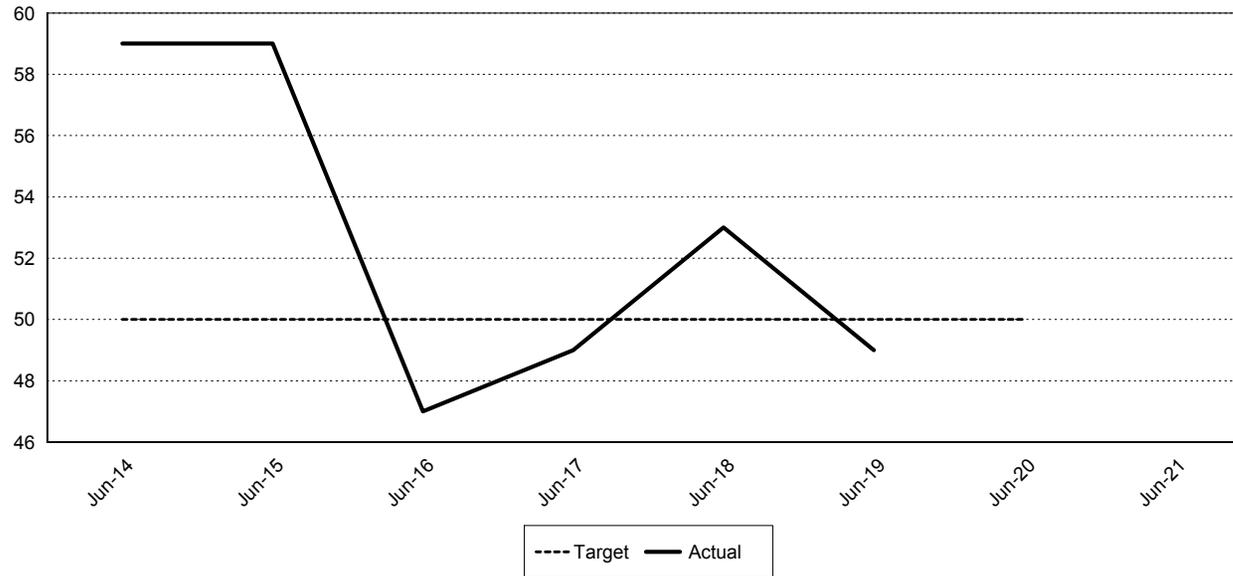
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002537			
<p>The AGO's Torts Division protects taxpayers by vigorously defending tort claims and lawsuits against the state, state agencies, boards, commissions, and officers and employees acting within the scope of their employment. The AGO Torts Division consists of experienced litigators and trained legal professionals who provide high quality and efficient legal services to the state. The provided legal services promotes government efficiency by employing concerted efforts to resolve claims and lawsuits at the earliest possible stages through the early resolution program, motions practice, direct negotiation and mediated settlement. The AGO Torts Division maintains a high rate of litigation success (including case appeal litigation) with many lawsuits dismissed with zero payout.</p>			
Biennium	Period	Actual	Target
2019-21	A3		
	A2		50%
2017-19	A3	49%	50%
	A2	53%	50%
2015-17	A3	49%	50%
	A2	47%	50%
Performance Measure Status: Draft			

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

Percent 002537 - Percentage of Tort Claims that Result in Zero Payout



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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse

The Medicaid Fraud Control Unit (MFCU) is federally mandated and 75% federally funded for this investigative and prosecutorial unit staffed by Attorneys, Auditors, Investigators, Paralegals and support personnel. MFCU’s mission is to protect patients and taxpayers through civil (including qui tam action) and criminal law enforcement. MFCU investigates and prosecutes fraud by health care providers that illegally divert Medicaid funds. These enforcement efforts curtail and deter similar criminal activity and lead to recoveries for the state and federal government. MFCU also prosecutes the abuse and neglect of residents in Medicaid-funded facilities. MFCU provides valuable assistance to local law enforcement in investigating and prosecuting crimes committed against vulnerable adults. MFCU helps coordinate the efforts of local vulnerable adult task forces, enforces the law, holds criminals accountable, increases public safety, deters fraud, and recovers money for the state. The addition of the Medicaid False Claims Act (FCA) in 2012 allows whistleblower qui tam actions. This increases MFCU’s capacity to aggressively combat fraud through civil and criminal means, benefits our state by expanding the AGO’s capacity to address fraud, neglect and abuse. This is essential as more Washingtonians become eligible for Medicaid under the Affordable Care Act, and as more people are entering the long-term care system.

Account	FY 2020	FY 2021	Biennial Total
FTE	94.7	95.7	95.2
001 General Fund - Basic Account			
001-2 Federal	\$10,646	\$11,720	\$22,366
19A Medicaid Fraud Penalty Account			
19A-1 State	\$4,235	\$4,520	\$8,755

Statewide Result Area: **Healthy and Safe Communities**

Statewide Strategy: **Provide access to health care**

Expected Results

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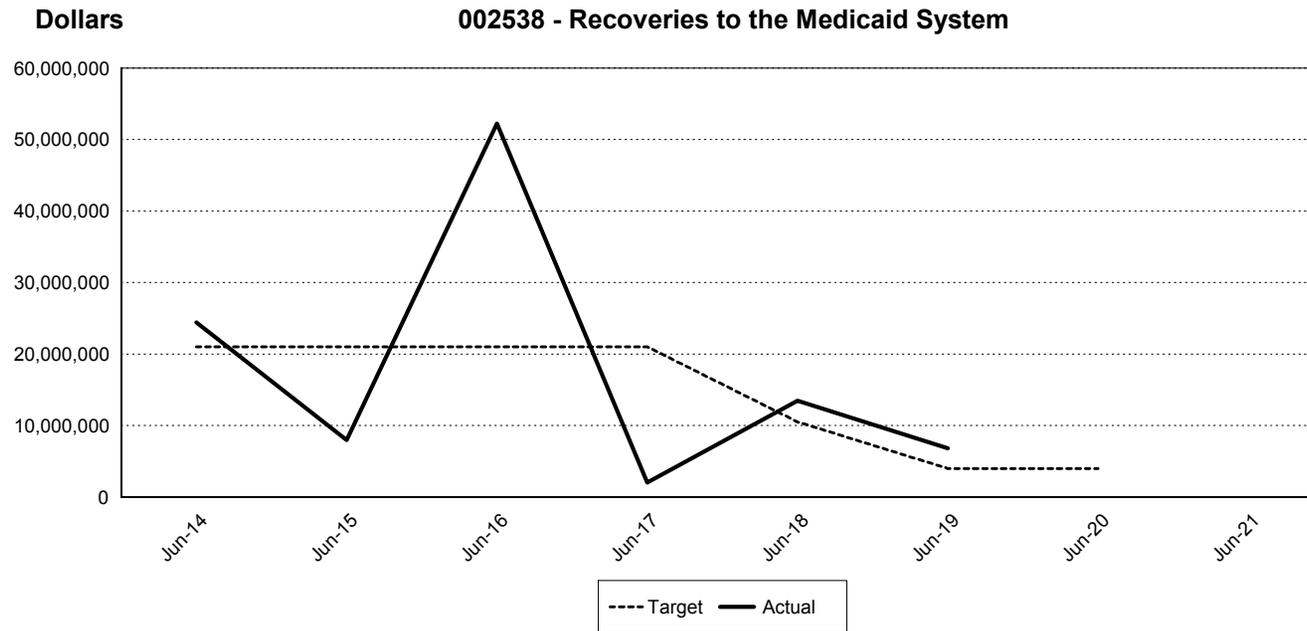
Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

Medicaid funds are returned to the State through appropriation to combat fraud, provide Medicaid services, and monitor prescription drug abuse. The 2012 legislature created the False Claims Act (FCA) and the Medicaid Penalty Account (MPA) which is the state funding source for the AGO’s Medicaid Fraud Control Unit (MFCU), and for the Medicaid program integrity responsibilities managed by the Washington State Health Care Authority. Through MFCU’s civil efforts, recovered money that was illegally obtained in violation of either the federal or state FCA is returned to the State and placed into the MPA. This includes restitution, interest and penalties. The 2013 legislature authorized the Prescription Drug Monitoring Program, also funded from the MPA. Through MFCU’s criminal and non-false claims act civil efforts, additional money is returned to the State. These cases generally contain a restitution portion, and have generated interest. In these cases, the restitution recoveries are returned directly to the Medicaid program and not to the MPA. Any interest earned and recovered goes to the State General Fund.

002538			
<p>State share of Medicaid recoveries is utilized to combat fraud, provide Medicaid services, and monitor prescription drug abuse. The 2012 legislature created the FCA and the MPA. These acts create the state funding source for the AGO’s MFCU, and for the Medicaid program integrity responsibilities managed by the HCA. MFCU’s civil efforts recovered money that was illegally obtained in violation of either the federal or state FCA is returned to the State and placed into the MPA. Recovered money includes restitution, interest and penalties. The 2013 legislature authorized the Prescription Drug Monitoring Program that is also funded from the MPA. Through MFCU’s criminal and non-false claims act civil efforts, additional money is returned to the State. These cases generally contain a restitution portion and an interest portion. Recoveries are returned directly to the Medicaid program and not to the MPA. The associated interest goes to GF-S.</p>			
Biennium	Period	Actual	Target
2019-21	A3		
	A2		\$4,000,000
2017-19	A3	\$6,848,253	\$4,000,000
	A2	\$13,469,568	\$10,500,000
2015-17	A3	\$2,027,233	\$21,000,000
	A2	\$52,231,255	\$21,000,000
Performance Measure Status: Draft			

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity



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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

A010 Legal Services to State Agencies

By providing high quality legal assistance and representation to Washington’s state agencies, boards, and commissions, the AGO improves government services, increases government efficiency, and prevents costly lawsuits. The legal services provided by the AGO saves taxpayer dollars, promotes the public interest, and ensures agencies are able to fulfill their essential missions. The AGO offers excellent, option-based legal advice to help the state promote the public good. In the litigation context, the AGO initiates, defends, and resolves cases effectively and efficiently for the benefit of the state, its agencies, and its citizens.

Account	FY 2020	FY 2021	Biennial Total
FTE	1,970.7	1,987.7	1,979.2
001 General Fund - Basic Account			
001-1 State	\$1,521	\$1,597	\$3,118
405 Legal Services Revolving Account			
405-1 State	\$249,807	\$262,028	\$511,835
489 Pension Funding Stabilization Acct			
489-1 State	\$133	\$132	\$265
828 Tobacco Prevention/Control Account			
828-1 State	\$258	\$260	\$518

Statewide Result Area: Efficient, Effective and Accountable Government

Statewide Strategy: Provide data, information, and analysis to support decision-making

Expected Results

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

The AGO provides legal advice and representation to nearly 200 state agencies, boards, and commissions and sustains about 25,000 open cases at all times. As legal counsel for the state, the AGO represents the state in litigation, and provides legal advice on personnel, contracts, public records, specialized program advice, and risk management. Program responsibilities supported by the AGO include state and federal benefit programs administered by state agencies, licensing and regulatory programs, agency custodial programs, higher education institutions, natural resources programs, capital construction and equipment acquisitions, state agency revenue and collection programs, and economic development and enterprise activities. The AGO protects taxpayer dollars by providing sound legal advice and risk management services to clients thus avoiding costly lawsuits. The AGO assists agencies with civil enforcement efforts – for example, working with the Department of Ecology to hold polluters accountable, the Department of Labor and Industries to promote fair labor practices, and Department of Social Health and Services to protect children and other vulnerable populations from abuse and neglect.

002539

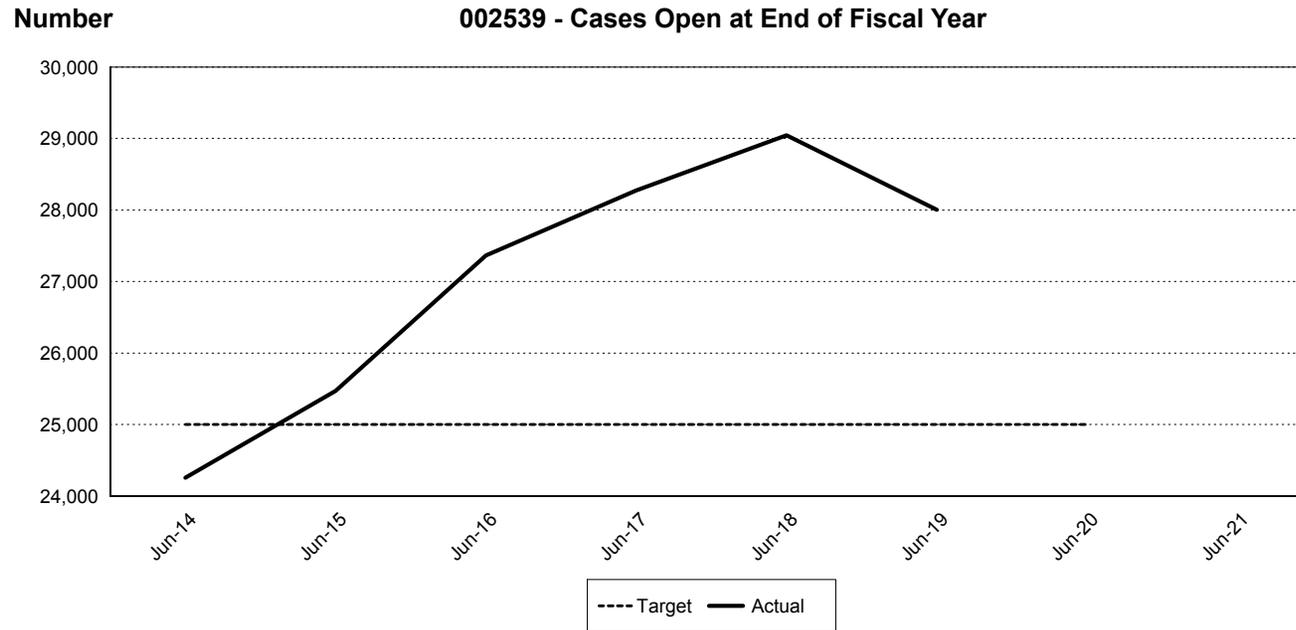
The AGO provides legal representation to state agencies, boards, and commissions and sustains about 25,000 open cases at all times. The AGO represents the state in litigation and provides advice on personnel, contracts, public records, specialized program advice, and risk management. Program responsibilities include state and federal benefit programs administered by state agencies, licensing and regulatory programs, agency custodial programs, higher education, natural resources programs, capital construction and equipment acquisitions, state agency revenue and collection programs, and economic development and enterprise activities. The AGO protects taxpayer dollars by providing sound legal advice and risk management services to clients avoiding costly lawsuits. AGO assists agencies with civil enforcement efforts – working with ECY to hold polluters accountable, L&I to promote fair labor practices, DSHS to protect children and other vulnerable populations from abuse and neglect.

Biennium	Period	Actual	Target
2019-21	A3		
	A2		25,000
2017-19	A3	28,002	25,000
	A2	29,045	25,000
2015-17	A3	28,275	25,000
	A2	27,364	25,000

Performance Measure Status: Draft

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity



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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

A011 Representing Ratepayers

The AGO’s Public Counsel Unit (PCU) represents residential and small business customers (ratepayers) of electric, natural gas, and telecommunications utilities regulated by the Washington Utilities & Transportation Commission (UTC). PCU advocates on behalf of customers in UTC cases involving utility rates, mergers, energy efficiency programs, service quality, and other policy matters. PCU investigates company requests and retains experts to analyze areas such as accounting, economics, finance, engineering, rate spread/rate design, and service quality. In a rate case or merger evidentiary hearings, PCU will cross-examine other parties’ expert witnesses, present its own witnesses, and file legal briefs. In addition to participating as a statutory party in major rate and merger cases, PCU may also present policy recommendations in UTC rulemakings or at bi-weekly UTC business meetings. PCU participates in technical policy and advisory groups, and may provide information to the Legislature and other policymakers.

Account	FY 2020	FY 2021	Biennial Total
FTE	16.6	16.6	16.6
111 Public Service Revolving Account			
111-1 State	\$3,376	\$3,306	\$6,682

Statewide Result Area: Prosperous Economy
Statewide Strategy: Provide consumer protection

Expected Results

The AGO’s Public Counsel Unit (PCU) protects consumers and businesses by advocating fair, just, reasonable, and sufficient utility rates, and by ensuring that customers pay only for reasonable and cost-effective programs. PCU’s efforts have helped save consumers nearly \$100 million over the past four years and will continue to save Washingtonians money on utility rates.

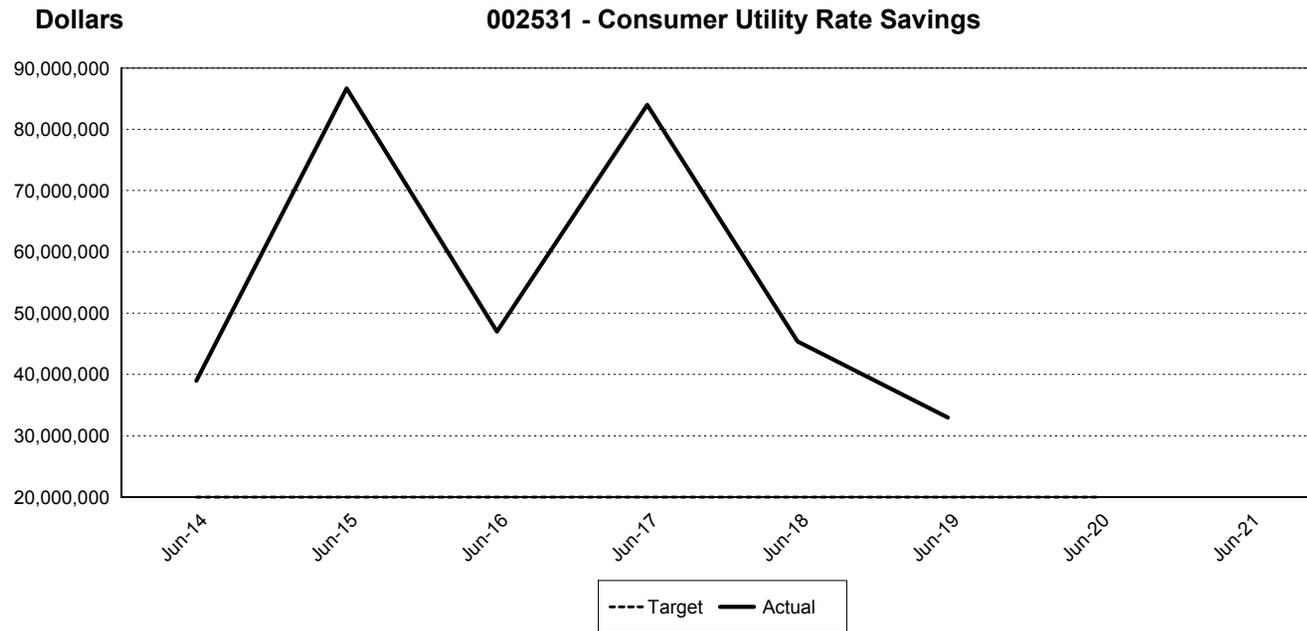
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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

002531			
The AGO's Public Counsel Unit (PCU) protects consumers and businesses by advocating fair, just, reasonable, and sufficient utility rates, and by ensuring that customers pay only for reasonable and cost-effective programs. PCU's efforts have helped save consumers nearly \$150 million over the past four years and will continue to save Washingtonians money on utility rates.			
Biennium	Period	Actual	Target
2019-21	A3		
	A2		\$20,000,000
2017-19	A3	\$33,000,000	\$20,000,000
	A2	\$45,400,000	\$20,000,000
2015-17	A3	\$84,000,000	\$20,000,000
	A2	\$47,000,000	\$20,000,000
Performance Measure Status: Draft			

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity



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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

A012 Victims Advocacy

The Washington Coalition of Crime Victim Advocates (WCCVA) provides training, certification and support to community-based victim service organizations. This training provides an overview of victim rights and the mandated pre-service core training for crime victim advocates before working professionally with victims of crime in Washington State. In addition, by maintaining web-based resources and ensuring the availability of an electronic distribution list for relevant crime victim advocacy issues and victim rights, WCCVA educates advocates, victims and the community relating to their rights and available services. WCCVA works to educate the public of the impact of crime to individuals and society in order to deter crimes and improve public and private efforts to prevent crimes.

Account	FY 2020	FY 2021	Biennial Total
19P Child Rescue Fund			
19P-1 State	\$500	\$500	\$1,000
001 General Fund - Basic Account			
001-1 State	\$803	\$841	\$1,644
489 Pension Funding Stabilization Acct			
489-1 State	\$74	\$73	\$147

Statewide Result Area: Healthy and Safe Communities

Statewide Strategy: Protect and support victims of crime

Expected Results

The AGO will support those who provide direct services to victims of crime, increase quality services for victims of crime in Washington State, protect victims' rights, enhance public awareness, and provide crime specific education opportunities for communities throughout our state. Consequently, Washingtonians will utilize the services necessary for recovery and lessen their chances for repeated victimization. Victims and victims' advocates will receive the support and services they need.

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Appropriation Period: 2019-21 Activity Version: 2020 - 2020 Supplemental Budget Request Sort By: Activity

Grand Total

	FY 2020	FY 2021	Biennial Total
FTE's	2,436.9	2,467.1	2,452.0
GFS	\$25,437	\$27,674	\$53,111
Other	\$298,217	\$314,692	\$612,909
Total	\$323,654	\$342,366	\$666,020

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

Activity:

CB	T0PL	No measures linked to activity
CB	T0PL	No measures linked to decision package
ML	03	No measures linked to activity
ML	04	No measures linked to activity
ML	05	No measures linked to activity
ML	07	No measures linked to activity
ML	11	No measures linked to activity
ML	12	No measures linked to activity
ML	13	No measures linked to activity
ML	15	No measures linked to activity
PL	01	No measures linked to activity
PL	02	No measures linked to activity
PL	08	No measures linked to activity
PL	08	No measures linked to activity
PL	09	No measures linked to decision package
PL	10	No measures linked to activity
PL	14	No measures linked to activity

Outcome Measures 000018 Average Number of Days to Complete an Ethics Investigation

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services. .

Outcome Measures 000021 HITS Requests from Law Enforcement

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0

AGO Strategic Plan: Goal 1: Serve the state – Deliver high quality, timely, and efficient legal services. Goal 2: Serve the State – Improve internal efficiency and effectiveness through the use of technology solutions and data.

Outcome Measures 002531 Consumer Utility Rate Savings

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

AGO Strategic Plan: Protect the People, Goal 4: protect WASHINGTON CONSUMERS. 2-4-3: Protect Washington Ratepayers.

Outcome Measures 002535 Total Successful Commitments

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 1: DEFEND CIVIL RIGHTS AND STAND UP FOR VULNERABLE WASHINGTONIANS. 2-1-4: Protect sexually exploited youth and pursue civil commitment of sexually violent predators.

Outcome Measures 002538 Recoveries to the Medicaid System

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: Protect All Washington Consumers. 2-4-2: Combat health care fraud.

Outcome Measures 002539 Cases Open at End of Fiscal Year

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
ML	03	Tobacco Diligent Enforcement	0	0	0	0
ML	04	Pressure Vapor Limits Legal Defense	0	0	0	0
ML	05	USDOE Hanford Litigation	0	0	0	0
ML	07	Wolf v. SBCTC/State of Washington	0	0	0	0
ML	11	UW Legal Services	0	0	0	0
ML	12	Corrections Legal Services	0	0	0	0
ML	13	WDFW Legal Support	0	0	0	0
ML	15	AGO Technical Corrections	0	0	0	0
PL	01	Child Permanency and Child Welfare	0	0	0	0
PL	09	Eastern State Hospital Legal Svcs	0	0	0	0
PL	10	L&I Employment Standards	0	0	0	0

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

PL	14	Discovery and Litigation Tools	0	0	0	0
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AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Outcome Measures 002877 Antitrust Restitution to the Citizens of the State

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: PROTECT WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 000011 Antitrust Restitution to the Citizens of the State

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: PROTECT WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 002534 Direct Restitution Provided to Consumers through Litigation and Complaint Resolution

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: AGO Strategic Plan: Protect the People – Goal 4: PROTECT ALL WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 002536 Criminal Cases Closed

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Output Measures 002537 Percentage of Tort Claims that Result in Zero Payout

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0%	0%	0%	0%

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

AGO Strategic Plan: Serve the State – Goal 3 Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public. 1-3-3 Play a statewide leadership role in risk management.

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

Activity: A001 Administration

ML 9Z
PL 08

No measures linked to decision package
No measures linked to decision package

Outcome Measures 000018 Average Number of Days to Complete an Ethics Investigation

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services. .

Outcome Measures 002531 Consumer Utility Rate Savings

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People, Goal 4: protect WASHINGTON CONSUMERS. 2-4-3: Protect Washington Ratepayers.

Outcome Measures 002535 Total Successful Commitments

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 1: DEFEND CIVIL RIGHTS AND STAND UP FOR VULNERABLE WASHINGTONIANS. 2-1-4: Protect sexually exploited youth and pursue civil commitment of sexually violent predators.

Outcome Measures 002538 Recoveries to the Medicaid System

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: Protect All Washington Consumers. 2-4-2: Combat health care fraud.

Outcome Measures 002539 Cases Open at End of Fiscal Year

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
ML	03	Tobacco Diligent Enforcement	0	0	0	0

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

PL	14	Discovery and Litigation Tools	0	0	0	0
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AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Outcome Measures 002877 Antitrust Restitution to the Citizens of the State

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: PROTECT WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 000011 Antitrust Restitution to the Citizens of the State

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Protect the People – Goal 4: PROTECT WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 002534 Direct Restitution Provided to Consumers through Litigation and Complaint Resolution

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: AGO Strategic Plan: Protect the People – Goal 4: PROTECT ALL WASHINGTON CONSUMERS. 2-4-1: Enforce the laws that protect consumers and improve consumer awareness.

Output Measures 002536 Criminal Cases Closed

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Output Measures 002537 Percentage of Tort Claims that Result in Zero Payout

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	14	Discovery and Litigation Tools	0%	0%	0%	0%

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

AGO Strategic Plan: Serve the State – Goal 3 Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public. 1-3-3 Play a statewide leadership role in risk management.

Activity: A002 Civil Commitment of Sexually Violent Predators

ML 9Z

No measures linked to decision package

Activity: A003 Criminal Investigation and Prosecution

ML 9Z

No measures linked to decision package

Outcome Measures 000021 HITS Requests from Law Enforcement

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0

AGO Strategic Plan: Goal 1: Serve the state – Deliver high quality, timely, and efficient legal services. Goal 2: Serve the State – Improve internal efficiency and effectiveness through the use of technology solutions and data.

Output Measures 002536 Criminal Cases Closed

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Activity: A004 Enforcement of Anti-Trust Laws

ML 9Z

No measures linked to decision package

Activity: A005 Enforcement of Consumer Protection Laws

ML 9Z

No measures linked to decision package

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

Activity: A006 Executive Ethics Board

ML 9Z

No measures linked to decision package

Activity: A007 Homicide Investigation Tracking System

ML 9Z

No measures linked to decision package

Outcome Measures 000021 HITS Requests from Law Enforcement

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0

AGO Strategic Plan: Goal 1: Serve the state – Deliver high quality, timely, and efficient legal services. Goal 2: Serve the State – Improve internal efficiency and effectiveness through the use of technology solutions and data.

Output Measures 002536 Criminal Cases Closed

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
PL	02	Cold Case Unit & HITS Restoration	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Activity: A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse

ML 9Z

No measures linked to decision package

Performance Measure Incremental Estimates

Agency: 100 Office of Attorney General

Session: 2020 Supp

Activity: A010 Legal Services to State Agencies

ML 9Z

No measures linked to decision package

Outcome Measures 002539 Cases Open at End of Fiscal Year

			<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
ML	04	Pressure Vapor Limits Legal Defense	0	0	0	0
ML	05	USDOE Hanford Litigation	0	0	0	0
ML	07	Wolf v. SBCTC/State of Washington	0	0	0	0
ML	11	UW Legal Services	0	0	0	0
ML	12	Corrections Legal Services	0	0	0	0
ML	13	WDFW Legal Support	0	0	0	0
ML	15	AGO Technical Corrections	0	0	0	0
PL	01	Child Permanency and Child Welfare	0	0	0	0
PL	09	Eastern State Hospital Legal Svcs	0	0	0	0
PL	10	L&I Employment Standards	0	0	0	0

AGO Strategic Plan: Serve the State – Goal 1: Deliver high quality, timely and efficient legal services.

Activity: A011 Representing Ratepayers

ML 9Z

No measures linked to decision package

Activity: A012 Victims Advocacy

ML 9Z

No measures linked to activity

ML 9Z

No measures linked to decision package



OFFICE OF THE ATTORNEY GENERAL STRATEGIC PLAN

FY 2019 – 2021

Attorney General Bob Ferguson

Our Guiding Principles

All of the work that we do is guided by our shared mission, our vision for what we strive to become, and the collective values we practice every day. The priorities, goals, and objectives established in this Strategic Plan describe how we plan to further our mission, vision, and values in the current biennium.

MISSION

The Office of the Attorney General will provide excellent, independent, and ethical legal services to the State of Washington and protect the rights of its people.

VISION

The Office of the Attorney General will be the best public law office in the United States.

VALUES

All staff in the Office of the Attorney General are guided by the following core values:

1. We will deliver high quality legal services and remember that we serve the people of Washington.
2. We will conduct ourselves with integrity, professionalism, civility, and transparency.
3. We will promote a collegial, diverse, and inclusive workplace that values, respects, and supports our employees.

OVERVIEW: STRATEGIC PRIORITIES AND GOALS

A Culture of Service

The Attorney General's Office has three strategic priorities in the advancement of our mission to provide excellent, independent, and ethical legal services to the State of Washington and protect the rights of its people.

SERVE THE STATE

Provide excellent, independent, and ethical legal advice and representation to our client, the State of Washington.

PROTECT THE PEOPLE

Protect the legal rights of the people of the State of Washington.

EMPOWER OUR EMPLOYEES

Create a positive work environment that recognizes employees as our most valuable resource and fosters integrity, professionalism, civility, and transparency.



OVERVIEW: STRATEGIC PRIORITIES AND GOALS

FY 2019-21 Goals

To meet our three strategic priorities, we established the following goals for the FY 2019-21 biennium. Within each of these goals, we adopted strategic objectives – the specific actions that we will undertake at the agency level to help us meet our goals. These objectives are laid out in detail in the following sections. Cascading down from this agency-wide plan will be individual measures developed by each AGO division. For those objectives that fall within the scope of their operations and work, the divisions will identify deliverables, indicators and the title or name of the person responsible for ensuring the execution of the objective.

SERVE THE STATE

Provide excellent, independent, and ethical legal advice and representation to our client, the State of Washington.

FY 2019-21 Goals:

1. Deliver high quality, timely, and efficient legal services.
2. Improve internal efficiency and effectiveness through the use of technology solutions and data.
3. Proactively engage in risk management efforts to reduce the state's liability and improve outcomes for the public.
4. Protect and enhance the financial health and resources of the Office of the Attorney General including optimizing fund utilization and management.

PROTECT THE PEOPLE

Protect the legal rights of the people of the State of Washington.

FY 2019-21 Goals:

1. Defend civil rights and stand up for vulnerable Washingtonians.
2. Protect Washington's environment and public health.
3. Promote good government.
4. Protect all Washington consumers.

OVERVIEW: STRATEGIC PRIORITIES AND GOALS

EMPOWER OUR EMPLOYEES

Create a positive work environment that recognizes employees as its most valuable resource and fosters integrity, professionalism, civility, and transparency.

FY 2019-21 Goals:

1. Enhance our commitment to being an employer of choice by recognizing, celebrating, and empowering AGO employees.
2. Promote diversity, inclusiveness, and equity throughout the organization to recruit and retain a high quality, highly skilled, and highly effective workforce.
3. Ensure employees have the skills and knowledge they need to be successful.
4. Ensure employees have the tools and work space they need to be efficient and effective.
5. Promote the health, safety, and well-being of all employees in the workplace.

FY 2019-21 Strategic Objectives

SERVE THE STATE

Provide excellent, independent, and ethical legal advice and representation to our client, the State of Washington.

GOAL 1: DELIVER HIGH QUALITY, TIMELY, AND EFFICIENT LEGAL SERVICES.

1-1-1 Develop and implement a plan to improve client service based on client feedback.

The Administration Division will conduct a client satisfaction survey. The results of this survey will be compared with prior survey results to identify trends and areas of improvement. Divisions will determine if there are supplemental means to gather additional client feedback. Based on the results of the survey and other feedback, divisions will develop and implement a plan to improve client services. Each division will share their survey results with division personnel, so that staff understands the feedback received and can provide input on improvements.

1-1-2 Maintain a current list of AGO subject matter experts.

Ensure that subject matter experts are identified, by area of expertise, in the Client Assignment Directory on Inside AGO to facilitate the ability of AGO users to identify AGO experts. Update no less than twice each year.

1-1-3 Promote cross-divisional consistency and collaboration.

Take steps to identify and elevate issues that are emerging in multiple divisions across the AGO, and to make formal and informal connections to ensure that the work benefits from cross-division collaboration and conversation.

1-1-4 Coordinate tribal law issues and promote tribal law training.

Consolidate tribal law resources across the AGO and ensure their broad accessibility across the office. Continue to promote tribal law trainings, including those sponsored internally, by the Governor's Office of Indian Affairs and other entities.

SERVE THE STATE

GOAL 2: IMPROVE INTERNAL EFFICIENCY AND EFFECTIVENESS

1-2-1 Use data in assessment and decision-making.

Review, and where appropriate improve, current data collection and use data to effectively assess how well we are meeting our strategic priorities, identify trends, and support decision-making.

1-2-2 Adjust existing software and processes to improve effectiveness and efficiency.

Implement collaborative, cloud-based litigation software platforms such as EverLaw to support and scale to clients' expanding discovery needs. Explore options to upgrade and improve systems such as the current matter management system, CCTNs, scheduling requests, and Office 365.

1-2-3 Share resources across the agency.

To improve our legal services, ensure the AGO remains flexible to shift personnel in response to emergent events and evolving AGO priorities, as well as sharing key resources, such as division policies and COOPs.

GOAL 3: PROACTIVELY ENGAGE IN RISK MANAGEMENT EFFORTS

1-3-1 Continue compliance with public records and open public meetings laws.

Work in collaboration with Public Records Counsel to ensure the provision of uniform advice and compliance with legal requirements and best practices with respect to Public Records. Work in collaboration with the Agency Law Forum leaders with respect to best practices on open meetings.

1-3-2 Develop and implement a plan to strengthen protection of confidential data.

Utilize the survey tool/checklist created by the Administration Division to ensure uniform protection of confidential data across the AGO and implementation of best practices.

1-3-3 Play a statewide leadership role in risk management.

Work with state agency clients and coordinate across divisions to identify and assess sources of potential risk and develop solutions to reduce and manage risk across state government.

1-3-4 Protect data security.

To safeguard sensitive data stored on AGO electronic systems, provide regular IT security training and awareness tools, implement multi-factor authentication in applications with sensitive data, and implement seamless Single Sign-on technologies where possible.

SERVE THE STATE

GOAL 4: PROTECT THE FINANCIAL RESOURCES OF THE AGO.

1-4-1 Enhance and maintain a high level of financial integrity and quality.

Provide timely and accurate financial information that meets the needs of the AGO and the State while fulfilling or exceeding accepted standards. Improve processes including further developing and documenting internal financial controls, benchmarks, tools and policies. Be transparent with and provide outreach to vendors, stakeholders, customers and clients.

1-4-2 Proactively manage AGO and division budgets.

Fully and responsibly utilize AGO and division resources. Increase the focus on strategic budgeting to better project expenditure levels, agency resource needs, and anticipate the impacts of future events on current and proposed programs and budgets.

1-4-3 Support high quality fiscal decision making.

Gather financial and other data and make it available and accessible. Analyze, interpret and present the information to enable informed and well-reasoned decisions at the division and agency level. Automate and create visual tools so that all divisions can easily track and understand relevant data and respond to changing resources and needs.

1-4-4 Continue to focus on contract and procurement compliance.

Centralize agency grant, contract, and procurement activities to maximize financial and operational performance and minimize risk, in order to ensure compliance with policies and regulations. Improve processes including further developing and documenting procedures and policies for use of Special Assistant Attorneys General and all other agency grants and contracts with an emphasis on ensuring compliance.

1-4-5 Maintain and enhance positive relationships with client agencies, the Governor, OFM, and the legislature.

Coordinate with client agencies and other stakeholders on the potential impacts of proposed initiatives and legislation. Provide timely and accurate fiscal information to the Governor, OFM, legislators, client agencies, and other stakeholders as appropriate.

PROTECT THE PEOPLE

FY 2019-21 Strategic Objectives

PROTECT THE PEOPLE

Protect the legal rights of the people of the State of Washington.

GOAL 1: DEFEND CIVIL RIGHTS AND STAND UP FOR VULNERABLE WASHINGTONIANS

2-1-1 Strengthen the protection of civil rights through enforcement and outreach.

Use AGO resources and authority to protect the constitutional and statutory rights of Washingtonians, including the civil rights granted by federal and state law.

2-1-2 Protect abused and neglected children in Washington State.

Use AGO resources and authority to protect abused and neglected children, including facilitating timely permanency and collaborating with external stakeholders and internally among divisions. Continue to seek a permanent funding solution to ensure the AGO maintains adequate resources to keep up with case filings.

2-1-3 Protect vulnerable adults and combat elder abuse.

Use AGO resources and authority to protect vulnerable adults and combat elder abuse by continuing to support the multi-divisional AGO Vulnerable Adults Task Force. Work with external stakeholders to raise awareness of and to prevent elder abuse. Support legislation to ensure protection of vulnerable adults. Increase the enforcement of existing laws against those who victimize elderly patients, including increasing AGO resources dedicated to investigating and prosecuting crimes against vulnerable adults and providing support to local law enforcement and prosecuting attorneys with cases involving vulnerable adults. Work with client agencies to develop strategies for improving investigations of and responses to complaints of elder abuse. Establish a tracking mechanism for Adult Protective Services advice and litigation (including adult family home licensing).

2-1-4 Protect sexually exploited youth and pursue civil commitment of sexually violent predators.

Continue to lead the Commercially Sexually Exploited Children Statewide Coordinating Committee. Explore opportunities to reduce demand for sexually vulnerable children in Washington State including the use of Washington State criminal law. Administer the Child Rescue Fund as set forth by law. Ensure the most dangerous and violent sexual predators are civilly detained, evaluated and treated.

PROTECT THE PEOPLE

2-1-5 Protect Washington Workers

Use AGO resources and authority to protect Washingtonians' rights in the workplace. Increase outreach to workers so they know their rights and where to go for help. Enhance collaboration with other AGs offices on cross-jurisdictional issues and national advocacy. Improve cooperation and communication with state agencies tasked with investigation and enforcement of workplace violations and with external stakeholders. Continue to improve internal coordination and information sharing through the AGO Worker Protection Workgroup. Work with policymakers and stakeholders to improve Washington's law to better protect workers and respond to changes in the marketplace.

2-1-6 Assist and partner with client agencies to further their mission

Provide the full range of legal services to assist our clients in achieving their mission. When appropriate, partner with our clients to provide legal support to achieve their policy objectives, such as offering trainings for clients, helping clients to develop or improve processes, and improving coordination of actions across multiple divisions of the AGO, client agencies and external stakeholders.

GOAL 2: PROTECT WASHINGTON'S ENVIRONMENT AND PUBLIC HEALTH.

2-2-1 Protect the environment and public health.

Ensure the AGO continues to be a national leader in enforcing the civil and criminal laws designed to protect our environment and the health of Washingtonians. Coordinate internal legislative and policy efforts that support the office's environmental work and goals.

2-2-2 Combat the opioid epidemic.

Pursue a coordinated approach to combat the opioid epidemic through the continued use of an internal workgroup, drawing from affected divisions and units. Promote legislation, outreach, and enforcement of existing laws.

GOAL 3: PROMOTE GOOD GOVERNMENT

2-3-1 Enforce the State's campaign finance disclosure and electoral integrity laws

To maintain and build public trust in the electoral system, continue to combat the influence of undisclosed or otherwise illegal political contributions and the misuse of campaign funds. Develop, inform and advocate for stronger enforcement of campaign finance laws at the state level in Washington.

PROTECT THE PEOPLE

2-3-2: Implement the 2018 Public Records Act legislation.

Assist local government agencies with respect to the Public Records Act as required by ESHB 1667 (2018), which made permanent the AGO Local Government Public Records Consultation Program, through activities such as providing consultations and outreach and preparing written materials. By January 1, 2020, create model policies with respect to the Public Records Act's limitations on disclosure of certain records to persons who have stalked or harassed agency employees, as required by ESHB 1692 (2018).

2-3-3: Provide current open government resources to the public and agencies.

Continue to periodically update the open government resource materials including those on the AGO Open Government Training Webpage. Reconfigure the AGO Open Government Training Webpage so it is more user-friendly.

2-3-4 Effectively and efficiently advise and defend the state against claims.

Provide state agency clients with high quality representation to help reduce exposure to claims. Provide effective representation of state agencies and employees who are sued to ensure equitable resolution of those claims in a financially responsible manner.

2-3-4 Assist with collecting state revenue, protecting state programs, and ensuring the proper administration of benefits.

Provide a full range of legal services to state agencies, boards, and commissions, including assisting clients in collecting money owed to the State, and with protecting and lawfully administering trust and endowed funds.

2-3-5 Support Washington's Infrastructure.

Provide a full range of legal services to the state's transportation and utility agencies, boards, and commissions.

GOAL 4: PROTECT WASHINGTON CONSUMERS.

2-4-1 Enforce the laws that protect consumers and improve consumer awareness.

Continue to focus on investigation and enforcement efforts to protect Washington consumers and businesses. Prioritize actions that could have a lasting, deterrent effect on illegal behavior in the marketplace, support those who face unequal access to justice, establish beneficial case law, and maximize the potential for restitution and recovery.

PROTECT THE PEOPLE

2-4-2 Combat health care fraud.

Use AGO resources and authority to combat health care fraud. Recover monies lost to fraud in the Medicaid system. Protect patients residing in Medicaid nursing and residential facilities from abuse and neglect. Share information and referrals among divisions involved in health care delivery issues.

2-4-3 Protect Washington ratepayers.

Vigorously represent the public interest in the full range of proceedings before the Utilities and Transportation Commission (UTC). Advocate for additional resources from the legislature to ensure that the public interest is appropriately represented in these proceedings. Represent customers of Washington's investor-owned utilities in proceedings to reduce carbon emissions through an orderly transition away from coal-fired electricity generation. Work to ensure customers have the benefit of environmental protections and reliable, affordable utility service.

2-4-4 Support Washington service members and their families

Use AGO authority including the Service members Civil Relief Act and consumer protection laws, to investigate and respond to violations against service members. Engage and educate veterans and service members, businesses, and client agencies about the legal protections and benefits available to veterans and service members. Continue to grow the AGO Office of Military & Veteran Legal Assistance. Support veteran hiring in the AGO and the Veterans' Affinity Group.

2-4-5 Serve and protect Washington students and educational institutions.

Support the state's universities and community and technical colleges, as well as its education agencies, boards, and commissions by providing a focused range of legal services.

EMPOWER OUR EMPLOYEES

FY 2019-21 Strategic Objectives

EMPOWER OUR EMPLOYEES

Create a positive work environment that recognizes employees as its most valuable resource and fosters integrity, professionalism, civility, and transparency.

GOAL 1: RECOGNIZE AND EMPOWER AGO EMPLOYEES

3-1-1 Address the compensation gap.

Continue to work with Washington State HR and the legislature to obtain fair and equitable attorney and professional staff compensation. Seek additional funding from the legislature to address critical recruitment and retention challenges. Engage in transparent communications with AGO staff about the status of our efforts.

3-1-2 Refine the performance management system.

Enhance employee job satisfaction, professional growth, productivity, and accountability by continuing to update the performance management system to foster more meaningful feedback and improve employee recognition. Continue to implement a streamlined system focused more on communication and less on paperwork. Ensure managers and staff are trained on updated procedures.

3-1-3 Increase opportunities for employee recognition.

Develop a culture of recognition by improving and expanding formal and informal recognition for all employees, at all levels. Support and promote ideas that improve recognition, and provide new tools for AGO employees to celebrate each other and our work.

3-1-4 Improve employee engagement.

Develop strategies to seek input on decisions that affect employees, and encourage employees to come up with better ways of doing things. Increase opportunities for employees to interact with and provide feedback to senior management, including members of the Core Leadership Team.

3-1-5 Expand the spirit of cooperation and teamwork in the office.

Continue efforts to build understanding and connections across the AGO. Find new ways to promote teamwork, build camaraderie, and enhance the development of collegiality. Focus on ways to continue to develop a spirit of teamwork between attorneys and professional staff.

EMPOWER OUR EMPLOYEES

3-1-6 Improve Support for Pro Bono Work by AGO staff.

Improve AGO support for and recognition of staff participation in appropriate Pro Bono activities that provide legal service and advocacy to persons who lack the resources to protect their legal rights or access the justice system. Determine the availability of external financial resources to cover costs incurred in direct Pro Bono representation by ago staff. Review the AGO Pro Bono policy to ensure it reflects maximum flexibility and support.

GOAL 2: PROMOTE DIVERSITY, INCLUSIVENESS, AND EQUITY THROUGHOUT THE AGO

3-2-1 Recruit and retain a diverse workforce.

Enhance efforts to recruit a diverse workforce through internal and external outreach. Explore new mediums and marketing strategies, so candidates can learn about the work of our office. Consider new ideas for removing implicit bias from the application process, such as blind resume reviews. The Diversity Advisory Committee (DAC) will work with the training unit to provide a training or module for existing training that focuses on diversity and inclusion in hiring. Collaborate with the training unit, if needed, to finalize on-line interviewer training modules to refresh interview panels and hiring managers on best practices. Review and revise, if needed, AGO Guidelines and Checklist for New Attorneys, as well as division onboarding process and training.

3-2-2 Continue to support the affinity group program.

Continue to promote and implement the AGO affinity policy, allowing groups to form and operate, to improve inclusion and enhance connections in the agency. Annually review the activities of each affinity group to measure program success.

3-2-3 Offer agency-wide trainings on issues related to equity, diversity, and inclusion.

Create a sustainable plan for offering training that meets agency goals in equity, diversity and inclusion; provides for various levels of educational training for staff; and reinforces a culture of inclusion in alignment with AGO values. DAC will work with the AGO training unit to increase the number of recorded DAC presentations, videos, or resources (toolkits) available for agency wide use. Actively support and encourage staff to attend and/or plan a training that supports equity, diversity, and inclusion. Divisions may consider sponsoring a diversity presentation.

EMPOWER OUR EMPLOYEES

GOAL 3: ENSURE EMPLOYEES HAVE THE SKILLS AND KNOWLEDGE THEY NEED TO BE SUCCESSFUL.

3-3-1 Increase training and professional development opportunities for staff throughout the agency.

Continue to increase training opportunities for professional staff and attorneys at their locations and via WebEx. Encourage and facilitate attendance. Prioritize expansion of training to staff and locations that require it. Plan for resource needs, including trainers' and learners' time and travel costs. Deploy training to meet the priorities.

3-3-2 Prepare for the future with succession planning.

Deploy tools to identify key positions at risk of vacancy; the knowledge, skills and competencies required to be successful in those positions; and developmental activities needed to prepare staff to fill those positions.

3-3-3 Expand cross-training opportunities.

Identify employees who are interested in cross training in different or specialty areas within their division or in other divisions. Facilitate placement in assignments that meet their growth and development needs. Improve communications about cross-training opportunities and ease administrative impediments.

3-3-4 Expand professional staff and manager mentoring programs.

Further develop the mentoring program and provide tools to guide mentors and mentees. Solicit and encourage experienced staff to serve as mentors.

3-3-5 Continue to expand and improve new employee orientation.

Ensure new employees throughout the state receive complete and consistent orientation including an introduction to the culture and key resources of the AGO.

GOAL 4: ENSURE EMPLOYEES HAVE THE TOOLS AND WORK SPACE THEY NEED TO BE EFFICIENT AND EFFECTIVE.

3-4-1 Expand mobility to improve productivity.

Continue to identify and deploy hardware and software solutions that allow employees to work effectively outside the office. Increase the availability of mobile devices and access to AGO

EMPOWER OUR EMPLOYEES

technology and applications. Ensure employees have and know how to access support for mobile access.

3-4-2 Implement technology solutions to improve effectiveness.

Assess AGO business needs and, where possible, implement technical solutions that make it easier for employees to perform their work. Leverage Microsoft Office365 technologies to improve the reliability of digital services. Increase resources and training on how to use available technology, including equipment, devices, and software.

3-4-3 Creatively approach how to use space

Maximize efficiency and minimize costs by using a multifaceted approach to the workspace. Encourage the implementation or expansion of telework and flex schedules agency wide. Explore office-sharing options to reduce the AGO's physical footprint.

GOAL 5: PROMOTE THE HEALTH, SAFETY, AND WELL-BEING OF ALL EMPLOYEES IN THE WORKPLACE.

3-5-1 Be prepared for natural disasters and emergency situations.

Annually review and update AGO, Building, and Division Safety and Security and Continuity of Operations Plans. Regularly train and drill AGO employees to be prepared for natural disasters or emergency situations, including at least one major preparedness exercise per biennium to test resources, communications, and structures for AGO continuity of operations in an emergency.

3-5-2 Foster a culture of wellness.

Encourage staff to participate in healthy workplace activities, leveraging the AGO's designation as a Washington Wellness Worksite. Promote a healthy workspace. Promote workplace programs that make it easier for employees to identify and pursue their own wellness goals, including those for mental health.

3-5-3 Create a sustainable workplace.

Continue promoting sustainable office practices to include expanding the use of carpool calendars, the reuse center, recycling programs, and other sustainable practices. Use carbon emission reduction strategies to further reduce agency office space, business travel, and energy consumption.

TAB B

**RECOMMENDATION
SUMMARY**



Recommendation Summary

Agency: 100 Office of Attorney General

Version: 2020 2020 Supplemental Budget Request

Dollars in Thousands

	Average Annual FTEs	General Fund State	Other Funds	Total Funds
CB T0PL Current Biennium Base	1,212.7	29,912	311,219	341,131
2019-21 Current Biennium Total	1,212.7	29,912	311,219	341,131
Total Carry Forward Level	1,212.7	29,912	311,219	341,131
Percent Change from Current Biennium	.0%	.0%	.0%	.0%
Maintenance – Other Changes				
ML 16 Federal Funding Adjustment	0.0	0	725	725
Maintenance – Other Total	0.0	0	725	725
Maintenance – Comp Changes				
ML 03 Tobacco Diligent Enforcement	4.5	1,216	0	1,216
ML 05 USDOE Hanford Litigation	2.3	0	1,710	1,710
Maintenance – Comp Total	6.8	1,216	1,710	2,926
Maintenance – Central Svcs Changes				
ML 04 Pressure Vapor Limits Legal Defense	2.3	0	1,210	1,210
ML 06 SEIU 775 v. DSHS Litigation	0.0	0	219	219
ML 07 Wolf v. SBCTC/State of Washington	3.6	0	1,563	1,563
ML 11 UW Legal Services	1.9	0	611	611
ML 12 Corrections Legal Services	1.9	0	474	474
ML 13 WDFW Legal Support	0.9	0	249	249
ML 15 AGO Technical Corrections	7.7	0	2,384	2,384
Maintenance – Central Svcs Total	18.3	0	6,710	6,710
Total Maintenance Level	1,237.8	31,128	320,364	351,492
Percent Change from Current Biennium	2.1%	4.1%	2.9%	3.0%
Policy – Other Changes				
PL 02 Cold Case Unit & HITS Restoration	6.7	1,795	0	1,795
PL 08 Orca and Puget Sound Recovery	3.5	993	0	993
PL 14 Discovery and Litigation Tools	3.8	3,027	0	3,027
Policy – Other Total	14.0	5,815	0	5,815
Policy – Central Svcs Changes				
PL 01 Child Permanency and Child Welfare	14.4	0	3,817	3,817
PL 09 Eastern State Hospital Legal Svcs	1.0	0	228	228
PL 10 L&I Employment Standards	2.5	0	649	649
Policy – Central Svcs Total	17.8	0	4,694	4,694
Subtotal - Policy Level Changes	31.8	5,815	4,694	10,509
2019-21 Total Proposed Budget	1,269.6	36,943	325,058	362,001
Percent Change from Current Biennium	4.7%	23.5%	4.4%	6.1%

Recommendation Summary**Agency: 100 Office of Attorney General****Version: 2020 2020 Supplemental Budget Request****ML 16 Federal Funding Adjustment**

The Attorney General's Office (AGO) requests an increase to its federal authority to cover the general wage increases and premium pay awarded to state employees in the 2019-21 biennial budget for the Medicaid Fraud program. This request will maintain the program and will continue protecting the Medicaid program and Washington's most vulnerable citizens from fraud and abuse. This adjustment will also allow the AGO to continue to clear the backlog of untested kits in the Federal Sexual Assault Kit Initiative (SAKI) and to further unresolved sexual assault related investigations. There is no impact to State funds.

ML 03 Tobacco Diligent Enforcement

The Attorney General's Office (AGO) seeks additional funding to diligently enforce tobacco escrow requirements. Under the Master Settlement Agreement (MSA) with the major tobacco companies, millions of dollars per year are placed in escrow. The State will receive this escrow if it is determined in an arbitration that the State diligently enforced its obligations under the MSA for that year. Losing a diligence determination will potentially cost Washington its entire next MSA payment. The requested additional funding will enable the AGO to continue to fully participate in the next arbitration, which will involve multiple years of escrowed funds.

ML 05 USDOE Hanford Litigation

The Attorney General's Office (AGO) requests funding to compel the U.S. Department of Energy (USDOE) to meet its Hanford cleanup deadlines that USDOE has failed to meet. Specifically, the USDOE has failed to meet the federal consent decree from the Washington v. Perry litigation requiring Hanford cleanup deadlines. Additionally, the Washington State Department of Ecology (Ecology) Director may issue a determination requiring USDOE to design new storage tanks as a contingency measure. If so, USDOE will likely appeal the Director's determination. Legal service needs in both situations would entail substantial staff resources and a need to hire specialized experts.

ML 04 Pressure Vapor Limits Legal Defense

North Dakota and Montana filed a petition with the Pipeline and Hazardous Materials Safety Administration (PHMSA) seeking a preemption declaration for Engrossed Substitute Senate Bill (ESSB) 5579, which contains vapor pressure limits for in-state receipt of crude oil by rail. North Dakota also intends to file a federal lawsuit challenging the law on Commerce Clause grounds. The Attorney General's Office (AGO) requests funding to defend the bill in both forums. The Department of Ecology (Ecology) is charged with implementing vapor pressure limits, the AGO will bill Ecology for the costs of defense. Ecology will submit a parallel decision package.

ML 06 SEIU 775 v. DSHS Litigation

The Service Employees International Union (SEIU) 775 has sued the Department of Social & Health Services (DSHS) alleging that DSHS has underpaid Individual Providers (IP) since March of 2014. The SEIU litigation relies on various theories including the contractual duty of good faith and fair dealing and the minimum wage act. The case is complex in that it may involve over one-hundred thousand individual client-provider pairs. The trial is scheduled for May 24, 2021 and discovery is ongoing.

ML 07 Wolf v. SBCTC/State of Washington

This request is to support the defense of a lawsuit initially filed as a class action against the State Board for Community and Technical Colleges (SBCTC) and Washington State concerning retirement benefits pursuant to the SBCTC Supplemental Retirement Benefit Plan. The putative class representative is a retired part-time faculty member. The plaintiff claims that the eligibility threshold for accessing supplemental retirement benefits violates his statutory and contractual rights. The plaintiff seeks monetary remedies in the form of access to, and adjustments to existing supplemental benefit payouts. This request provides staff and funding to defend Washington State in this litigation.

Recommendation Summary**Agency: 100 Office of Attorney General****Version: 2020 2020 Supplemental Budget Request****ML 11 UW Legal Services**

In order to meet the expanding and complex legal needs of the University of Washington (UW) and to help minimize legal risks for the UW and the state, the Office of the Attorney General (AGO) requests additional resources. The UW operates three campuses and an immense, expanding medical enterprise. The additional AGO staff is needed to provide consistent and comprehensive legal advice and representation in a wide variety of complicated legal issues related to the UW's broad array of operations and activities. The UW supports this request.

ML 12 Corrections Legal Services

This request addresses staffing needs for the Attorney General's Office (AGO), Corrections Division (COR). The Department of Correction's (DOC) legal services needs are increasing, particularly in the areas of sentencing law and health care. Additionally, advocacy groups are focusing on DOC health care and prison conditions, leading to more complex and discovery intensive civil rights litigation. One additional Assistant Attorney General (AAG) is needed to ensure sustainable caseloads and allow attorneys sufficient time for critical legal advice. Two additional paralegals will help manage the rising volume of discovery and ensure attorneys do not spend significant time doing paralegal work.

ML 13 WDFW Legal Support

The Attorney General's Office (AGO) provides legal support to the Department of Fish and Wildlife (WDFW) and the State with respect to complex fisheries regulation issues, including tribal fishing issues arising under U.S. v Washington and U.S. v. Oregon. Fisheries regulation has become increasingly complex. Recent legislation gave WDFW civil enforcement authority to further orca recovery, which requires additional legal support. Finally, implementation of WDFW's Wolf Plan has required increased legal services.

ML 15 AGO Technical Corrections

The Attorney General (AGO) is requesting billing authority for five legislative bills; 5135-SSB.PL, 1579-2SHB, 1290-SHB, 5163-SSB, 1087-2SHB.PL that passed in the 2019 session. The client agencies; Department of Ecology (Ecology), Department of Fish and Wildlife (WDFW), Department of Enterprise Services (DES), and Employment Security (ESD) received funding in the 2019-21 Omnibus Budget to enact each bill. Successful implementation of these new laws signed into law by the Governor require adequate resources for legal services. The AGO is also requesting billing authority for the Paid Family Medical Leave (PFML) program within ESD that was funded in the 2019-21 Omnibus Budget.

PL 02 Cold Case Unit & HITS Restoration

The Legislature invested more than \$10 million in the 2019-21 Biennium to test the backlog of untested sexual assault kits. Testing that backlog of approximately 10,000 kits will likely produce new evidence in hundreds of open cold case sexual assaults. More law enforcement resources are necessary to prevent this new evidence from languishing. There are approximately 1600 unsolved homicides in Washington State (Attachment 1). There are even more unsolved sexual assault cases. A statewide cold case unit would provide investigative and prosecution resources to local law enforcement to solve cold cases, providing justice to victims and making Washingtonians safer.

PL 08 Orca and Puget Sound Recovery

The Attorney General's Office (AGO) Counsel for Environmental Protection Division (CEP) requests two Assistant Attorneys General (AAG) and one Legal Assistant (LA) to address Orca whale recovery and Puget Sound water quality. These positions are essential to implement the recommendations of the Governor's Southern Resident Orca Task Force and continued litigation efforts regarding the U.S. Navy for Clean Water Act violations, and Monsanto for harm caused by polychlorinated biphenyl (PCBs). These positions would also support litigation related to increased vessel traffic due to tankers and naval vessels in Puget Sound.

Recommendation Summary**Agency: 100 Office of Attorney General****Version: 2020 2020 Supplemental Budget Request****PL 14 Discovery and Litigation Tools**

The current electronic discovery (eDiscovery) software tools used by the Attorney General's Office (AGO) are insufficient for the size and complexity of many current and future cases. Legal divisions need tools that provide processing and review options in order to ensure maximum efficiency and to increase cost-effectiveness. A dedicated Assistant Attorney General (AAG) and Litigation Support Manager (LSM) are needed to serve as the AGO discovery lead for legal and discovery processing (non-technical) questions, to create and deliver eDiscovery risk management training for client agencies. These positions will also routinely review and update eDiscovery policies and best practices.

PL 01 Child Permanency and Child Welfare

Facing unsustainable caseloads far surpassing the American Bar Association's (ABA) recommendation, the Attorney General's Office (AGO) requests permanent funding to promote child safety and timely permanency for foster children. Legal resources must keep pace with increases in the number of child welfare cases and their greater complexity. Assistant Attorneys General (AAG) and support staff levels should not exceed the ABA's recommendation of maximum average attorney caseloads of 60 cases. This package seeks increased staffing to improve outcomes for foster children by reducing delays resulting from continuances and extensions, adequately preparing cases, and providing DCYF exceptional legal advice.

PL 09 Eastern State Hospital Legal Svcs

There has been a dramatic 139% increase in felony commitment petitions at Eastern State Hospital that has led to significant growth in the litigation workload. In addition to these petitions, the AGO Spokane Division handles the regular civil commitment dockets and show cause hearings due to lack of bed capacity. The statutory and court-ordered deadlines create very short time-frames in which to prepare for felony commitment trials and other hearings. Adding paralegal support, which does not exist now, is crucial to effective preparation and legal representation in civil commitment hearings and enables an attorney to efficiently handle more cases.

PL 10 L&I Employment Standards

The Office of the Attorney General (AGO) Labor and Industries Division (LNI) division requests funding for increased legal services to the Department of Labor and Industries (L&I). Recent litigation brought before the U.S. Supreme Court resulted in workers losing access to certain private remedies against employers for labor violations. Legislation passed in the 2019 session increased L&I's powers and responsibilities in pursuing enforcement actions to protect worker rights. To maximize the effectiveness of L&I and AGO initiatives in this area, the LNI division will need additional personnel.

TAB C

**DECISION
PACKAGES**



**2020 SUPPLEMENTAL BUDGET REQUEST
Office of Attorney General**

Decision Package Summary

PL Priority			
Type	DP Code	DP Title	Priority
PL	01	Child Permanency and Child Welfare	1
PL	02	Cold Case Unit & HITS Restoration	2
PL	08	Orca and Puget Sound Recovery	3
PL	09	Eastern State Hospital Legal Svcs	4
PL	10	L&I Employment Standards	5
PL	14	Discovery and Litigation Tools	6

ML Priority			
Type	DP Code	DP Title	Priority
ML	03	Tobacco Diligent Enforcement	1
ML	04	Pressure Vapor Limits Legal Defense	2
ML	05	USDOE Hanford Litigation	3
ML	06	SEIU 775 v. DSHS Litigation	4
ML	07	Wolf v. SBCTC/State of Washington	5
ML	11	UW Legal Services	6
ML	12	Corrections Legal Services	7
ML	13	WDFW Legal Support	8
ML	15	AGO Technical Corrections	9
ML	16	Federal Funding Adjustment	10



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 03 - Tobacco Diligent Enforcement
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
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Agency Recommendation Summary

The Attorney General's Office (AGO) seeks additional funding to diligently enforce tobacco escrow requirements. Under the Master Settlement Agreement (MSA) with the major tobacco companies, millions of dollars per year are placed in escrow. The State will receive this escrow if it is determined in an arbitration that the State diligently enforced its obligations under the MSA for that year. Losing a diligence determination will potentially cost Washington its entire next MSA payment. The requested additional funding will enable the AGO to continue to fully participate in the next arbitration, which will involve multiple years of escrowed funds.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001 - 1	\$600	\$616	\$616	\$616
Total Expenditures	\$600	\$616	\$616	\$616
Biennial Totals		\$1,216		\$1,232
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	4.5	4.5	4.5	4.5
Average Annual		4.5		4.5
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$383	\$395	\$395	\$395
Obj. B	\$132	\$136	\$136	\$136
Obj. E	\$73	\$75	\$75	\$75
Obj. G	\$5	\$5	\$5	\$5
Obj. J	\$7	\$5	\$5	\$5

Package Description

Few States are willing to aggressively litigate against the tobacco companies, and many have entered into settlement agreements giving them a fraction of the escrowed funds. The AGO seeks to aggressively represent Washington and seek to recover the full amount of the escrow funds. Prior proceedings have determined States' diligence one year at a time. Washington is leading an effort to speed up the process by litigating multiple years in a single proceeding.

In this supplemental decision package, the AGO requests 4.5 additional FTEs, which would require an additional \$587,000 in fiscal year 2020 and \$603,000 in fiscal year 2021 and each year thereafter for possibly the next six biennia.

46 states, the District of Columbia, Puerto Rico, and four territories (Settling States) and the major tobacco companies signed the tobacco Master Settlement Agreement (MSA) in 1998. The companies' party to the agreement are known as Participating Manufacturers (PM) while those companies that did not sign are known as Non-Participating Manufacturers (NPM). As part of the settlement, the PMs make annual payments to the Settling States in perpetuity, and the Settling States must enact and diligently enforce statutes that require the NPMs to pay into escrow accounts amounts similar to the obligation imposed on PMs by the MSA.

Millions of dollars are sitting in the Disputed Payment Accounts that relate to the NPM adjustments. For most states, they are being arbitrated one year at a time. The first arbitration concerned the 2003 MSA sales year. Work on it began in 2005. It was completed in 2013. The AGO of the State of Washington was successful in showing that Washington had enacted the necessary statute and the AGO had diligently enforced it. This resulted in the State of Washington receiving an additional \$14 million dollars and avoided the potential loss of an annual payment amount of over \$100 million dollars.

A hearing on the second arbitration occurred in April 2018 and involved whether the Washington AGO diligently enforced the escrow statute during 2004. This proceeding began in 2014 and a decision expected in 2019. Work for the next arbitration, to decide whether the statute was diligently enforced in at least MSA year 2005, has begun. The PMs appear to agree that this upcoming hearing also will cover MSA years 2006 and 2007. We are exploring avenues to combine a number of additional MSA years into the hearing so that the years at issue are more current. If we are able to combine multiple years into the next arbitration, the potential revenue for the State is approximately \$14 million per year. 37 Settling States resolved this dispute with the PMs at a substantial discount.

Washington and the remaining litigating states continue, year by year, to fight to recover the NPM adjustment and receive our full MSA payment. Hundreds of millions of dollars are at stake in these arbitrations. If Washington were to be able to combine a number of MSA years into one proceeding, the State could receive approximately \$14 million per year if it prevails with the exception of calendar year 2005. If Washington were to lose, it would not receive this amount and would be subject to a potentially significant adjustment of the amount due under the MSA.

Assumptions and Calculations

Expansion or alteration of a current program or service:

Funding was provide in the 2015-17, 2017-19, and the 2019-21 biennium for the diligent enforcement of the tobacco MSA.

2015-17 - \$1,174,000

2017-19 - \$1,454,000

2019-21 - \$1,431,000

Detailed assumptions and calculations:

The AGO requests an additional \$587,000 per fiscal year for 4.5 FTE, (2.0 Assistant Attorney Generals (AAG); 1.0 Paralegal 2 (PL2); 1.0 Legal Assistant 3 (LA3); and 0.5 Management Analyst 5 (MA5) as administration support. The total for the biennium is \$1,190,000.

The next arbitrations will require additional resources as the arbitration very likely will involve whether the State diligently enforced for multiple years rather just one year as has been the issue for the first two arbitrations. It currently appears that at least three years will be arbitrated, and possibly more. Further, due the passage of time and retirements, the AGO likely will retain additional expert witnesses instead of being able to rely on prior agency personnel that had the necessary expertise. Preparation for the third arbitration has begun.

Agency administration support FTEs are included in the tables using an MA5 as a representative classification. These costs are ongoing and will carry forward into future biennia for at least the next six biennia.

One-time costs are not included in this request.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE	2.0	2.0	2.0	2.0	Y
	Object A & B	283,000	292,000	292,000	292,000	
LA	FTE	1.0	1.0	1.0	1.0	Y
	Object A & B	81,000	84,000	84,000	84,000	
PL	FTE	1.0	1.0	1.0	1.0	Y
	Object A & B	93,000	96,000	96,000	96,000	
MA5	FTE	0.5	0.5	0.5	0.5	Y
	Object A & B	58,000	60,000	60,000	60,000	
TOTAL FTE		4.5	4.5	4.5	4.5	
TOTAL A & B		515,000	532,000	532,000	532,000	

Strategic and Performance Outcomes

Strategic framework:

1. RESULTS WASHINGTON:

Goal 4 – Healthy and Safe Communities: By ensuring that the public health provisions of the MSA are complied with, the tobacco diligent enforcement activities contribute to fighting tobacco use among our youth. Ensuring that nonparticipating manufacturers (NPM) make required escrow payments also helps achieve this goal. The necessity to make escrow payments discourages the NPMs from pricing their products below market which would have made their product more attractive to youth.

Goal 5 - Efficient, Effective, and Accountable Government: By keeping the more than \$100,000,000 flowing annually into the state treasury, the tobacco diligent enforcement activities provide substantial funding for general government.

2. AGO STRATEGIC PLAN:

Priority – Serve the State

Goal – Deliver high quality, timely, and efficient legal services

3. ACTIVITY:

Expected incremental change in revenue: \$14,000,000 in FY 2020, assuming AGO obtains a favorable ruling for the 2004 arbitration. Additionally, \$28,000,000 in FY 2021 or 2022 assuming AGO obtains a favorable ruling for the next arbitration, which likely will be for the period from 2005-2007. This ruling may be received by the end of FY 2021 as the arbitration panel holds all rulings until all states have had their hearings and the rulings are all released on the same date. If we are able to add additional years into the next arbitration, the potential revenue for the State is approximately \$14 million per additional year. Further, vigorous defense is necessary to avoid the penalty of losing a proceeding which could completely eliminate Washington entire MSA payment.

Activity	Fund	FY2020	FY2021	FY2022	FY2023
Activity 0001 Administration	001-1	587,000	603,000	603,000	603,000
TOTAL		587,000	603,000	603,000	603,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Tobacco diligent enforcement is not assumed to affect this Performance Measure in any way. These legal services are an agency administrative function.

Other Collateral Connections

Intergovernmental:

The collaborative work with Department of Health, Liquor and Cannabis Board and Department of Social and Health Services aims to improve the public health around tobacco issues

The litigation work helps to continue the flow of MSA revenue into the state. In 2016, that revenue was more than \$100 million.

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

46 states, the District of Columbia, Puerto Rico, and four territories (Settling States) and the major tobacco companies signed the tobacco MSA in 1998. The companies' party to the agreement are known as Participating Manufacturers (PM) while those companies that did not sign are known as Non-Participating Manufacturers (NPM). As part of the settlement, the PMs make annual payments to the Settling States in perpetuity, and the Settling States must enact and diligently enforce statutes that require the NPMs to pay into escrow accounts amounts similar to the obligation imposed on PMs by the MSA. Millions of dollars are sitting in the Disputed Payment Accounts that relate to the NPM adjustments. The arbitrations involve these escrowed funds.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 04 - Pressure Vapor Limits Legal Defense
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
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Agency Recommendation Summary

North Dakota and Montana filed a petition with the Pipeline and Hazardous Materials Safety Administration (PHMSA) seeking a preemption declaration for Engrossed Substitute Senate Bill (ESSB) 5579, which contains vapor pressure limits for in-state receipt of crude oil by rail. North Dakota also intends to file a federal lawsuit challenging the law on Commerce Clause grounds. The Attorney General's Office (AGO) requests funding to defend the bill in both forums. The Department of Ecology (Ecology) is charged with implementing vapor pressure limits, the AGO will bill Ecology for the costs of defense. Ecology will submit a parallel decision package.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$601	\$609	\$0	\$0
Total Expenditures	\$601	\$609	\$0	\$0
Biennial Totals		\$1,210		\$0
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	2.3	2.3	0.0	0.0
Average Annual		2.3		0.0
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$186	\$192	\$0	\$0
Obj. B	\$65	\$67	\$0	\$0
Obj. C	\$250	\$250	\$0	\$0
Obj. E	\$65	\$65	\$0	\$0
Obj. G	\$32	\$32	\$0	\$0

Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. J	\$3	\$3	\$0	\$0
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$601	\$609	\$0	\$0
Total	\$601	\$609	\$0	\$0
Biennial Totals		\$1,210		\$0

Package Description

In 2019, the Legislature passed ESSB 5579 to improve the safety of Washington communities. ESSB 5579 Volatility of Crude Oil Received in the State by Rail sets a vapor pressure limit of nine pounds per square inch on crude oil transported by rail cars. The limit applies to Washington facilities by prohibiting facilities from loading or unloading crude oil that does not meet the limit. Ecology enforces the requirement and can issue civil penalties for violations. The limit goes into effect for a particular facility two years after annual rail traffic to a facility increases by more than ten percent above 2018 rail traffic volume.

Much of the crude oil shipped to Washington comes from the Baaken oil field in North Dakota and Montana. North Dakota imposes a vapor pressure limit of 13.7 pounds per square inch on crude oil transported by rail cars. On July 17, 2019, North Dakota and Montana filed a petition for declaratory judgment with PHMSA seeking a declaration that ESSB 5579 is preempted by federal law. North Dakota also announced that it would file a lawsuit against ESSB 5579.

The AGO will need to prepare written comments in response to the PHMSA petition with the aid of a consulting expert. We also intend to challenge any adverse determination from PHMSA and defend any lawsuit filed by North Dakota. North Dakota's lawsuit will involve discovery, motions practice, and potentially a trial. We also anticipate expert costs associated with the litigation. Based on current workload, the Ecology Division of the AGO lacks sufficient attorney staff to handle the lawsuit. We thus anticipate staffing the lawsuit, in part, through the AGO's Complex Litigation Division which will result in AGO costs to Ecology above their budgeted amount of legal services.

Assumptions and Calculations

Expansion or alteration of a current program or service:

N/A

Detailed assumptions and calculations:

The AGO anticipates hiring a chemical engineering expert to assist in defense of the lawsuit and preparation of comments for the PHMSA petition at an assumed cost of \$500,000. Expert tasks will include:

- (1) Meetings with AAGs
- (2) Review of relevant materials

- (3) Preparation of comments, expert report, and possible rebuttal report
- (4) Preparing for and delivering live trial testimony
- (5) Helping to prepare AAGs for depositions and cross-examination of opposing experts

The AGO will need to perform numerous tasks associated with the litigation including:

- (1) Researching, briefing, and arguing motions
- (2) Propounding and responding to discovery, including written discovery and depositions
- (3) Assisting expert witness in preparing their expert report
- (4) Preparing trial briefs and written expert testimony
- (5) Working with fact and expert witnesses to prepare them for trial
- (6) Identifying trial exhibits
- (7) Preparing opening statements, direct examinations, cross examinations, and closing arguments
- (8) Presenting the State's case at trial

Paralegal tasks include:

- (1) Document management associated with discovery
- (2) Compiling exhibit notebooks
- (3) Developing and arranging presentation of State's electronic exhibits for trial
- (4) Providing technical and other assistance to AAGs during trial

To staff these functions, we anticipate needing 1.0 AAG FTE, 0.5 Legal Assistant FTE and 0.5 Paralegal FTE through the biennium.

We also anticipate costs of approximately \$15,000 per fiscal year associated with travel for depositions and court appearances. Incidental costs of litigation are anticipated to be approximately \$28,000 per fiscal year.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE	1.0	1.0			N
	Object A & B	138,000	143,000			
LA	FTE	0.5	0.5			
	Object A & B	38,000	39,000			
PL	FTE	0.5	0.5			N
	Object A & B	46,000	48,000			
MA5	FTE	0.3	0.3			N
	Object A & B	29,000	30,000			
TOTAL FTE		2.3	2.3	0.0	0.0	
TOTAL A & B		251,000	260,000	0	0	

Strategic and Performance Outcomes

Strategic framework:

Results Washington Outcome Measure: Efficient, Effective and Accountable Government

This request advances goal 5 by reflecting the actual costs of defending ESSB 5579 against legal challenges. It clarifies how costs will be spent, shows accountability and responsibility in spending, and offers transparency resulting in customer satisfaction and confidence in legal services provided.

Outcome Measure: Sustainable Energy and a Clean Environment

This request advances Goal 4. ESSB 5579 establishes important public safety measures by requiring Washington oil facilities to only accept crude-by-rail that meets specified volatility standards. The public safety measures established by ESSB 5579 will protect workers at facilities receiving crude oil and will decrease the potential for fatal rail accidents associated with the transport of crude oil by rail.

AGO Strategic Plan:

Priority 1—Serve the State

Goal 1—Deliver high-quality, timely, and efficient legal services

Priority 2—Protect the People

Goal 2-Protect Washington’s Environment and Public Health

This request supports the AGO Strategic Plan by ensuring adequate funding to provide high-quality, timely, and efficient legal services to the State in the defense of ESSB 5579. The request also protects Washington’s environment and public health and safety by ensuring a robust defense to the legal challenges against ESSB 5579.

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405	601,000	609,000		
TOTAL		601,000	609,000	-	-

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Indeterminate incremental adjustments for this Performance Measure.

Other Collateral Connections

Intergovernmental:

There will be no direct impact to other governmental parties. Many tribal and local governments are concerned about an increase in crude oil rail traffic and would likely support a robust defense of ESSB 5579. In addition to the Department of Ecology, the Utilities and Transportation Commission (UTC) has an interest in a robust defense of ESSB 5579, although UTC is not expected to have costs associated with the litigation. The Attorneys General of North Dakota and Montana are opposed to ESSB 5579 and are currently challenging it.

Client	Fund	FY2020	FY2021	FY2022	FY2023
DOE		601,000	609,000		
TOTAL		601,000	609,000	-	-

Stakeholder response:

There is no known opposition to this request at this time. It is possible that railroads and/or oil companies could oppose ESSB 5579 in the future. Several stakeholder groups supported passage of ESSB 5579, and we would expect them to support a robust defense of the bill.

Legal or administrative mandates:

This request responds to the current need to defend ESSB 5579 against a preemption petition filed with the PHMSA. This request is also related to anticipated future litigation in federal court.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 05 - USDOE Hanford Litigation
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
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Agency Recommendation Summary

The Attorney General's Office (AGO) requests funding to compel the U.S. Department of Energy (USDOE) to meet its Hanford cleanup deadlines that USDOE has failed to meet. Specifically, the USDOE has failed to meet the federal consent decree from the Washington v. Perry litigation requiring Hanford cleanup deadlines. Additionally, the Washington State Department of Ecology (Ecology) Director may issue a determination requiring USDOE to design new storage tanks as a contingency measure. If so, USDOE will likely appeal the Director's determination. Legal service needs in both situations would entail substantial staff resources and a need to hire specialized experts.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$851	\$859	\$0	\$0
Total Expenditures	\$851	\$859	\$0	\$0
Biennial Totals		\$1,710		\$0
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	2.3	2.3	0.0	0.0
Average Annual		2.3		0.0
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$186	\$192	\$0	\$0
Obj. B	\$65	\$67	\$0	\$0
Obj. C	\$500	\$500	\$0	\$0
Obj. E	\$65	\$65	\$0	\$0
Obj. G	\$32	\$32	\$0	\$0

Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. J	\$3	\$3	\$0	\$0
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$851	\$859	\$0	\$0
Total	\$851	\$859	\$0	\$0
Biennial Totals		\$1,710		\$0

Package Description

Hanford holds more high-level radioactive waste than all other U.S. sites combined. Liquid waste discharged directly to the ground and leaking tanks buried in the ground risk contamination of the groundwater that flows into the Columbia River.

The Washington v. Perry consent decree originally entered in 2010, established deadlines for single-shell tank waste retrievals and start-up of the Waste Treatment and Vitrification Plant. Concurrent with the consent decree, Ecology and USDOE added additional requirements to Hanford's Tri-Party Agreement, including the requirement for USDOE to issue a periodic System Plan to evaluate scenarios and identify actions to optimize tank waste retrievals and treatment. Based on the System Plan, Ecology and USDOE are required to negotiate certain milestones, including contingency actions to ensure retrieval deadlines are met. Installation of new storage tanks is an example of a contingency action.

In March 2016, Governor Jay Inslee said, "I have been repeatedly frustrated by the delays and lack of progress toward meeting key milestones in waste cleanup and treatment. We cannot consider any further delays."

After over a year of discussions, System Plan negotiations have recently concluded without full resolution. It became clear through these negotiations that USDOE does not expect to meet certain retrieval and treatment deadlines. Nonetheless, USDOE has been unwilling to implement Ecology's proposed contingency plan, including designing new storage tanks. If the parties do not reach agreement through the current dispute resolution process, Ecology's director can issue a unilateral order requiring USDOE to take certain measures. USDOE would likely appeal such an order. Funding for legal services will be needed to support Ecology.

Assumptions and Calculations

Expansion or alteration of a current program or service:

N/A

Detailed assumptions and calculations:

If litigation is required to get the USDOE to comply with the Washington v. Perry consent decree, the AGO anticipates the following costs and tasks will be required:

Hiring chemical engineering and heuristics experts to support Ecology's position in the litigation at an assumed cost of \$1,000,000. Expert tasks will include:

- (1) Meetings with AAGs
- (2) Review of relevant trial-related materials
- (3) Preparation of expert report and possible rebuttal report
- (4) Preparing for and delivering live trial testimony
- (5) Helping to prepare AAGs for depositions and cross-examination of opposing experts

The AGO will need to perform numerous tasks associated with the litigation including:

- (1) Researching, briefing, and arguing motions
- (2) Propounding and responding to discovery, including written discovery and depositions
- (3) Assisting expert witnesses in preparing their expert reports
- (4) Preparing trial briefs and written expert testimony
- (5) Working with fact and expert witnesses to prepare them for trial
- (6) Identifying trial exhibits
- (7) Preparing opening statements, direct examinations, cross examinations, and closing arguments
- (8) Presenting the State's case at trial

Paralegal tasks include:

- (1) Document management associated with discovery
- (2) Compiling exhibit notebooks
- (3) Developing and arranging presentation of State's electronic exhibits for trial
- (4) Providing technical and other assistance to AAGs during trial

To staff these functions, the AGO anticipates needing 1.0 AAG FTE, 0.5 LA3 FTE, and 0.5 Paralegal FTE through the biennium. The AGO also anticipates costs of approximately \$43,000 per fiscal year associated with travel between Olympia and Richland and other incidental costs.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE	1.0	1.0			N
	Object A & B	138,000	143,000			
LA	FTE	0.5	0.5			N
	Object A & B	38,000	39,000			
PL	FTE	0.5	0.5			N
	Object A & B	46,000	48,000			
MA5	FTE	0.3	0.3			N
	Object A & B	29,000	30,000			
TOTAL FTE		2.3	2.3	0.0	0.0	
TOTAL A & B		251,000	260,000	0	0	

Strategic and Performance Outcomes

Strategic framework:

Results Washington Goal 5: Efficient, Effective and Accountable Government

This request advances goal 5 by ensuring that USDOE meets its cleanup obligations at Hanford. It clarifies how costs are being spent, shows accountability and responsibility in spending, and offers transparency resulting in customer satisfaction and confidence in legal services provided.

Results Washington Goal 3: Sustainable Energy and a Clean Environment

Keeping the Columbia River Healthy: The Hanford Nuclear Reservation is located on the Columbia River. Hanford's millions of gallons of waste pose a significant threat to the Columbia River ecosystem, to fish and wildlife who use that system, and to the thousands of water users who rely on clean Columbia River water for a wide range of purposes. The risk increases exponentially the longer the waste remains in the tanks due to cleanup delays. Keeping the cleanup on track and ensuring that the federal government is held accountable for its legacy of contamination is paramount to meeting this goal.

Results Washington Goal 4: Healthy and Safe Communities

This request advances goal 3 by compelling USDOE to meet its obligations to clean up Hanford as expeditiously as possible and ensure timely construction of treatment facilities. This request advances goal 4 because expeditious cleanup of Hanford decreases the public and worker safety risk posed by the extensive contamination present at the Hanford site.

AGO Strategic Plan—

Priority 1--Serve the State

Goal 1—Deliver high quality, timely, and efficient legal services

Priority 2—Protect the People

Goal 2-Protect Washington's Environment and Public Health

This request supports the AGO Strategic Plan by ensuring adequate funding to provide high-quality, timely, and efficient legal services to Ecology in meeting one of its core functions (i.e. Hanford cleanup). The request also protects Washington's environment and public health by compelling USDOE to meet its cleanup obligations at the Hanford site.

AGO Activity—

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A010 - Legal Services to State Agencies	405	851,000	859,000		
TOTAL		851,000	859,000	-	-

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Performance Measure impact is indeterminate.

Other Collateral Connections**Intergovernmental:**

There are no direct impacts to any other governmental entities besides the USDOE. Ecology supports this funding package and intends to submit a parallel package. It is anticipated that the Yakama Nation and the State of Oregon will likely support this lawsuit. It is uncertain whether local governmental entities in the Tri-City area will support or oppose the lawsuit.

Client	Fund	FY2020	FY2021	FY2022	FY2023
DOE		851,000	859,000		
TOTAL		851,000	859,000	-	-

Stakeholder response:

There is no known stakeholder opposition to this request at this time. We anticipate that Hanford watchdog groups such as Hanford Challenge and Heart of America Northwest along with conservation groups, such as Columbia Riverkeeper, will support this request.

Legal or administrative mandates:

This proposal does not respond to litigation.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 06 - SEIU 775 v. DSHS Litigation
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
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Agency Recommendation Summary

The Service Employees International Union (SEIU) 775 has sued the Department of Social & Health Services (DSHS) alleging that DSHS has underpaid Individual Providers (IP) since March of 2014. The SEIU litigation relies on various theories including the contractual duty of good faith and fair dealing and the minimum wage act. The case is complex in that it may involve over one-hundred thousand individual client-provider pairs. The trial is scheduled for May 24, 2021 and discovery is ongoing.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$0	\$219	\$0	\$0
Total Expenditures	\$0	\$219	\$0	\$0
Biennial Totals		\$219		\$0
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. C	\$0	\$219	\$0	\$0
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$0	\$219	\$0	\$0
Total	\$0	\$219	\$0	\$0
Biennial Totals		\$219		\$0

Package Description

This lawsuit is about alleged underpayments made to IPs since 2014. The IP population is very large, at about 45,000 contracted individuals at any time and is highly fluid. That is, many IPs enter and exit the workforce constantly. SEIU 775 is bringing this suit in its associational capacity, in other words without presenting the case of any individual IP and without certifying a class (this is an increasingly used litigation strategy for organizational plaintiffs). It alleges that it can prove damages on a common basis with statistical and sociological techniques. It has already retained two experts to assist in its proof.

The Attorney General's Office (AGO) defense includes an allegation that SEIU 775 does not have associational standing to sue. In order to prepare for trial, the AGO will need to retain expert witnesses to rebut SEIU 775's assertions as well as pay for SEIU 775's expert's time when they are deposed. The AGO estimates a minimum of \$50,000 for this cost.

At trial, the AGO will need a streamlined mechanism of displaying complex statistical information to the jury and anticipates contracting with a trial presentation vendor for these services. In consultation with paralegals and AAGs who have contracted for these services in the past, the AGO estimates a minimum of \$26,000 for this cost.

The AGO estimate includes \$142,800 for a discovery vendor. Although DSHS has completed all discovery with resources internal to DSHS and the AGO, the Plaintiff has insisted that DSHS bear costs related to redacting certain information the Plaintiff has requested in discovery. The AGO has objected and is in negotiations with the Plaintiff to avoid costly redactions. The AGO's position is that if the Plaintiff wants this information the Plaintiff should bear the costs. Nonetheless, it is possible DSHS will be compelled to pay for the cost of redacting this information, estimated at \$142,800.

Assumptions and Calculations

Expansion or alteration of a current program or service:

N/A

Detailed assumptions and calculations:

The AGO assumes trial will take place in May 2021 and will take three weeks to complete. The AGO estimates the Trial Presentation Vendor time at \$1,625 per day, for 16 total days for a total cost of \$26,000. ($1,625 \times 16 = 26,000$) The AGO assumes the trial presentation vendor's time includes all days of trial and some pre-trial set-up time.

The AGO will retain one expert and depose each of SEIU 775's experts once. Experienced trial counsel estimate these cost at \$50,000.

The AGO has received an estimate for redaction costs and assumes a cost per record for review and redaction of \$0.0714 for approximately 2,000,000 records for an estimate cost of \$142,800. SEIU 775 has indicated that it may move to have the trial date advanced from the anticipated date of May 2021 in which case the date that these expenditures will be incurred could change.

Workforce Assumptions:

This request does not include an increase in AGO staffing.

Strategic and Performance Outcomes

Strategic framework:

RESULTS WASHINGTON:

Goal 4: Healthy and Safe Communities

Sub-Topic: Preparing for Aging Washingtonians

Sub-Topic: Ensuring Access to Quality Healthcare

This request is made to defend DSHS's rules and policies relating to the provision of in-home personal care services to the elderly and disabled. This request enables DSHS to continue to work toward the goal of healthy and safe communities.

1. Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

AGO STRATEGIC PLAN:

This request supports the AGO Strategic Plan by allocating resources to a complex case so that the office can provide high quality, timely, and efficient legal services.

AGO ACTIVITY:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A010 Legal Services TO State Agencies			219,000		
TOTAL		-	219,000	-	-

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental increases to performance measures are indeterminate.

Other Collateral Connections

Intergovernmental:

Client	Fund	FY2020	FY2021	FY2022	FY2023
DSHS	001-1		219,000		
TOTAL		-	219,000	-	-

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

SEIU 775 v. Department of Social and Health Services and Cheryl Strange. This request is made directly to support our litigation efforts related to this case.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 07 - Wolf v. SBCTC/State of Washington
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
 (360) 586-2104
 Edward.Giger@atg.wa.gov

Agency Recommendation Summary

This request is to support the defense of a lawsuit initially filed as a class action against the State Board for Community and Technical Colleges (SBCTC) and Washington State concerning retirement benefits pursuant to the SBCTC Supplemental Retirement Benefit Plan. The putative class representative is a retired part-time faculty member. The plaintiff claims that the eligibility threshold for accessing supplemental retirement benefits violates his statutory and contractual rights. The plaintiff seeks monetary remedies in the form of access to, and adjustments to existing supplemental benefit payouts. This request provides staff and funding to defend Washington State in this litigation.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$784	\$779	\$0	\$0
Total Expenditures	\$784	\$779	\$0	\$0
Biennial Totals		\$1,563		\$0
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	3.6	3.6	0.0	0.0
Average Annual		3.6		0.0
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$296	\$305	\$0	\$0
Obj. B	\$103	\$107	\$0	\$0
Obj. C	\$305	\$295	\$0	\$0
Obj. E	\$59	\$60	\$0	\$0
Obj. G	\$16	\$8	\$0	\$0

Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. J	\$5	\$4	\$0	\$0
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$784	\$779	\$0	\$0
Total	\$784	\$779	\$0	\$0
Biennial Totals		\$1,563		\$0

Package Description

This request for 3.6 FTE and \$1,563,000 for the 2019-21 Biennium will provides defense funding including a litigation team, expert witnesses and consultants, and a data support vendor required to mount a full defense. Each of the public four-year universities sponsors its own retirement plan, separate and apart from the state employee plans administered by the Department of Retirement Services (DRS). The SBCTC sponsors a plan for faculty and exempt staff at the 34 community and technical colleges. Until 2011, all of the college and university retirement plans had an attendant supplemental plan that provided a safety net for retirees whose investments in the regular retirement plan did not perform up to a determined threshold level. The supplemental plans were closed by the legislature in 2011, but employees who entered service before 2011 are still entitled to seek a supplemental benefit. The plaintiff engaged the firm of Bendich, Stobaugh, and Strong, which is a firm that specializes in benefits-related class action lawsuits and has successfully litigated benefits-related cases against the State in the past. Failure to mount a robust defense is assumed to lead to significant state financial liability. It will also lead to additional litigation against any other public higher education institutions that have supplemental plans with similar characteristics. A successful defense will eliminate those impacts.

A trial date has not been determined. The AGO Education Division has been responding to discovery for several months and was successful in a recent motion on the pleadings, leading the plaintiff to re-file and seek his remedy in another manner. This delays timelines leading to trial, but the AGO anticipates it will be scheduled in calendar year 2020. The AGO expects several phases of judicial review and motion practice to settle on the appropriate statute of limitations. The AGO expects to receive and respond to motions concerning class certification and other motions. It is assumed that the defense will require actuarial and other experts, as well as data consultants.

SBCTC receives a legal services allocation for routine day-to-day needs for the 34 community and technical colleges. This allocation does not include the costs of complex litigation of the magnitude that this case will require. SBCTC is a small agency and the costs of defending this action will be extensive. Without additional resources, defense of the case will severely impact the SBCTC's operating revenues. This will severely cut into the college system's ability to pay for legal services for the biennium.

Assumptions and Calculations

Expansion or alteration of a current program or service:

The AGO began billing legal services for Gary Wolf v. State Board for Community and Technical Colleges in February 2019. In FY 2019, the AGO billed SBCTC for 1.93 Assistant Attorney General (AAG) and 1.03 Paralegal (spread over the last 6 FM of the biennium) hours.

There is no funding in the AGO's base budget for legal services billings in the capacity projected and included in this request. SBCTC does not have adequate funding in their legal services allocation to pay for these charges.

Detailed assumptions and calculations:

Workload assumptions: The AGO has an increase in workload due to this litigation. This increase of 3.2 FTE is assumed through the end of FY 2021.

Direct litigation costs are assumed:

A. Expert witness costs are based upon 500 hours of services at \$450 an hour: \$225,000 (FY2020: \$112,500; FY2021: \$112,500).

B. Data intake, hosting, and management for 500 gigabytes of data: \$120,000 (\$5,000 per month for 24 months) (FY2020: \$60,000; FY2021: \$60,000).

C. Data consulting and analysis: \$225,000 (1,000 hours *\$225) (FY2020: \$112,500; FY2021: \$112,500).

D. 30 Depositions at \$1,000 each totals \$30,000 (FY2020: \$20,000; FY2021: \$10,000).

E. Statewide Travel: 20 trips at \$400 per trip totals \$8,000. (FY2020: \$6,000; FY2021: \$2,000). This case is assumed to include all of the 34 community and technical colleges. Depositions are assumed to be conducted across the state.

Workforce Assumptions:

Agency administration support FTEs are included in the tables using a Management Analyst 5 as a representative classification.

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE	1.5	1.5			N
Object A & B	207,486	213,876			
LA FTE	0.8	0.8			N
Object A & B	56,277	58,032			
PL FTE	1.0	1.0			N
Object A & B	92,796	95,664			
MA5 FTE	0.4	0.4			N
Object A & B	42,735	44,049			
TOTAL FTE	3.62	3.62	0.00	0.00	
TOTAL A & B	399,294	411,621	0	0	

Strategic and Performance Outcomes

Strategic framework:

Results Washington Outcome Measures:

World-class education. This case challenges a component of employee benefits in the community and technical college system that was sunset in 2011 to decrease financial liability to the state. A number of employees remain grandfathered into the supplemental retirement benefit eligibility. A victory by the plaintiffs would increase the costs of operating the CTC system.

Efficient, effective & accountable government. A successful result by the plaintiff in this case will divert resources from the priorities established by the legislature in its operating budget.

AGO Strategic Plan:

This request supports the following portions of the AGO Strategic Plan.

1. Priority – Serve the State

Goal 1—Deliver high quality, timely, and efficient legal services.

Effective defense of this case is part of delivering quality, timely and efficient litigation services.

1. Priority – Protect the People

Goal 3—Promote Good Government

The SBCTC is empowered by statute to provide retirement plans under such rules as it may prescribe. The plaintiff's challenge in this case seeks to curtail that authority and discretion. Good government requires clear understanding of the roles and authorities of the executive branch agencies.

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405	784,000	779,000		
TOTAL		784,000	779,000	-	-

Performance Measure 2539: Cases Open at End of Fiscal Year

Target: 25,000 open cases at the end of each FY, reported annually.

Key Divisions: Legal Services Divisions

Expected performance outcome is a vigorous defense leading to confirmation by the courts that the SBCTC's supplemental retirement benefit eligibility criteria are legal and valid. A successful defense will avoid an outcome that commandeers future state financial resources.

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Expected performance outcome is a vigorous defense leading to confirmation by the courts that the SBCTC's supplemental retirement benefit eligibility criteria are legal and valid. A successful defense will avoid an outcome that commandeers future state financial resources.

Other Collateral Connections

Intergovernmental:

This lawsuit impacts all 34 community and technical colleges. If the plaintiff is successful, this lawsuit may require the community and technical colleges to modify their practices in assessing supplemental retirement eligibility.

SBCTC is in agreement with these legal services needs and fully support this AGO request.

Client	Fund	FY2020	FY2021	FY2022	FY2023
SBCTC	405	784,000	779,000		
TOTAL		784,000	779,000	-	-

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

This request is directly related to the preparation and litigation of Gary Wolf v. State Board for Community and Technical Colleges

Changes from current law:

N/A

State workforce impacts:

A successful challenge by the plaintiff may expand eligibility of faculty and exempt community and technical college retirees for supplemental retirement benefits. .

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 11 - UW Legal Services
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
 (360) 586-2104
 EdwardG@atg.wa.gov

Agency Recommendation Summary

In order to meet the expanding and complex legal needs of the University of Washington (UW) and to help minimize legal risks for the UW and the state, the Office of the Attorney General (AGO) requests additional resources. The UW operates three campuses and an immense, expanding medical enterprise. The additional AGO staff is needed to provide consistent and comprehensive legal advice and representation in a wide variety of complicated legal issues related to the UW's broad array of operations and activities. The UW supports this request.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$0	\$611	\$611	\$611
Total Expenditures	\$0	\$611	\$611	\$611
Biennial Totals		\$611		\$1,222
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.0	3.8	3.8	3.8
Average Annual		1.9		3.8
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$407	\$407	\$407
Obj. B	\$0	\$129	\$129	\$129
Obj. E	\$0	\$65	\$65	\$65
Obj. G	\$0	\$5	\$5	\$5
Obj. J	\$0	\$5	\$5	\$5
Revenue	FY 2020	FY 2021	FY 2022	FY 2023

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$0	\$611	\$611	\$611
Total	\$0	\$611	\$611	\$611
Biennial Totals		\$611		\$1,222

Package Description

The AGO's UW division has an acute need for three additional Assistant Attorneys General. These additional attorneys are needed to handle an increase in workload in light of the UW's growth, expansion, and complexity across its three campuses (Seattle, Bothell, and Tacoma) and at UW Medicine. The last attorney increase for UW occurred in FY 2016.

UW currently depends on SAAGs to meet many of its legal needs. Without additional AAG resources, the UW cannot decrease their reliance on SAAGs, who bill at a much higher rate than AAGs. Providing additional AGO support will likely reduce costs and financial risk to the state.

Between July 2017 and June 2019, the AAGs at the AGO UW Division logged more than 7,500 hours in excess of a 40-hour workweek schedule (despite high turnover and vacancies of attorney staff.) These hours represent approximately 1.9 FTE per fiscal year.

The UW enrolls more than 59,000 undergraduate, graduate, and professional students between all three campuses and is consistently ranked among the best higher education research institutions in the world. Its Continuum College educates an additional 50,000 students per year. The UW is one of the largest employers in the state with more than 30,000 faculty and staff. The UW currently operates UW Medical Center, UW School of Medicine, Airlift Northwest, Harborview Medical Center, and Valley Medical Center.

The AGO's UW Division is expected to manage all legal needs related to the UW's vast array of activities and endeavors related to students, employees, and operations. This includes providing advice and representation, thus reducing risk to the UW and the state.

An example of the increased complexity and workload is the upcoming integration of the Northwest Hospital & Medical Center as well as the administrative employees and their work at UW Physicians to the UW. By January 2020, the UW will be assuming operations of Northwest Hospital & Medical Center (NWH), a full-service, acute care 281-bed community hospital located on a 44-acre campus in North Seattle that provides comprehensive medical, surgical and therapeutic services, including a level-4 trauma center, and has more than 2300 employees. Moving towards integrating another hospital and medical center has already resulted in the UW's additional need for considerable legal services. This demand for significant legal services will continue and likely increase once the UW assumes the operations of NWH. Legal services will be to a number of areas including, but not limited to, healthcare, employment, and business operations. Private sector lawyers currently provide NWH's legal work, so a substantial portfolio of legal work will shift to the AGO's UW Division, which

cannot absorb or handle this work at its current level of staffing. Given the risks inherent in operating an additional major urban hospital, along with the UW's already existing health entities, in a quickly evolving and increasingly regulated healthcare environment, the risks to the state and UW are significant.

Furthermore, approximately 270 administrative employees at UW Physicians, a nonprofit corporation closely connected with the UW, and not represented by the AGO, will become UW employees in early 2020 in order to provide professional billing and related support services. This shifting of operations and employees will result in an additional demand for the AGO's legal services. Again, this additional legal work cannot be done at the division's current level of staffing, thus posing more risk to the UW and the state.

In addition to the anticipated increase in employment work related to the integration of NWH and UW Physicians, the AGO division has experienced an increase in demand for work related to Title IX (sexual misconduct, sexual harassment, etc.), state-specific immigration, arbitration hearings, faculty adjudicative hearings, and public records.

The increase of legal work related to Title IX and sexual misconduct has not been limited to the employment arena. The division has also experienced a significant increase in demand for advice and representation related to students. There has also been a noticeable increase in requests for legal work related to disability accommodations due to issues identified by the UW's recently hired full-time Americans with Disabilities Act Coordinator. Work in both of these areas are anticipated to continue to expand.

Faculty adjudicative hearings have become more litigious and discovery intensive. Because of the increase of employment related hearings as well as AGO division employee turnover (due in part to the heavy workload), the UW has had to pay for Special AAGs (SAAGs) to handle the hearings. By providing more AAG resources, it is anticipated that the UW will have to rely less on SAAGs.

Moreover, last session, the Legislature passed SB 5022, which grants binding interest arbitration rights to higher education uniformed personnel, which includes UW Police Department. Since interest arbitration has never been allowed for any of the UW's bargaining units, this will be a new body of work for the AGO. These arbitrations will involve AAGs and administrative staff preparing for multiple day hearings in a short timeframe in the event that the UW and the unions fail to agree to a collective bargaining agreement.

Public Records matters and requests have also increased. This creates an additional area of risk for the UW. Due to the current workload and inadequate funding for staff, the use of SAAGs will likely continue unless the AGO receives additional resources to increase AAG staff.

Lastly, we are renewing the request for resources to provide legal services to UW Bothell. For more than three years, 1.0 AAG FTE has been dedicated to this work and the demand will be ongoing. UW Bothell alone has grown to almost 6000 enrolled students and over 700 employees. In order to minimize legal risk in its operations and maintain its high standards, legal support services should continue.

While the Division rightly prides itself on providing timely, excellent legal advice on the UW's most pressing issues, there is no question that important work considered less of a priority must be delayed indefinitely due to capacity constraints. One example is the preparation of compliance presentations and materials to proactively

mitigate and reduce significant legal and financial risk to the UW. The constant presence of “priority one” work does not allow for the completion of critical equally important, long term projects which are of great value to the UW and state and address risk.

The AGO’s UW division requests 3.0 AAG at a cost of \$611,000 in FY 2021 and in each FY thereafter. The last AAG FTE increase for UW occurred in FY 2016.

Legal support staff are UW FTE and reflect no cost for the AGO. However, the AGO supports the UW’s request for 1.0 FTE for a Legal Assistant Supervisor. The UW currently provides three legal assistants for 18 AAGs. (Another professional staff member supports the Division Chief.) This means on average each legal assistant provides support and assistance to 6 AAGs, which is a much higher ratio than the AGO model of 2 AAGs per legal assistant. This higher ratio at the AGO’s UW division means the AAGs are performing administrative tasks that legal assistants could be doing, which is an inefficient use of resources. Funding another legal assistant will provide the attorneys with much needed additional administrative support. Moreover, by making the additional assistant a supervisor, this employee can exclusively manage and oversee the other three legal assistants and their workload. This increase in legal administrative staff is needed even without the increase in AAGs included in this request, but it is imperative with the addition of more attorney positions. The AGO fully supports and agrees with the UW’s request for a 1.0 FTE Legal Assistant Supervisor.

Assumptions and Calculations

Expansion or alteration of a current program or service:

This proposal seeks to increase the level of legal services needed to provide appropriate attention and reduce risk management for UW. The combination of new client components and escalating legal complexity in higher education requires additional resources to maintain service levels that allow for effective risk management.

Detailed assumptions and calculations:

All funds requested represent additional AAGs necessary to handle a significant and inevitable increase in legal services required by UW.

In the 2019-21 biennium, the AGO and the UW is requesting additional 3.0 AAG FTE for legal services.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE		3.0	3.0	3.0	Y
Object A & B		447,336	447,336	447,336	
MA5 FTE		0.8	0.8	0.8	Y
Object A & B		89,289	89,289	89,289	
TOTAL A & B	0.0	3.8	3.8	3.8	

AGO administration support FTEs are included in the tables using a Management Analyst 5 as a representative classification.

Strategic and Performance Outcomes

Strategic framework:

RESULTS WASHINGTON OUTCOME MEASURES: This proposal supports Results Washington goals:

World Class Education

Subgoal: Increasing the Economic Security of Washingtonians

Prosperous Economy

Subgoal: Increasing Young Adult Engagement for Successful Adulthood.

UW MEDICINE MISSION: to improve the health of the public

AGO STRATEGIC PLAN:

1. Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

Goal 4 – Protect and enhance the financial health and resources of the AGO including optimizing fund utilization and management.

2. Priority – Protect the People

Goal 2 – Protect Washington’s environment and public health.

Goal 3 – Promote Good Government

Goal 4 – Protect all Washington consumers

3. Priority – Empower our Employees

Goal 1 – Enhance our commitment to being an employer of choice by recognizing, celebrating and empowering AGO employees.

Goal 2 – Promote diversity, inclusiveness and equality throughout the organization to recruit and retain a high quality, highly skilled and highly effective workforce.

Goal 3 – Ensure Employees have the skills and knowledge they need to be successful.

Goal 4 – Ensure employees have the tools and work space they need to be efficient and effective.

Goal 5 – Promote the health, safety and well-being of all employees in the workplace.

The AGO’s strategic plan has three priorities:

(1) Serve the state by providing excellent, independent, and ethical legal advice and representation to our clients

(2) Protect the people by protecting the legal rights of the state

(3) Empower our employees by creating a positive work environment that recognizes employees as our most valuable resource and fosters integrity, professionalism, civility, and transparency.

In order for the AGO to provide high quality, timely, and efficient legal services to the UW especially in light of the integration of NWH and UWP, the passage of SB 5022, along with the expansion of the UW's activities and the increase in employment, disability, Title IX, and UW Bothell related work, additional resources are needed to meet the demand for additional legal services.

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405		611,000	611,000	611,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental impact for this performance measure is indeterminate.

Other Collateral Connections

Intergovernmental:

UOW is in agreement with these legal services needs and fully support this AGO request.

Client	Fund	FY2020	FY2021	FY2022	FY2023
UW	405		611,000	611,000	611,000
TOTAL		-	611,000	611,000	611,000

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

N/A

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 12 - Corrections Legal Services
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
 (360) 586-2104
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Agency Recommendation Summary

This request addresses staffing needs for the Attorney General's Office (AGO), Corrections Division (COR). The Department of Correction's (DOC) legal services needs are increasing, particularly in the areas of sentencing law and health care. Additionally, advocacy groups are focusing on DOC health care and prison conditions, leading to more complex and discovery intensive civil rights litigation. One additional Assistant Attorney General (AAG) is needed to ensure sustainable caseloads and allow attorneys sufficient time for critical legal advice. Two additional paralegals will help manage the rising volume of discovery and ensure attorneys do not spend significant time doing paralegal work.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$0	\$474	\$474	\$474
Total Expenditures	\$0	\$474	\$474	\$474
Biennial Totals		\$474		\$948
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.0	3.8	3.8	3.8
Average Annual		1.9		3.8
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$296	\$296	\$296
Obj. B	\$0	\$106	\$106	\$106
Obj. E	\$0	\$63	\$63	\$63
Obj. G	\$0	\$4	\$4	\$4
Obj. J	\$0	\$5	\$5	\$5

Package Description

This request addresses critical staffing needs in the AGO COR. COR advises and represents DOC, the Indeterminate Sentence Review Board (ISRB), and the Governor’s Clemency and Pardon Board. COR’s work includes defending criminal convictions and sentences in federal habeas corpus proceedings, defending DOC’s administration of criminal sentences in personal restraint and post-sentence review matters, representing DOC in civil rights and other litigation concerning the rights of individuals in DOC custody, and representing DOC in public records litigation.

The bulk of COR’s work is litigation or litigation related. The table below identifies new litigation matters opened over the last two biennia. As shown, COR’s caseload has increased significantly since FY 2016.

	FY 16	FY 17	FY 18	FY 19
Habeas Corpus Cases*	140	158	148	173
Personal Restraint Petitions*	141	123	154	176
PSPs (Reviewed/Filed)	58/6	223/26	251/27	213/4
ISRB Revocations	105	112	135	165
Civil Rights Cases*	133	119	139	138
Public Records Act Cases*	65	52	42	42
Guardianship Cases Filed	0	3	6	3
Totals	642	790	875	910

* Includes appeals

While the broader focus nationally and in Washington on criminal justice reform and the rights of incarcerated persons undoubtedly influences these numbers, there are several clear trends:

Personal Restraint Petitions (PRP): PRPs are a means by which incarcerated and supervised individuals may challenge DOC’s administration of their sentences, including release date calculations, sentence sequencing decisions (whether multiple sentences run consecutively or concurrently), and Drug Offender Sentencing Alternative (DOSA) revocation decisions. The significant increase in PRP filings over the last several years follows heightened scrutiny of DOC’s calculation and administration of sentences since 2016 and is a function of Washington sentencing law complexity.

Post-Sentence Petitions (PSP): The PSP process enables DOC to seek correction of erroneous judgments and sentences through the Court of Appeals. When DOC identifies a potentially erroneous Judgment and Sentence (J&S) of an individual committed to its custody, it notifies the sentencing court and prosecutor, and requests correction of the error. If this administrative effort is unsuccessful, DOC sends the matter to COR for review and evaluation. COR attempts to resolve the matter without litigation, but if unsuccessful may file a post-sentence petition on behalf of DOC pursuant to RCW 9.94A.585 (7). DOC’s focus on identifying and correcting erroneous judgments and sentences since 2016 has dramatically increased the number of PSP matters DOC has sent to COR for evaluation and potential petition filing.

Parole Revocations: COR prosecutes Community Custody Board (CCB) revocation cases before the Indeterminate Sentence Review Board. CCB cases involve sex offenders convicted under the “determinate plus” sentencing scheme enacted in 2001. As the population of released sex offenders under ISRB jurisdiction continues to grow, the number of ISRB revocation cases handled by COR increases as well. The volume of these

cases has steadily grown over the last two biennia. While parole revocation cases are not typically complicated, revocation hearings occur at jails and prisons across the state, and the related travel time takes attorneys away from other work.

Guardianships: With DOC's aging prison population, DOC has sought COR advice and representation in guardianship matters over the last several years, a new area of practice for the division. These are cases where DOC seeks court appointment of a guardian to represent the interests of an incompetent inmate in health care and/or end of life decision making. COR expects the number of guardianship matters filed to continue to grow.

Civil Rights Litigation: COR defends DOC in state and federal civil rights litigation concerning prison operations, including inmate health care. Though the number of civil rights cases has remained relatively stable, case complexity has increased. Since 2015, COR has defended two major system reform lawsuits brought by advocacy groups (*Haldane v. Hammond* and *Disability Rights Washington v. Inslee*). These matters counted as only two cases in the table above, but required substantial attorney and paralegal resources to defend, pulling those resources away from other matters. Additionally, COR's experience is that counsel are appearing in individual medical cases, leading to more involved discovery and motions practice than in pro se cases, and increased risk, including risk of fee shifting. Notable cases currently include civil rights claims relating to transgender care and DOC's Hepatitis C treatment protocol.

In short, COR is extended beyond sustainable levels managing its current workload. This request will provide an additional attorney to represent and defend DOC in litigation and help with DOC's ongoing need for legal advice. The additional paralegal resources (2.0 FTE) will directly address the need for additional litigation support and thereby help avoid attorneys doing paralegal work.

Assumptions and Calculations

Expansion or alteration of a current program or service:

This request is to increase COR attorney and paralegal staffing. Current staffing includes 17 attorney FTEs and 5.5 paralegals. FY 2015-17 staffing included 16 attorney FTEs and 4.5 paralegal FTEs. COR added an attorney and paralegal in May of 2017 to address workload increases at that time. However, the additional staffing in FY 2017-19 has not kept pace with growing workloads.

Two of COR's paralegals focus nearly exclusively on important, non-litigation support functions; one supports the Governor's Clemency & Pardon Board, and another handles all COR critical litigation event calendaring and coordinates the division's public records response function. This leaves 3.5 paralegal FTEs to support the division's 17 attorneys who carry a combined litigation caseload of approximately 450 cases.

Paralegal litigation support work includes coordinating document discovery with DOC, preparing draft discovery responses, and assisting with investigation and witness interviews. When paralegals are not available, attorneys do their own litigation support work.

Increasing workloads have resulted in attorneys working extraordinary hours. In FY 2018, for example, COR attorneys worked an average of 220 nonscheduled hours, with some attorneys working as many as 300–500 nonscheduled hours. Much of this increased workload is a result of COR attorneys performing paralegal duties due to lack of current paralegal resources. While some amount of additional work hours is expected of assistant attorneys general, this consistently high level of extraordinary hours impacts effectiveness and retention. Current staffing also limits CORs ability to absorb peak workloads associated with significant litigation and trials.

Detailed assumptions and calculations:

For purposes of this request, COR seeks funding for one additional AAG, two additional paralegals, and the related support staff and administrative expenses.

These costs are ongoing and will carry forward into future biennia. One-time costs are not included in this request.

If approved, the additional AAG will likely be a shared position between COR's Habeas Corpus & Sentencing Unit and Civil Right Unit. The position will handle a caseload of litigation matters, to include personal restraint petitions, civil rights and public records litigation, and legal advice.

The two paralegal positions, if approved, will provide litigation support, particularly for document / discovery intensive civil rights matters.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE		1.0	1.0	1.0	Y
	Object A & B		142,584	142,584	142,584	
LA	FTE		0.5	0.5	0.5	Y
	Object A & B		38,688	38,688	38,688	
PL	FTE		2.0	2.0	2.0	Y
	Object A & B		191,328	191,328	191,328	
MA5	FTE		0.3	0.3	0.3	Y
	Object A & B		29,763	29,763	29,763	
TOTAL FTE		0.0	3.8	3.8	3.8	
TOTAL A & B		0	402,363	402,363	402,363	

Agency administration support FTEs are included in the tables using a Management Analyst 5 as a representative classification.

Strategic and Performance Outcomes

Strategic framework:

Results Washington:

Goal: Efficient, Effective and Accountable Government

This request promotes efficient, effective, and accountable government by ensuring DOC has sufficient AGO legal resources to lawfully administer the criminal judgments and sentences of individuals committed to DOC custody, defend the state in increasing litigation relating to the corrections system, and provide advice on legal requirements applicable to DOC operations.

Goal: Healthy and Safe Communities

This request supports healthy and safe communities by ensuring DOC has sufficient AGO legal resources to lawfully administer the judgments and sentences of individuals convicted of felonies and committed to DOC custody.

AGO Strategic Plan:

1. Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

2. Priority – Protect the People

Goal 3 – Promote Good Government

3. Priority – Empower our Employees

Goal 5 – Promote the health, safety and well-being of all employees in the workplace.

This request supports the AGO Strategic Plan by ensuring COR has sufficient staffing to deliver high quality and timely legal services, thereby reducing the state’s liability and promoting public safety and individual liberty through lawful administration of criminal sentences. Additionally, the request will empower COR employees and promote their health and well-being by addressing unsustainable workloads.

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405		474,000	474,000	474,000
TOTAL		-	474,000	474,000	474,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental changes are indeterminate.

Other Collateral Connections

Intergovernmental:

Client	Fund	FY2020	FY2021	FY2022	FY2023
DOC	405		474,000	474,000	474,000
TOTAL		-	474,000	474,000	474,000

Stakeholder response:

There is no known opposition to this request at this time

Legal or administrative mandates:

N/A

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 13 - WDFW Legal Support
Budget Session: 2020 Supp
Budget Level: Maintenance Level
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Agency Recommendation Summary

The Attorney General's Office (AGO) provides legal support to the Department of Fish and Wildlife (WDFW) and the State with respect to complex fisheries regulation issues, including tribal fishing issues arising under U.S. v. Washington and U.S. v. Oregon. Fisheries regulation has become increasingly complex. Recent legislation gave WDFW civil enforcement authority to further orca recovery, which requires additional legal support. Finally, implementation of WDFW's Wolf Plan has required increased legal services.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$0	\$249	\$249	\$249
Total Expenditures	\$0	\$249	\$249	\$249
Biennial Totals		\$249		\$498
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.0	1.8	1.8	1.8
Average Annual		0.9		1.8
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$157	\$157	\$157
Obj. B	\$0	\$54	\$54	\$54
Obj. C	\$0	\$5	\$5	\$5
Obj. E	\$0	\$29	\$29	\$29
Obj. G	\$0	\$2	\$2	\$2
Obj. J	\$0	\$2	\$2	\$2

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$0	\$249	\$249	\$249
Total	\$0	\$249	\$249	\$249
Biennial Totals		\$249		\$498

Package Description

The AGO provides legal support to WDFW and the State with respect to complex fisheries regulation issues, including tribal fishing issues arising under U.S. v Washington and U.S. v Oregon.

The annual North of Falcon fisheries season setting process involves complex legal issues that demand significant attorney time. This includes questions concerning tribal fishing rights as well as assisting in WDFW's intensive efforts to design fishery and hatchery plans that can secure National Oceanic and Atmospheric Administration (NOAA) approval for needed ESA coverage. Intertribal fisheries disputes have resulted in numerous sub proceedings in U.S. v. Washington. Over the past six years, the AGO has been party to an average of one-dozen active matters each year. Six of these matters generated appeals to the federal appellate courts during the last three years. At the same time, the AGO has seen a significant increase in workload from numerous lawsuits filed by environmental groups, animal rights activists, pro-fishing groups, and suction dredge miners opposed to various aspects of WDFW's management of fish and wildlife resources. For example, our legal support to WDFW's Habitat Program has increased by 0.5 FTE over the last two years, as we defended four challenges to HPA rules, each of which resulted in appeals to the Washington Court of Appeals and/or the Washington Supreme Court. Our legal support for WDFW's Wildlife Program has increased by 0.8 FTE over the last two years, due, in significant part, to litigation and advice associated with WDFW's implementation of its Wolf Conservation and Management Plan. During the last two years, we have defended against five lawsuits, at least six motions for emergency injunctive relief, and numerous other motions, relating to wolf management. As recovery progresses, the wolf work may actually increase as growing wolf populations will likely result in more conflict with livestock.

Additionally, the 2019 Legislature enacted 2SHB 1579 (Chapter 290, Laws of 2019), an act relating to implementing recommendations of the Southern Resident Killer Whale Task Force related to increased chinook abundance. This legislation amended chapter 77.55 RCW (governing regulation of hydraulic projects) to provide WDFW with significant new civil enforcement powers, including the authority to issue stop work orders, notices to comply, and significant civil penalties. The AGO's fiscal note on this legislation estimated that it would require an additional 0.2 AAG and 0.1 Legal Assistant (LA) in FY 2020 and 0.4 AAG and 0.2 LA in FY 2021 and each fiscal year thereafter. The AGO received no additional funding for this work and is not included in this request.

In light of the increased workload, the AGO and WDFW signed an Interagency Agreement (IAA) to add 1.0 AAG and 0.5 LA to the services provided to WDFW through the end FY 2020. However, the AGO expects the increased workload described above to continue on an ongoing basis. The funding requested in this package would convert the positions currently funded through the IAA into WDFW's legal services base funding,

beginning in Fiscal year 2021. This will ensure that the AGO and WDFW have sufficient ongoing capacity to support WDFW's legal needs and protect the interests of the State. Without the continued funding for the requested additional legal support, WDFW's and the State's position in complex fisheries, tribal, and wildlife matters will be jeopardized. Funding this request will ensure that all the legal needs of WDFW are met including the increased workload associated with wolf management and implementing 2SHB 1579.

Assumptions and Calculations

Expansion or alteration of a current program or service:

There is no funding in the AGO's base budget for costs identified in this request. Recognizing the increase in demand for priority legal services as described above, WDFW began funding one additional AAG FTE and 0.5 LA through an IAA with the AGO. This package would make the positions added through the IAA a part of the AGO's and WDFW's base. This critical need exists independently, but it is compounded by the additional legal service demand anticipated for implementation of 2SHB 1579, which the legislature enacted in 2019 to provide WDFW with enhanced HPA civil penalty and enforcement authority as recommended in by the Governor's Orca Task Force. The AGO's fiscal note on that bill projected the need for 0.4 AAG and 0.2 LA beginning 2021, and continuing into the future indefinitely.

Detailed assumptions and calculations:

This request assumes that the demand for increased legal services will continue indefinitely. Consequently, the request would make the IAA-funded position permanent. The fund source for FWP includes the Legal Services Revolving Account. This request for additional funding will support 1.0 AAG and 0.5 LA. These costs are ongoing and will carry forward into future biennia. One-time costs are not included in this request.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE		1.0	1.0	1.0	Y
	Object A & B		142,584	142,584	142,584	
LA	FTE		0.5	0.5	0.5	Y
	Object A & B		38,688	38,688	38,688	
MA5	FTE		0.3	0.3	0.3	Y
	Object A & B		29,763	29,763	29,763	
TOTAL FTE		0.0	1.8	1.8	1.8	
TOTAL A & B		0	211,035	211,035	211,035	

Strategic and Performance Outcomes

Strategic framework:

Results Washington:

Keeping Puget Sound Ecosystem Clean and Healthy: Funding this request will directly support implementation of 2SHB 1579, which implements a recommendation of the Governor’s Orca Recovery Task Force to enhance the WDFW’s HPA civil enforcement authority and thereby improve abundance of Chinook salmon, which are the preferred prey of the Southern Resident Orca Whales.

Keeping the Columbia River Healthy: Funding this request will also ensure the AGO continues to have capacity to support the State in complex legal work supporting the State’s policy objectives in the Columbia River, such as ongoing ESA litigation associated with the Columbia River BiOp, various restoration projects, and fish passage.

AGO Strategic Plan: Funding this request will support the following AGO Strategic Plan elements:

Priority I--Serve the State, Goal 1--Deliver high quality, timely, and efficient legal services, Task 1-1-5--Coordinate tribal law issues and promote tribal law training.

Priority II--Protect the People, Goal 2--Protect Washington’s environment and public health, Task 2-2-1—Protect the environment and public health.

This request supports the AGO Strategic Plan by ensuring that the AGO’s Fish and Wildlife divisions (FWP) has sufficient depth and capacity on complex tribal law issues to enable succession planning and training as senior division attorneys retire. It will also promote the goals of protecting the environment by helping WDFW implement the Southern Resident Killer Whale Task Force recommendations, and navigate complex fisheries management and ESA issues.

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 - Legal Services to State Agencies	405		249,000	249,000	249,000
TOTAL		-	249,000	249,000	249,000

AGO Performance Outcomes:

This request impacts the legal services provided to WDFW. Permanent funding of this AAG position (currently funded by an IAA) will sustain efficient and effective delivery of legal services. It will also help ensure that the AGO has the capacity to provide legal support to WDFW and the State on complex fisheries, tribal rights, and ESA matters, including implementing enhanced civil HPA enforcement authority recommended by the Governor’s Southern Resident Killer Whale Task Force.

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental impact for this performance measure is indeterminate.

Other Collateral Connections**Intergovernmental:**

WDFW is in agreement with these legal services needs and fully supports the AGO request. The package does not affect any other agency.

Client	Fund	FY2020	FY2021	FY2022	FY2023
WDFW	405		249,000	249,000	249,000
TOTAL		-	249,000	249,000	249,000

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

This decision package does not focus on a single piece of litigation or matter. However, the increase in complexity of Fish and Wildlife legal support has challenges the AGO's ability to provide legal services on several ongoing pieces of litigation. Examples include *U.S. v. Washington* and various sub proceedings which raise complex tribal fishing rights issues, *NWF v. NMFS* (ongoing litigation concerning the Columbia River BiOp); *Center for Biological Diversity v. WDFW* (example of ongoing litigation concerning implementation of the Wolf Conservation and Management Plan). The request is also in response to enactment of 2SHB 1579, which implements recommendations of the Governor's Southern Resident Killer Whale Task Force.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 15 - AGO Technical Corrections
Budget Session: 2020 Supp
Budget Level: Maintenance Level
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Agency Recommendation Summary

The Attorney General (AGO) is requesting billing authority for five legislative bills; 5135-SSB.PL, 1579-2SHB, 1290-SHB, 5163-SSB, 1087-2SHB.PL that passed in the 2019 session. The client agencies; Department of Ecology (Ecology), Department of Fish and Wildlife (WDFW), Department of Enterprise Services (DES), and Employment Security (ESD) received funding in the 2019-21 Omnibus Budget to enact each bill. Successful implementation of these new laws signed into law by the Governor require adequate resources for legal services. The AGO is also requesting billing authority for the Paid Family Medical Leave (PFML) program within ESD that was funded in the 2019-21 Omnibus Budget.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$979	\$1,405	\$1,516	\$1,916
Total Expenditures	\$979	\$1,405	\$1,516	\$1,916
Biennial Totals		\$2,384		\$3,432
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	6.6	8.8	9.8	12.6
Average Annual		7.7		11.2
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$561	\$770	\$837	\$1,095
Obj. B	\$192	\$266	\$291	\$379
Obj. C	\$103	\$205	\$205	\$205
Obj. E	\$106	\$146	\$162	\$210
Obj. G	\$7	\$9	\$10	\$13

Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. J	\$10	\$9	\$11	\$14
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$979	\$1,405	\$1,516	\$1,916
Total	\$979	\$1,405	\$1,516	\$1,916
Biennial Totals		\$2,384		\$3,432

Package Description

The Attorney General is requesting billing authority for five legislative bills that passed in the 2019 session. The client agencies; Ecology, WDFW, DES, and ESD received funding in the 2019-21 Omnibus Budget to enact each bill.

Substitute Senate Bill (SSB) 5135 – Toxic Pollution – Legal services in support of the new Hazardous Waste and Toxics Reduction Program. These legal services include but are not limited to;

- Advice and representation at Pollution Control Hearings Board (PCHB) on enforcement of information requests to manufacturers,
- Advice regarding determination of regulatory actions for priority chemicals in priority consumer products,
- Advice on rulemaking to implement regulatory actions,
- Advice regarding identification of at least five additional priority chemicals beyond the first six listed in statute,
- Advice and representation at PCHB on enforcement of rules addressing priority chemicals in priority consumer products.

Second Substitute House Bill (2SHB) 1579 – Chinook Abundance of Southern Resident Killer Whale – The enacted legislation found that the population of southern resident killer whales has declined in recent years. To combat this decline the enacted legislation requires the following:

- Washington State Fish and Wildlife Commission to adopt rules to liberalize bag limits for certain fish to reduce predation risk to salmon smolts.
- Amends RCW 77.32.010 to remove certain types of fish that do not require licenses such as smelt, changes smelt to freshwater smelt.
- Adds a new section to chapter 77.55 RCW that requires a permit for certain work near a high water line. Sets up a predetermination system for those unsure if a permit is required.
- WDFW must review and notify others before making its determination and adds a new section to chapter 77.55 RCW which sets out procedure for a stop work order including, when such an order can be issued, how to issue the order, how to provide notice and appeal rights. If WDFW issues 60 stop work orders/notices to comply, and 20 civil penalties, half of these appeals are assumed to result in formal appeals.

Substitute House Bill (SHB) 1290– Voluntary cleanup of hazardous waste - the enacted legislation authorizes the AGO Ecology Division (ECY) to offer an expedited process for providing informal advice and assistance under the Voluntary Cleanup Program (VCP). If ECY offers advice and assistance through the expedited process, it must collect all costs incurred in providing the advice and assistance. ECY may establish conditions for VCP customers who request advice and assistance through the expedited process.

SSB 5163 – Wrongful Injury or Death - This bill expands the number of prospective plaintiffs who can recover for a wrongful death and does have fiscal impact on Contracts Procurement and Risk Management. Based on historical data from the Risk Management Office there are an average of 44 wrongful injury and death claims and suits received per year over the last 10 years. AGO Torts divisions assumes this enacted legislation will increase the number of wrongful death claims and suits by 20% per the direction of DES. This would increase the annual average to 52 wrongful death claims and suits received per year.

2SHB 1087 - Long-term Services & Support – ESD will issue orders and notices of assessment for unpaid long-term care premiums, which are subject to administrative appeal rights. It is assumed that approximately 229 employers will request administrative hearings each year. This enacted legislation has the same or similar coverage provisions and number of yearly appeals projected as for paid family and medical leave premium assessments. The law changed on July 28, 2019 and the first delinquencies resulting in the issuance of assessments of unpaid long-term care premiums are expected in August and September 2019. The AGO estimates it will provide representation for one-third (approximately 75) of the more complex administrative appeals hearings. With respect to appeals litigated by agency staff, the AGO will provide training, develop legal resources, and offer review and advice when needed.

The AGO is also requesting billing authority for the Paid Family Medical Leave Program (PFML) and the PFML Ombuds (PFMLO) programs within ESD. Since the enactment of PFML in June 2017, ESD has been in the process of writing rules implementing the new RCW Title 50A. The rulemaking was split into multiple phases. Four phases of rule development are complete, three are in process, and more are expected to be added as the program continues to develop. Assistant Attorneys General (AAGs) have provided advice on rule development and review process, open meetings, public records, the impact of the new legislation on state agencies as employers, proposed legislation, and areas for more possible legislative amendments. AAGs have also advised on contract issues concerning the design of computer systems to carry out ESD's responsibilities, the writing and review of requests for proposal, and management of contracts with vendors. AAGs provided personnel assistance as ESD has created a new division to implement the PFML legislation. The workload in assisting ESD has been more time-intensive in recent months and will continue to escalate. Premium requirements went into effect in January 2019, and employers must file quarterly reports in July and August 2019. Benefits claims begin in January 2020.

The primary division providing legal services on PFML issues has been the AGO's Licensing and Administrative Law (LAL) Division. LAL AAGs billed over 800 AAG hours in FY 2018, and over 1,200 hours in FY 2019. AAGs in the Spokane Division and the Labor and Personnel Division also provided more than 100 AAG hours of assistance on PFML issues in FY 2018 and FY 2019.

This level of new legal services is not sustainable and the workload is assumed to increase. In addition to any

ongoing rulemaking and other advice projects, significant litigation will commence, as ESD will begin issuing determinations subject to appeal. The Administrative Procedure Act allows aggrieved parties to request hearings concerning ESDs determinations in administering the PFML laws. ESD will require AGO representation in appeals (which can begin in January 2021 and thereafter). AAG advice is assumed to dramatically increase in connection with adjudicative determinations and as stakeholders contact ESD when all provisions of the law are in effect. Advice needs will continue to grow throughout FY 2020 as ESD develops internal operations processes for its administration of the PFML law, and there is need to train ESD staff on legal issues. Advice is also required concerning public records requests for PFML records and data sharing issues.

The PFMLLO is requesting legal services from the AGO Government Compliance & Enforcement (GCE) program. The GCE estimates 360 hours (.20 AAG FTE) to provide on-going legal advice.

Assumptions and Calculations

Expansion or alteration of a current program or service:

<u>Division</u>	<u>2015-17</u>	<u>2017-19</u>
AHD	\$5,552,000	\$6,319,000
ECY	\$7,910,000	\$9,387,000
FWP	\$3,121,000	\$3,487,000
LAL	\$5,889,000	\$6,576,000
TORTS	\$49,500,000	\$49,500,000

\$63,000 was provided in the 2019-21 biennial budget for PFML legal services. This provisioned funding is assumed to be depleted by October 2019 (Fiscal Month 04).

Detailed assumptions and calculations:

5135 SSB PL – Toxic Pollution

Legal services are in support of the new Hazardous Waste and Toxics Reduction Program. New workload includes but is not limited to:

- A. Advice and possible representation at PCHB on enforcement of information requests to manufacturers (Section 3).
- B. Advice regarding determination of regulatory actions for priority chemicals in priority consumer products (Section 4).
- C. Advice on rulemaking to implement regulatory actions (Section 5(1)(c)).
- D. Advice regarding identification of at least five additional priority chemicals beyond the first six listed in statute (Section 2).
- E. Advice and possible representation at PCHB on enforcement of rules addressing priority chemicals in priority consumer products (Section 7).

Total workload Impact:

- FY 2020: Nominal costs are not included in this request
- FY 2021: 0.08 Assistant Attorney General (AAG) at a cost of \$18,000
- FY 2022 and FY 2023: 0.10 AAG at a cost of \$22,000

FY 2024: 0.05 AAG at a cost of \$11,000

1579 2SHB – Chinook Abundance of Southern Resident Killer Whale

The assumptions below are the best plausible projections the AGO can identify. Variance in the number of notices to comply and civil penalties is probable to vary.

Beginning in FY 2020, if WDFW issues 60 stop work orders/notices to comply, and 20 civil penalties.

- A. Each appeal will require an average of approximately 100 hours of AAG time.
- B. 10% of the stop work orders, notices to comply, and civil penalties will be appealed each year based on AGO experience: six stop work orders/notices and two civil penalties.
- C. Half of these appeals are assumed to result in formal appeals requiring 100 AAG hours each: three stop work orders/notices and one civil penalty (400 AAG hours). The remainder will be resolved informally by WDFW.

Beginning in FY 2021, if WDFW issues 120 stop work orders/notices to comply, and 40 civil penalties.

- A. Each appeal will require an average of approximately 100 hours of AAG time.
- B. 10% of the stop work orders, notices to comply, and civil penalties will be appealed each year based on AGO experience: 12 stop work orders/notices and four civil penalties.
- C. Half of these appeals are assumed to result in formal appeals requiring 100 AAG hours each: six stop work orders/notices and 2 civil penalties (800 AAG hours). The remainder will be resolved informally by WDFW.

Direct litigation costs are also required each FY for Depositions, exhibit preparation and court filing fees.

- A. FY2020: \$2,500
- B. FY2021 and in each FY thereafter: \$5,000.

Total workload impact:

FY 2020: 0.22 AAG and 0.11 Legal Assistant (LA) at a cost of \$53,000 (this includes direct litigation costs of \$2,500).

FY 2021 and in each FY thereafter: 0.44 AAG and 0.22 LA at a cost of \$107,000 (this includes direct litigation costs of \$5,000).

1290 SHB – Voluntary cleanup of hazardous waste

Section 2(3) of the bill would authorize ECY to offer an expedited process for providing informal advice and assistance under the Voluntary Cleanup Program (VCP). If AGO ECY offers advice and assistance through the expedited process, it must collect all costs incurred in providing the advice and assistance. ECY may establish conditions for VCP customers who request advice and assistance through the expedited process.

Section 2(4) would authorize ECY to operate under interpretive guidance pending adoption of the rules, to speed implementation of the program. ECY would initiate the process by July 1, 2020, based on the assumption that ECY will need up to one year to develop the expedited process. To develop the expedited process in FY 2020, AGO ECY will need 0.2 FTE AAG to provide legal advice during the development of

guidance and policies. FY 2021 and subsequent years, the AGO assumes the projects requesting expedited reviews will be more complex; additionally, the agency will need to be able to meet its commitments to reduce response times and provide greater certainty regarding response times to those requesting expedited reviews.

Assuming the program is implemented in FY 2021, AGO ECY will need 0.3 FTE AAG to provide legal advice to the Ecology processing projects through expedited reviews.

Section 2(4) will authorize ECY to adopt rules to implement the expedited process. In FY 2021 and 2022, the AGO assumes 0.1 FTE AAG would be necessary to support the rulemaking.

Total workload impact:

FY 2020: 0.2 AAG and 0.1 Legal Assistant (LA) at a cost of \$47,000.

FY 2021 and FY 2022: 0.4 AAG and 0.2 LA at a cost of \$93,000.

FY 2023 and in each FY thereafter: 0.3 AAG and 0.15 LA at a cost of \$70,000.

5163 SSB – Wrongful Injury or Death

Assumptions for the AGO Torts Legal Services for DES:

1. Tort defense costs are billed through to the DES Risk Management Division through an Interagency Agreement (IAA).
2. The Torts client agency is DES. These costs are over and above the current 2019-21 IAA amount.
3. Torts assumes that each additional case will required approximately 225 AAG hours. Torts also assumes that each additional case will incur approximately \$25,000 in expert fees for economic testimony.
4. Torts is in agreement with DES's predicted financial impact of this proposed bill: This bill expands the number of prospective plaintiffs who can recover for a wrongful death and does have fiscal impact on Contracts Procurement and Risk Management (CPRM).
5. Based on historical data from the Risk Management Office there is an average of 44 death claims and suits received per year over 10 years.
6. Torts assumes this bill will increase the number of death claims and suits by 20% per the direction of DES, increasing the annual average to 52 death claims and suits received per year.
7. Amended filings will take time to be drafted and filed, and it is estimated that new lawsuits resulting from this legislation will not begin until the latter part of 2019. These are the reasons for the lower projected work hours in FY 2020.
8. Legal services include, but are not limited to defending wrongful death lawsuits that have more beneficiaries and higher damages exposure.

9. Direct litigation costs:

A. \$100,000 in FY 2020 are included for four economist reports costing \$25,000 each. The economist reports calculate lost future net accumulations to the estate of the decedent.

B. \$200,000 in FY 2021 and in each FY thereafter are included for eight economist reports costing \$25,000 each. The economist reports calculate lost future net accumulations to the estate of the decedent.

10. Total workload impact:

FY 2020: 0.5 AAG and 0.25 LA at a cost of \$215,000 (this includes direct litigation costs of \$100,000).

FY 2021 and in each FY thereafter: 1.0 AAG and 0.5 LA at a cost of \$432,000 (this includes direct litigation costs of \$200,000).

1087 2SHB PL – Long-term Services & Support

Assumptions for the AGO Licensing & Administrative Law (LAL) Legal Services for ESD:

1. The AGO will bill ESD for legal services based on the enactment of this bill.

2. Between FY 2020 and FY 2022, the AGO assumes a nominal level of legal services for rulemaking and contract procurement assistance that will be provided within existing resources.

3. Premiums under Section 9 of this law will be assessed beginning in January 2022. It is assumed these premiums will be paid on a quarterly basis, as with unemployment and paid family and medical leave premiums, and that the first premium payments would be due at the end of April 2022. Those employers who do not pay premiums as required are subject to issuance of assessments under Sections 9 and 10, which may be appealed under Section 13.

4. Beginning in approximately May 2022, ESD will issue orders and notices of assessment for unpaid long-term care premiums, which are subject to administrative appeal rights. From that point forward, each year, approximately 229 employers will request administrative hearings. This bill has the same or similar coverage provisions and number of yearly appeals projected as for paid family and medical leave premium assessments.

The timing of the appeals is based on the effective date of the law change and the first expected delinquencies resulting in turn in the issuance of assessments of unpaid long-term care premiums. The AGO will provide representation in up to one-third (approximately 75) of the more complex administrative appeals hearings, particularly when the law is new and on higher-stakes appeals. With respect to appeals litigated by agency staff, the AGO will provide training, develop legal resources, and offer review and advice when needed. An employer's request for hearing upon an assessment is the document that initiates litigation proceedings. It triggers the ESD's need to request assignment of an Administrative Law Judge (ALJ) for scheduling hearings. It is possible that ESD will settle a handful of appeals before requesting assignment of an ALJ, but this is rare because settlement generally occurs in the context of litigation proceedings. As a result, nearly all of the 229 projected appeals will result in litigation.

5. Each administrative appeal handled by the AGO is assumed to require 40 hours of AAG legal services, including briefing, oral argument, exhibit submission, and witness examination. In administrative appeals handled by ESD, AAGs will provide advice as needed. The AGO will handle all court appeals from final administrative orders in long-term care assessment appeals.

6. With litigation beginning in FY 2023, the AGO will also continue to provide advice on vendor contract management issues and operational processes, among other issues, and will continue to provide training and guidance to ESD staff handling administrative appeals.

7. Beginning in FY 2023, litigation will require 3,000 hours of AAG legal services, with 180 additional hours for advice on statutory and regulatory construction and on vendor contract compliance issues relating to ESD's implementation of the new law.

8. Total workload impact: FY 2023 and in each FY thereafter: 1.77 AAG and 0.89 Legal Assistant (LA) at a cost of \$410,000 per FY.

Paid Family Medical Leave

FY2020:

A. Advice — 1,000 AAG hours are required for the following advice to ESD on the implementation of PFML:

- Additional phases of rule development
- Legislative proposals
- Review of significant stakeholder communications
- Development of operational processes
- Providing training to Department staff
- Providing assistance and review before the Department's determinations in significant cases when requested
- Advising on contracts with vendors and contract performance management
- Advising on public records and data sharing issues

B. Litigation in Benefits Cases — 2,500 AAG hours are required for litigating PFML appeals at the Office of Administrative Hearings (OAH), before the Commissioner's Review Office, and in the courts. This includes the development and/or review of the record, preparation of briefing, submission of witness lists and exhibits, and handling telephonic hearings. Each case litigated to completion through the administrative tribunals will average up to 15 hours of AAG work. There likely will be thousands of PFML administrative appeals filed each year starting in January 2020 and continuing thereafter into future biennia. The AGO will provide representation in benefits cases in the administrative tribunal until such time as administrative law judges develop expertise and consistently apply the law.

C. Litigation in Tax, Discrimination and Collection Cases — 660 hours are required each FY for AAG assistance. This includes but is not limited to; handling appeals from PFML premium assessments issued to employers (including development and/or review of the record; preparation of briefing, submission of evidence; conducting hearings; case-related communications); assisting with discrimination investigations and conducting hearings when discrimination violations have occurred; and assisting with bankruptcy and warrant collection activity.

FY 2021 and in each FY thereafter – 2.3 AAG and 1.2 LA:

A. Advice — 500 AAG hours are required for advice on additional rulemaking, legislative proposals, review of significant stakeholder communications, review of operational processes, providing additional training to ESD staff, providing assistance and review before ESD’s determinations in significant cases when requested, advising on contracts with vendors and contract performance management, and advising on public records and data sharing issues.

B. Litigation in Benefits Cases — 3,000 AAG hours are required for litigating PFML appeals at the OAH, before the Commissioner’s Review Office, and in the courts. This includes development and/or review of the record, preparation of briefing, submission of witness lists and exhibits, and handling telephonic hearings. Each case litigated to completion through the administrative tribunals will average up to 15 AAG hours. The AGO will provide representation in benefits cases in the administrative tribunal until such time as Administrative Law Judges develop expertise and consistently apply the law. As a point of reference, 12,000 unemployment insurance appeals are filed each year to OAH. This is representative of the complexity and assumed number of PFML appeals. In addition to the administrative litigation, the AGO will represent ESD in all court cases involving PFML benefits. Based on data in the last four years, approximately 60 unemployment insurance benefits cases are filed in the courts each year. Each court appeal under this legislation will average 20 AAG hours for review of the record, preparation of briefing, handling oral argument (including associated travel), and case-related communications. Between the administrative and court litigation, it is conservatively estimated that 3,000 AAG hours will be required. Even this will likely require triage at the administrative level—where the AGO will provide the fullest assistance possible and appropriate for efficient services in benefits cases, by providing full representation in the complex cases and those raising new issues. If the volume of litigation does not allow for full representation within the resources available, the AGO will provide stock briefing on recurring legal issues in the other cases. In time, as Administrative Law Judges develop expertise and as greater numbers of court appeals are filed from final administrative orders, more AAG time will be expended defending court appeals relative to administrative appeals in benefits cases.

C. Litigation in Tax, Discrimination and Collection Cases — 660 hours are required each year for AAG assistance. This includes but is not limited to; handling appeals from PFML premium assessments issued to employers (including development and/or review of the record, preparation of briefing, submission of evidence, conducting hearings, and case-related communications); assisting with discrimination investigations and conducting hearings when discrimination violations have occurred; and assisting with bankruptcy and warrant collection activity.

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE	3.4	4.4	4.5	6.1	Y
	Object A & B	474,000	632,000	635,000	873,000	
LA	FTE	1.7	2.2	2.2	3.0	Y
	Object A & B	129,000	172,000	173,000	237,000	
PL	FTE	0.6	1.1	2.0	2.0	Y
	Object A & B	52,000	101,000	188,000	183,000	
MA5	FTE	0.9	1.1	1.1	1.5	Y
	Object A & B	98,000	131,000	132,000	182,000	
TOTAL FTE		6.6	8.8	9.8	12.6	
TOTAL A & B		753,000	1,036,000	1,128,000	1,475,000	

Strategic and Performance Outcomes

Strategic framework:

RESULTS WASHINGTON: Efficient, Effective and Accountable Government and Prosperous Economy

AGO STRATEGIC PLAN:

1. Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.

Goal 4 – Protect and enhance the financial health and resources of the AGO including optimizing fund utilization and management.

2. Priority – Protect the People

Goal 2 – Protect Washington’s environment and public health.

Goal 3 – Promote Good Government

Goal 4 – Protect all Washington consumers

AGO ACTIVITY:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services for State Agencies	405	979,000	1,405,000	1,516,000	1,916,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental changes for this performance measure are indeterminate.

Other Collateral Connections

Intergovernmental:

The below agencies have received funding in the 2019-21 biennial budget.

Client	Fund	FY2020	FY2021	FY2022	FY2023
DOE	405	47,000	111,000	115,000	92,000
WDFW	405	53,000	107,000	107,000	107,000
DES	405	215,000	432,000	432,000	432,000
ESD	405	664,000	755,000	862,000	1,285,000
TOTAL		979,000	1,405,000	1,516,000	1,916,000

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

N/A

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 16 - Federal Funding Adjustment
Budget Session: 2020 Supp
Budget Level: Maintenance Level
Contact Info: Edd Giger
 (360) 586-2104
 edward.giger@atg.wa.gov

Agency Recommendation Summary

The Attorney General's Office (AGO) requests an increase to its federal authority to cover the general wage increases and premium pay awarded to state employees in the 2019-21 biennial budget for the Medicaid Fraud program. This request will maintain the program and will continue protecting the Medicaid program and Washington's most vulnerable citizens from fraud and abuse. This adjustment will also allow the AGO to continue to clear the backlog of untested kits in the Federal Sexual Assault Kit Initiative (SAKI) and to further unresolved sexual assault related investigations. There is no impact to State funds.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001 - 2	\$0	\$725	\$525	\$525
Total Expenditures	\$0	\$725	\$525	\$525
Biennial Totals		\$725		\$1,050
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$341	\$341	\$341
Obj. B	\$0	\$116	\$116	\$116
Obj. C	\$0	\$200	\$0	\$0
Obj. E	\$0	\$68	\$68	\$68
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
001 - 0316	\$0	\$200	\$0	\$0
001 - 0393	\$0	\$525	\$525	\$525
Total	\$0	\$725	\$525	\$525

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
Biennial Totals		\$725		\$1,050

Package Description

The AGO requests an increase to its federal authority in FY 2021 by \$725,000 and \$525,000 each year thereafter. \$525,000 of this adjustment will cover the general wage increases and premium pay awarded to state employees of the Medicaid Fraud program in the 2019-21 biennial budget. The agency currently has sufficient state match authority in the Medicaid Fraud Penalty Account (MFPA – 19A) to cover this increase and maintain the program at its current level. The other \$200,000 will allow the AGO to continue to clear the backlog of untested kits in the Federal Sexual Assault Kit Initiative (SAKI) and to further unresolved sexual assault related investigations.

Assumptions and Calculations

Expansion or alteration of a current program or service:

This request does not expand or alter the current program but provide expenditure authority for the current maintenance level.

Detailed assumptions and calculations:

For the Medicaid program, the adjustment in federal authority will cover the general wage increases for all staff and premium pay in King County. There is sufficient authority in Fund 19A, which is the state match for this program.

For the SAKI grant, it will allow the program to expend the entire grant within the grant period awarded.

Workforce Assumptions:

There is no increase to the workforce assumptions.

Strategic and Performance Outcomes

Strategic framework:

Results Washington:

Goal 4: Healthy & safe communities

Goal 5: Efficient, effective & accountable government

Agency Strategic Plan:

Priority 2 – Protect the People

2-1-3 Protect vulnerable adults and combat elder abuse.

2-2-3 Combat the opioid epidemic.

2-4-2 Combat health care fraud.

2-1-4 Protect sexually exploited youth and pursue civil commitment of sexually violent predators.

This request supports the AGO strategic plan and Results Washington because MFC's continuation enables the division to provide fraud accountability, increase revenue for the Medicaid Fraud Penalty Account and enables the division to bring more residential patient abuse and neglect matters - helping deter and protect Washington's most vulnerable citizens.

This request advances the Governor's Results Washington Goal 4: Healthy and Safe Communities and the AGO Strategic Plan Priority 2 – Protect the People. By utilizing all available funding to inventory and test un-submitted or partially submitted sexual assault kits (SAKs), and entering those results into the Homicide and Investigative Tracking System (HITS). This will assist local law enforcement in the commitment or recommitment of sexually violent predators, while developing cross discipline training which focuses on the victims of sexual assault.

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse	001-2		525,000	525,000	525,000
A0003 Criminal Investigations and Prosecutions	001-2		200,000		
TOTAL		-	725,000	525,000	525,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002538 - Recoveries to the Medicaid System	\$	0	0	0	0

Performance outcomes:

Incremental adjustments are indeterminate.

Other Collateral Connections

Intergovernmental:

N/A

Stakeholder response:

All fellow law enforcement agencies such as Washington Association of Sheriffs and Police Chiefs, Washington Association of Community Oriented Police, Washington Association of Prosecuting Attorneys, and Washington State Patrol support this request. Health Care Authority and Department of Social and Health Services expressed their support as well.

No known oppositions to this request for SAKI.

Legal or administrative mandates:

N/A

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 01 - Child Permanency and Child Welfare
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
 (360) 586-2104
 EdwardG@atg.wa.gov

Agency Recommendation Summary

Facing unsustainable caseloads far surpassing the American Bar Association's (ABA) recommendation, the Attorney General's Office (AGO) requests permanent funding to promote child safety and timely permanency for foster children. Legal resources must keep pace with increases in the number of child welfare cases and their greater complexity. Assistant Attorneys General (AAG) and support staff levels should not exceed the ABA's recommendation of maximum average attorney caseloads of 60 cases. This package seeks increased staffing to improve outcomes for foster children by reducing delays resulting from continuances and extensions, adequately preparing cases, and providing DCYF exceptional legal advice.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$0	\$3,817	\$10,883	\$14,044
Total Expenditures	\$0	\$3,817	\$10,883	\$14,044
Biennial Totals		\$3,817		\$24,927
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.0	28.7	81.8	106.0
Average Annual		14.4		93.9
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$2,436	\$6,944	\$8,947
Obj. B	\$0	\$850	\$2,423	\$3,133
Obj. E	\$0	\$472	\$1,349	\$1,747
Obj. G	\$0	\$29	\$82	\$106
Obj. J	\$0	\$30	\$85	\$111

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$0	\$3,817	\$10,883	\$14,044
Total	\$0	\$3,817	\$10,883	\$14,044
Biennial Totals		\$3,817		\$24,927

Package Description

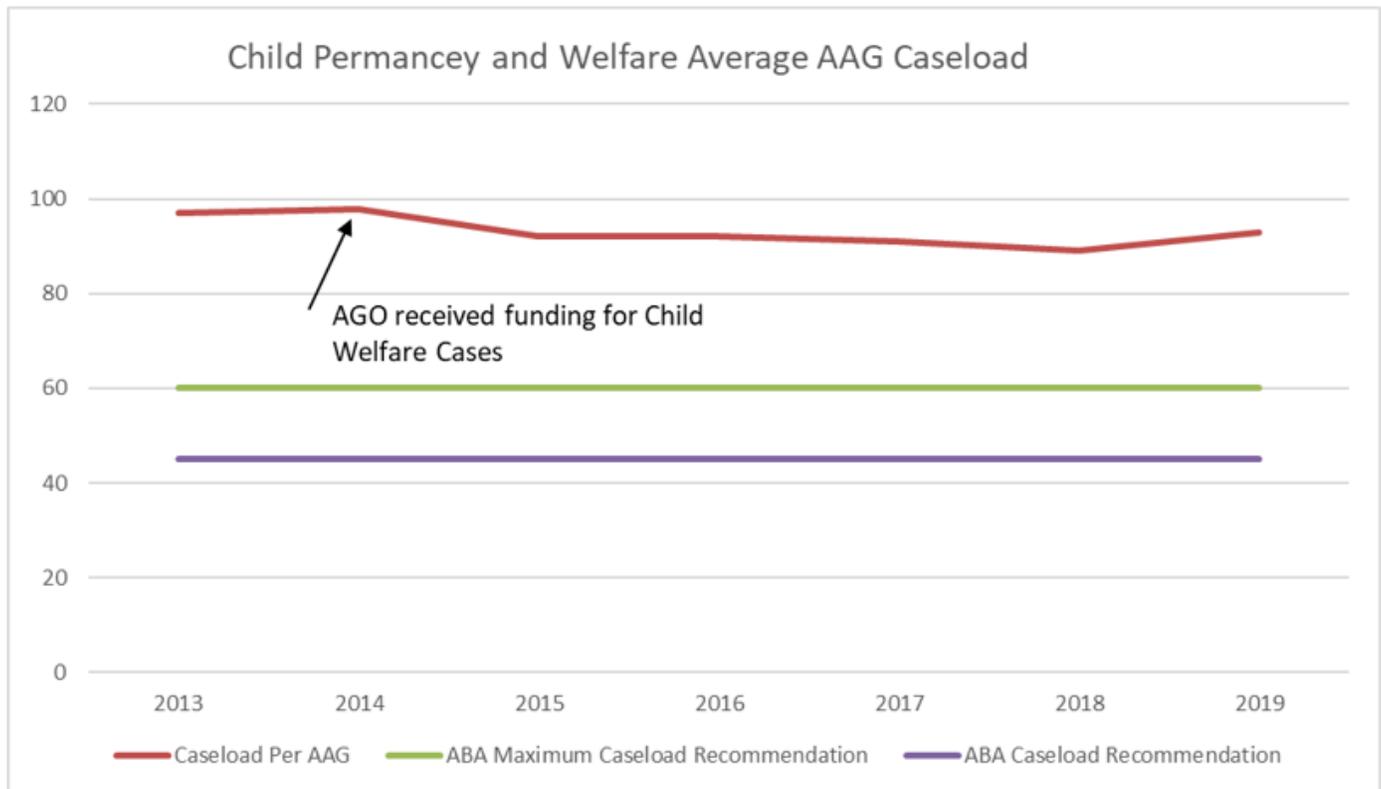
The AGO provides legal advice and representation for DCYF, while supporting DCYF’s mission to protect children from abuse and neglect, and working to achieve timely permanency for foster children. AAGs handling child welfare cases carry caseloads considered “unmanageable” by ABA standards. AAG caseloads are above 150% of the ABA’s recommended maximum caseload level for attorneys representing child welfare agencies. Without additional funding from the Legislature, the AGO’s unmanageable caseloads will likely negatively impact the entire child welfare system and delay safe, permanent outcomes for vulnerable children. We are requesting staffing adequate to support the legal needs of DCYF to protect children through the establishment of dependency cases, and to achieve safe and timely permanency for children and their families through either reunification, adoption, or guardianship.

The ABA recommends a caseload target of no more than 60 cases per attorney. *Standards of Practice for Lawyers Representing Child Welfare Agencies* recognizes that a “caseload of 40 - 50 active cases is reasonable, and a caseload of over 60 cases is unmanageable.” The ABA made these recommendations in 2004, but the AGO has never been funded for the recommended staffing level. Due to increased legal complexity at the state and federal level, and additional burdens resulting from court decisions, representing our state’s child welfare agency is substantially more complex than it was 15 years ago.

AAGs play a crucial role in ensuring the DCYF can prove that it made reasonable efforts to reunify families, that remedial services were provided to parents, and that the agency’s decisions about removal or return of children conform to legal standards. The ABA recommendations are based on the importance of:

- Promoting timely hearings with fewer continuances
- Ensuring adequate preparation of cases
- Ensuring compliance with complex laws

The ABA attorney caseload standards also recognize that effective legal support for child welfare agencies requires sufficient and highly qualified support staff. Offices that represent child welfare agencies require well-trained legal assistants, paralegals, and office assistants to function successfully. Adequate staffing of these positions is critical to effective representation, and is fiscally justified. Highly qualified support staff in adequate numbers leverages the value from each AAG position, at significantly lower cost than adding attorney positions.



The ABA *Standards of Practice for Lawyers Representing Child Welfare Agencies* recognizes that attracting and retaining “high quality attorneys is essential... Since the agency attorneys often move the rest of the system, strong, committed attorneys can drastically improve the system.” However, we have seen that high caseloads result in increased turnover of AAGs and staff.

The work defined:

In order to protect the rights of children and families, this work involves significant legal process. AAGs initially may provide advice, but the first court appearance is in shelter care hearings. This first emergency hearing must take place within 72 hours of the child’s removal from home, excluding weekends and holidays. The court decides whether the legal standard has been met for removing a child from the home. The case then proceeds to a determination of “dependency”. Within 75 days of the filing of the dependency petition, the court must either enter an agreed order or begin a bench trial to decide whether the child is dependent. If the court finds the child dependent, it also enters an order on where the child will live, what contact the parent and child may have, and what services the parent must complete to reunify with their child.

About three months after a child is found dependent, and at least every six months thereafter, the court holds a review hearing, deciding whether the parent has made compliance and progress in fixing what led to the child’s removal, and deciding whether the child’s placement and visits should change.

If the child cannot be safely returned home for 15 months, and the plan for the child is adoption, DCYF must file a petition seeking termination of parental rights. AAGs review these petitions to make sure they are legally sufficient, and these cases either result in an agreed adoption, or in most cases, a termination bench trial. Parents

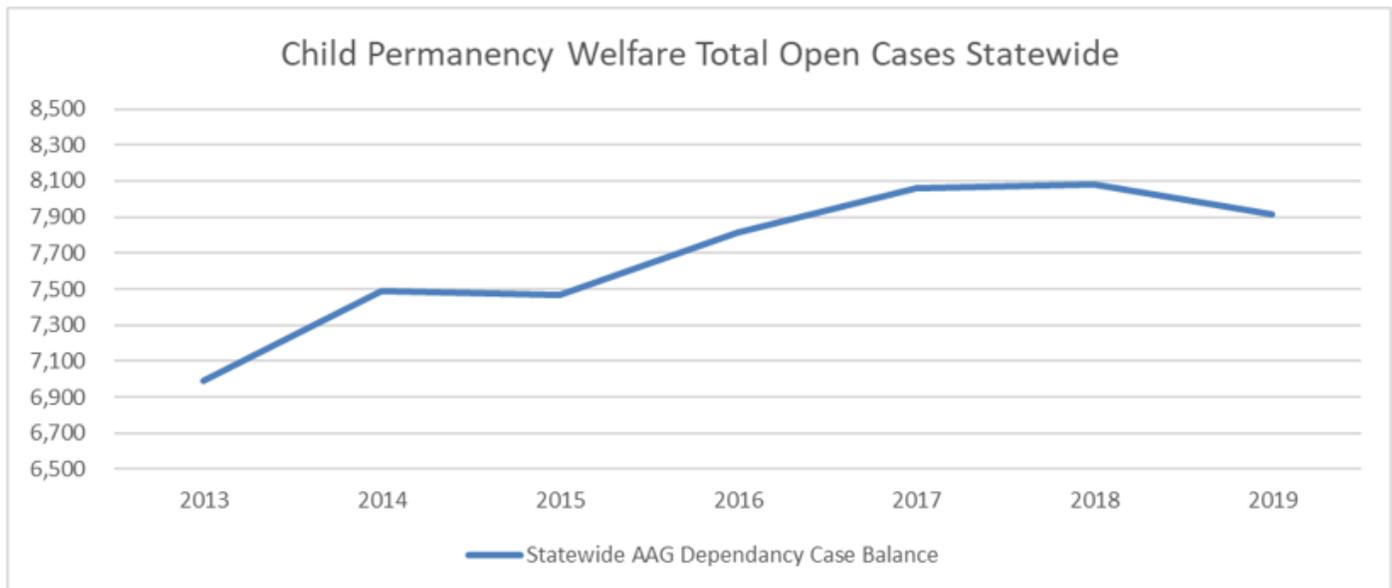
have a right to appeal dependency and termination orders, and may ask the appellate courts to review any other court orders entered in dependency cases. The AGO also represents DCYF in all appeals of dependency and termination orders.

The workload for open cases has increased.

Workload for open cases is increasing for three reasons:

- 1) Cases take longer to close than in the past;
- 2) Some courts regularly hold hearings more frequently than required by state law; and
- 3) Parties often bring motions that require the AGO to defend DCYF's position.

While the number of new dependency cases remains high and stable, the number of open cases is slowly increasing, which indicates that it is taking longer to close cases than in the past. In addition, some courts regularly hold hearings more often than legally required. While state law requires the court hold review hearings for dependent children every six months, current national recommendations advocate that courts hold hearings more frequently in order to provide closer oversight, and many stakeholder believe that this results in better outcomes for children. As a result, some courts hold hearings as often as every three months, which increases the workload for each of these cases. DCYF also must respond to other motions brought by the parties, such as those for expanded visitation, and faster return home. More court hearings and cases remaining open longer represents a significant increase in workload.



In the absence of legislative appropriation, we have no ability to respond to workload demands, except with delay. High caseloads impact our ability to effectively manage the cases involving these abused and neglected children. Because the AGO's resources are not currently tied to the caseload forecast, the AGO's authority to bill DCYF for legal services is set without regard to AAG caseloads. The office cannot offset increased filings of dependency or termination cases by increasing AAG resources to handle them. Additionally, as cases grow more complex because of changing laws and more participants being represented by attorneys, the AGO's authority to bill remains stagnant. Some of the challenges of the state's role in litigating these cases are detailed below:

The state carries the burden of proof in dependency, termination, and guardianship fact-finding trials, and presents each case in review hearings at least every six months.

The AGO, on behalf of DCYF, carries the burden of proof, which requires considerable staff and AAG preparation time to work with the client agency and experts to ensure that each legal element of the case is satisfied. Additionally, at each review hearing, the AGO, on behalf of DCYF, is responsible for presenting each case to the court. This responsibility requires significant preparation so that court orders are appropriately drafted and signed and crowded court dockets are facilitated efficiently.

AAGs and staff are responsible for nearly every order for every child in every hearing.

The AGO is responsible for court orders in nearly every county for all dependency, termination, and guardianship fact-finding trials, for all regular and early review and permanency planning hearings, and all or almost all motion hearings for every child. This requires both legal assistants and AAGs to spend substantial hours drafting, reviewing, preparing, revising, and distributing court orders.

AAGs must prove the allegations in the petitions as to every parent (even parents whose identity is unknown), and continue representing DCYF even after all parental rights are terminated.

Each case involves representing the DCYF on behalf of multiple children, and often involves multiple parents' attorneys.

- Most cases include at least two parents and many include three or more, such as when children in a family have different fathers or parentage is unclear. An attorney at public expense represents nearly all parents who appear.
- The AAG must prove the allegations in each petition, even as to parents who do not appear in the case and are not represented by an attorney.
- Cases often involve separate fact-findings or trials for different parents on different timetables. Cases can also require significant time to comply with due process notice requirements of parents who reside out of state or out of country.
- In addition, AAGs continue to represent DCYF in dependency matters in which all parental rights have been terminated, after the parents' counsel have been discharged. Dependency proceedings and related hearings continue until permanency is achieved for the child or the child ages out of the system.

New or expanded dockets are increasing required court appearances and staff preparation.

As part of their efforts to improve children's outcomes, many counties have added therapeutic courts, such as Family Recovery (or "Treatment") Courts for parents with substance abuse issues and infant mental health court (also known as Baby Court), as an alternative to the regular dependency court system. These courts involve more frequent court hearings and intensive case management. These additional dockets typically increase workloads, with expanded tax or grant funding for court time, but without additional funding for the AGO, requiring the AGO to redirect existing resources to these courts. The AGO has not received any additional funding to manage this increased workload. While we support safe and effective efforts to expedite permanency for children, expansion without additional resources takes the AGO further away from the ABA recommended standards.

The same AGO legal teams represent DCYF in appellate cases at each level, and in administrative hearings.

- The AGO juvenile litigation teams also represent DCYF in **appellate cases** generated by dependency, guardianship, and termination cases, both at the Court of Appeals and at the Washington State Supreme Court. This includes appeals from dependency fact-finding trials and the termination of parental rights, and includes frequent discretionary appeals of interlocutory orders, such as on shelter care decisions, placement orders, and orders on visitation. 154 new appeals were opened by the AGO in FY 2019.
- AAGs and AGO staff also handle some administrative appeals of “founded” findings that a parent or person providing care for a child abused or neglected a child, as well as all administrative appeals related to denials, suspensions, and revocations of foster care, group care, and child care licenses.

The opioid epidemic is driving increased caseloads.

Last year, the AGO performed an internal survey of all AAGs working on child dependency and termination cases. 76 AAG from around the state — from Seattle to Spokane, Bellingham to Kennewick — responded to the survey during the last two weeks of July. The attorneys estimated that opioid abuse impacted 47.9 percent of their dependency cases. The attorneys estimated that the epidemic impacted 39.9 percent of their parental rights termination caseload. The opioid epidemic’s devastation on families is resulting in additional cases of child neglect.

AAGs also provide advice and training to DCYF.

- AAGs have a role beyond the cases actually filed in juvenile court. They must respond to requests for advice on matters that are being handled by DCYF caseworkers but may not directly relate to a currently open court case.
- AAGs also provide legal training for casework staff. Training demands increase with caseworker turnover. Paradoxically, the ability to provide additional training is likely to help stem caseworker turnover.

Achieving an average attorney caseload of 60 cases and appropriate staffing levels would require permanently funding for 47 AAG, 17 Paralegals, 24 Legal Assistants, and 6 Legal Office Assistants FTE statewide. This request is made to permanently reduce the average attorney caseload from 93 to 60 and achieve an appropriate support staff to attorney staffing ratio statewide.

Assumptions and Calculations

Expansion or alteration of a current program or service:

The 2015-2017 Biennial and the FY 2016 Supplemental Enacted Budget provided a combined total of \$2,692,000 for Child Permanency for 5.0 AAG, 3.0 PL and 2.0 LA. This funding was not ongoing and expired at the end of the 2015-2017 Biennium.

For Fiscal Year 2017 Supplemental the AGO requested \$538,000 and 2.5 AAG, 1.3 LA, and 0.6 MA for Child Welfare Litigation however, no funding was approved for this request.

The 2017-2019 Biennial Budget the AGO submitted a decision package for Child Permanency and Child Welfare. The request was for ongoing funding to pay for 14.0 AAG, 4.0 PL, 7.0 LA, 2.0 LOA, and 3.5 MA5 for a total of 30.5 FTE at a total biennial cost of \$7,192,000. The amount approved in the budget provided for 20.0 FTE and \$4,292,000. This funding was not ongoing and expired at the end of the 2017-2019 Biennium.

The 2019-2021 Biennial Budget the AGO submitted a decision package for Child Permanency and Child Welfare. The request was for ongoing funding to pay for 29.5 AAG, 10.3 PL, 15.8 LA, 4.8 LOA, and 6.5 MA5 for a total of 66.9 FTE at a total cost of \$8,326,000 during FY 2020. For FY 2021 and ongoing, the request was for ongoing funding to pay for 48 AAG, 18 PL, 24 LA, 6 LOA, and 12 MA5 for a total of 108 FTE at a total cost of \$13,554,000. The amount approved in the budget provided 20.0 FTE and \$4,292,000.

Detailed assumptions and calculations:

As of June 30, 2019:

Statewide average monthly AAG FTE serving Child Permanency and Welfare cases: 85

The average monthly AAG serving Child Permanency and Welfare cases includes the positions funded in the 2019-2021 Biennium Budget

Number of DCYF dependency, guardianship and termination cases, and appeals statewide: 7,914.

Average caseload per AAG: $7,914 / 85 = 93$

93 cases per AAG is more than double the American Bar Association (ABA) recommended caseload standard. (40 – 50 average 45)

$(93 - 45) / 45 = 1.07$ or 107%

ABA recommended caseload standard for child permanency and welfare work: 40 – 50 cases.

ABA maximum caseload recommended per AAG: 60

ABA describes caseloads exceeding 60 cases per AAG as “unmanageable”.

AAGs needed to meet the maximum caseload standard recommended by the ABA: $7,914 / 60 = 132$

AAGs requested in this decision package: $132 - 85 = 47$.

Following the ABA recommendations the AGO is requesting the following support staff:

One Paralegal for every three Child Welfare AAGs.

There are 27 Paralegals on Staff

$132 \text{ AAG} / 3 = 44$ Recommended Paralegals

$44 - 27 = 17$ Paralegals

One Legal Assistant for every two Child Welfare AAGs.

$47 \text{ AAG} / 2 = 23.5$ Legal Assistants

One Legal Office Assistant for every eight Child Welfare AAGs:

$47 \text{ AAG} / 8 = 5.9$ Legal Office Assistants

Cost include the assumption that hiring of staff will be phased in over two years with two AAG and associated support staff on boarded each month beginning July 1, 2020. Staff will be located statewide to meet the legal needs of DCYF.

These costs are ongoing and will carry forward into future biennia. One-time costs are not included in this request.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE		13.0	37.0	47.0	Y
Object A & B		1,873,176	5,327,832	6,766,728	
LA FTE		6.5	18.5	24.0	Y
Object A & B		507,858	1,444,560	1,873,404	
PL FTE		4.3	12.4	17.0	Y
Object A & B		415,543	1,197,541	1,629,168	
LOA FTE		1.6	4.6	6.0	Y
Object A & B		102,140	295,536	382,224	
MA5 FTE		3.3	9.3	12.0	Y
Object A & B		386,919	1,101,231	1,428,624	
TOTAL FTE	0.0	28.7	81.8	106.0	
TOTAL A & B	0.0	3,285,636	9,366,700	12,080,148	

Strategic and Performance Outcomes

Strategic framework:

Relationship to Results Washington: Goal 4: Healthy & Safe Communities

[Link to Results Washington](#)

Relationship to the AGO Strategic Plan:

1. Priority – Protect the People

1. Goal – Defend civil rights and stand up for vulnerable Washingtonians.

1. Objective 2-1-2 Protect abused and neglected children.

- Use AGO resources and authority to protect abused and neglected children, including facilitating timely permanency and collaborating with external stakeholders and internally among divisions. Seek a permanent funding solution to ensure the AGO maintains adequate resources to keep up with case filings.

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A 010 Legal Services to State Agencies	405		3,817,000	10,883,000	14,044,000
TOTAL		-	3,817,000	10,883,000	14,044,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental impact for this performance measure is indeterminate.

Other Collateral Connections

Intergovernmental:

There is no know opposition to this request.

DCYF supports this budget request and will submit a parallel decision package.

The goals of protecting children from abuse and neglect and achieving permanency for children will be realized if the AGO can increase and sustain sufficient staff resources by having DCYF receive additional funding for legal services. Delays in child welfare cases can impact DCYF's compliance with federal law and risk reduced federal funding to the state. Delays also extend the time a child is in dependency and increases the cost of providing services.

The courts and defense counsel rely on the AGO to present these cases in a timely manner, be available to resolve issues, and appear for hearings. When permanency is not achieved and dependency cases continue, the court and defense counsel resources are impacted. Additionally, as courts add commissioners and specialty courts and expand dockets, all in the interest of serving children and their families, they require AAGs to be present and participate in these initiatives if they are to be successful.

Client	Fund	FY2020	FY2021	FY2022	FY2023
DCYF			3,817,000	10,883,000	14,044,000
TOTAL		-	3,817,000	10,883,000	14,044,000

Stakeholder response:

There is no known opposition to this request. Stakeholders include children and relatives involved in the child welfare system, including foster parents. The entire system benefits when the workforce is adequately staffed. Otherwise, delays in child welfare cases will impact the affected children because they will not be provided a timely, stable and permanent home.

Legal or administrative mandates:

This proposal is not in response to any single case or administrative mandate. However, it is in response to the increased number of dependency, termination, and guardianship cases and to expanded dockets and specialty courts established by the judicial branch.

In addition, the complexity of representing DCYF has increased as a result of some specific cases. For example, in *In re A.B.*, 168 Wn.2d 908 (2010), the Washington State Supreme Court found that, in addition to proving the six elements necessary to terminate parental rights under RCW 13.34.180, the State must prove the additional element of current parental unfitness at the time of the trial. Similarly, SHB 1284, passed in 2013, increased the necessary evidence that must be presented to ensure that parents incarcerated at the time of a termination trial have been provided sufficient opportunities to address parental deficiencies and be involved in children's lives.

Other legislative policies such as expanded rights to counsel for legally free children under 2014's E2SSB 6126 and options for dependent youth to stay in extended foster care after reaching majority similarly increased the complexity of representing DCYF.

In addition, federal and state law mandate that DCYF meet certain timelines, such as:

- Federal Adoption and Safe Families Act, must ensure timely permanency for foster children by filing a termination petition within 15 months from when the child was removed from home.
- RCW 13.34.070(1), a fact-finding hearing on a dependency petition shall be held no later than 75 days after filing.
- RCW 13.34.138(1), there shall be a review by the court at least once every six months to determine the progress of the parties and determine whether supervision should continue.
- SB 5890 Sec. 6, Legislature mandated that DSHS establish a case review panel where permanency is not achieved for children within 18 months after being placed in out-of-home care.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

The agency will need to increase facility capacity to accommodate the additional staff. The AGO will deploy staff to seven Regional Services Division offices located in Bellingham, Everett, Kennewick, Port Angeles, Vancouver, Wenatchee, and Yakima. The AGO will also deploy staff to Seattle, Tumwater, and Tacoma.

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 02 - Cold Case Unit & HITS Restoration
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
 (360) 586-2104
 edward.giger@atg.wa.gov

Agency Recommendation Summary

The Legislature invested more than \$10 million in the 2019-21 Biennium to test the backlog of untested sexual assault kits. Testing that backlog of approximately 10,000 kits will likely produce new evidence in hundreds of open cold case sexual assaults. More law enforcement resources are necessary to prevent this new evidence from languishing. There are approximately 1600 unsolved homicides in Washington State (Attachment 1). There are even more unsolved sexual assault cases. A statewide cold case unit would provide investigative and prosecution resources to local law enforcement to solve cold cases, providing justice to victims and making Washingtonians safer.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001 - 1	\$0	\$1,795	\$1,795	\$1,795
Total Expenditures	\$0	\$1,795	\$1,795	\$1,795
Biennial Totals		\$1,795		\$3,590
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.0	13.3	13.3	13.3
Average Annual		6.7		13.3
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$0	\$1,145	\$1,145	\$1,145
Obj. B	\$0	\$396	\$396	\$396
Obj. E	\$0	\$234	\$234	\$234
Obj. G	\$0	\$14	\$14	\$14
Obj. J	\$0	\$6	\$6	\$6

Package Description

Washington State is in the process of testing its large backlog of previously untested sexual assault kits and other DNA collected at crime scenes, but Washington law enforcement agencies have not been provided additional resources to act on the new evidence these tests will produce. Without the resources to investigate cold cases, Washington state risks investing millions to test sexual assault kits without results in the form of prosecutions and justice for victims. Even before testing, results in a wave of new evidence demanding new investigations, law enforcement agencies need additional help addressing unsolved cold cases.

According to the Homicide Information Tracking System (HITS) database maintained by the Attorney General's Office (AGO), there are approximately 1,600 unsolved homicide cases at police departments around the state of Washington. In addition, there are approximately 1,774^[1] unsolved sexual assault cases in the HITS database. *Attachment 2.* Most agencies struggle with current caseloads and do not have the resources to address past unresolved crimes. *Attachment 3.* Currently, there are only a handful of law enforcement agencies in Washington with dedicated Cold Case Investigators. Those Investigators are often required to assist with current investigations, which limits time actually spent on cold case investigation. Some agencies use volunteers with limited experience in modern forensic technology on cold cases. Many cold cases are solvable with the resources requested here: a state Cold Case Unit and restoration of resources to the AGO's HITS Unit.

Cold Case Unit (new)

In 2017, Homicide Investigators from Washington formed a Cold Case Advisory Group to share information. Based on discussions within the group, as well as data collected by the AGO's HITS Unit, it is clear that serial offenders do not contain themselves within jurisdictional boundaries and may commit crimes in multiple jurisdictions before they are apprehended. The highly mobile nature of these offenders is another reason to address cold cases from a statewide perspective.

In 2018, the AGO conducted a survey asking local law enforcement agencies about their cold case needs. 56 law enforcement agencies responded by indicating they would benefit from cold case assistance from the AGO. The AGO has resources and expertise to offer to these agencies, but needs funding for a Cold Case Unit in order to provide it. Current and former Cold Case Investigators and relatives of victims support a state Cold Case Unit. *Attachment 3.*

This is a revolutionary time for cold case investigations. Genetic genealogy and other cutting-edge forensic tools have solved some of the most challenging cold cases around the country. Since 2018, genetic genealogy alone has solved dozens of cold cases in the United States. Most of those cases involved the sexual assault and murder of vulnerable women and children. The cases were thought to be unsolvable until reinvestigated and subjected to modern DNA analysis. Several such cases were recently solved in Washington and child rapists and murderers held accountable for their heinous crimes. *Attachment 4.* Review of these cases is labor-intensive and requires Investigators dedicated to the project.

Washington is presently testing its entire backlog of previously untested sexual assault kits, which will increase the number of needed cold case sexual assault investigations. Testing of old, previously untested sexual assault kits will generate numerous investigations and prosecutions. For example, Detroit, Michigan pioneered the

testing of previously unsubmitted sexual assault kits. Detroit has tested approximately 10,000 kits, which is similar to Washington's backlog. Testing of a similar volume of kits in Detroit resulted in the reopening of hundreds of investigations of past sexual assault cases, the identification of 821 potential serial sex offenders, and 144 convictions.^[2] Washington can expect similar results and will need additional resources for investigation and prosecution of old sexual assault cases. The data supports this conclusion.

In 2015, 9,760 sexual assault kits in Washington, some dating back decades, had never been submitted to the Crime Lab for DNA analysis. Since 2015, Washington has tested 2,914 of those kits, resulting in 1,057 DNA profiles of suspects uploaded to the national DNA database, CODIS (Combined Offender DNA Information System). Of those profiles, 395 matched to known offender profiles in CODIS. In total, Washington is experiencing a 13% "hit" rate from old kits submitted for testing, i.e., 13% of kits submitted for testing resulted in a match to a known DNA profile in the national DNA database. These numbers are consistent with the experience of other jurisdictions, like Detroit, which have tested their backlog of sexual assault kits. Based on these numbers, the AGO predicts more than 900 additional profiles from the remaining untested kits that will "hit" to a known offender profile in CODIS. This new evidence will generate a large volume of old cases in need of review and possible re-investigation by local law enforcement. *Attachment 5.*

The AGO's base budget does not allow for a Cold Case Unit. The proposed AGO Cold Case Unit would act as a resource multiplier for local law enforcement agencies by leveraging state and federal law enforcement resources and providing victim-centered and trauma informed training, technical assistance, case reviews, forensic consultation, assistance with victim and witness interviews, data collection, intelligence gathering, crime analysis and overall investigative guidance. Other jurisdictions provide usable templates for implementing a Cold Case Unit and adopting best practices. *Attachment 6.*

HITS (restoration of lost resources)

The AGO's HITS Unit can provide the Cold Case Unit with necessary data to assist in solving cold cases, but it needs a restoration of lost resources. The Legislature created HITS in 1990 as a response to serial killers and the high profile murder and rape of children by transient offenders. HITS collects data from homicides and sexual assaults and stores it in a searchable database. The purpose is to provide law enforcement with a searchable database of crimes committed in different jurisdictions that share commonalities. The work of HITS Investigators entails frequent travel around the state to meet with law enforcement. There are only four Investigators to cover the entire state and its more than 250 law enforcement agencies.

Budget cuts decimated HITS over the years. HITS was once comprised of 16 AGO staff. In 2003, budget concerns reduced HITS to 10 FTE. In 2009, in response to the recession, budget cuts reduced HITS to its present 5 FTE. The HITS database is only as useful as the data entered into it, which requires collection of data, which requires investigations and data entry. The supervisor of HITS covers a geographical area due to understaffing. One Investigator covers the entirety of Eastern Washington (except Yakima) due to understaffing. HITS once had 4 FTE dedicated to data entry and IT maintenance, and now has none due to understaffing. Investigators and the Violent Crime Analyst share data entry duties. *Attachment 7.*

The AGO's present base budget does not allow for a return to prior staffing levels. HITS needs additional Investigators and a person dedicated to data entry. This proposal would restore HITS staffing level to 11.0 FTE, about 70% of the staffing it had in 1999. *Attachment 7*.

Conclusion

Unsolved cold homicide and sexual assault cases are a statewide issue that demand attention from the state. However, before advances in modern forensic technology tools can solve cold cases across the state, labor-intensive review of cold cases by experienced Investigators is necessary. Investigators can identify evidence and subject it to modern forensic analysis. A Crime Analyst can analyze data from cold cases, and an Assistant Attorney General (AAG) can provide legal support and availability to prosecute cases. A Cold Case Unit within the AGO can provide valuable assistance.

This is a first-time request from the AGO that recognizes there is no acceptable reason to delay investigation of murders and sexual assaults. The state should not ignore the coming volume of cold sexual assault cases that will be in need of re-investigation due to DNA analysis of previously untested sexual assault kits. Advances in forensic technology—particularly DNA analysis—make this a perfect time to fund an investigative unit within the AGO to assist in solving cold cases statewide. The alternative to this proposal is to maintain the status quo and allow cold cases to languish as cities and counties struggle to combat current crime at the expense of older unsolved cases.

[1] The AGO estimates that this number is less than half of what it should be. Not all law enforcement agencies submit sexual assault data to the AGO, and sexual assault is notoriously underreported to police.

[2] See <http://www.endthebacklog.org/michigan>

Assumptions and Calculations

Expansion or alteration of a current program or service:

The HITS component of this proposal is a partial restoration of a legislatively created unit within the AGO. There is no funding in the AGO's base budget for costs included to increase HITS' staffing. The proposed increase in staffing does not fully restore HITS to past staffing levels, but will nonetheless greatly increase HITS' efficiency and ability to collect data for use by law enforcement in solving homicide and sexual assault cases.

For historical context, in 1999 HITS was comprised of 16 AGO employees, including 13 Investigators who combed the state for data on homicides and sexual assaults for entry into the HITS database. In 2003, budget concerns reduced HITS to 10 FTE with only eight Investigators. In 2009, in response to the recession, budget cuts reduced HITS from 10 FTE to its present 5 FTE and only four Investigators. For the past two biennia (2015-17 and 2017-19), HITS staffing has maintained at four Investigators and a Violent Crime Analyst, with no Data Entry Specialist. The mission and workload have remained the same throughout the years despite reductions in staff. Investigators and Violent Crime Analyst share labor-intensive, time-consuming data entry duties necessary for entry of useful data into the HITS database, taking away time that could be spent collecting data, investigating, and analyzing cases. Present staffing is insufficient.

Detailed assumptions and calculations:

The total request is an increase of \$1,749,000 to the AGO's base budget for Fiscal Year 2021. The increase funds eight Senior Investigators, an AAG, a Crime Victim Advocate, a Violent Crime Analyst, a Data Consultant, and a Legal Assistant (LA). The new positions would form a Cold Case Unit and partially restore HITS staffing. Workload costs are ongoing and carried forward into future biennia, with an anticipated increase to \$1,795,000 per fiscal year.

Cold Case Unit

The AGO requests an increase in base budget funding to allow the hiring of four AGO Senior Investigators, an AAG, a Violent Crime Analyst, and a LA. These would be new positions to the AGO's base budget and used to form a Cold Case Unit.

Investigators assigned to the Cold Case Unit would travel frequently to meet with local law enforcement and participate in investigations. Two Investigators assigned to the Cold Case Unit would be assigned duty stations in Western Washington in the AGO's Seattle and/or Olympia offices. The other two Investigators would be assigned duty stations in Eastern Washington in the AGO's Spokane, Yakima, Kennewick, or Wenatchee offices. The AAG, Violent Crime Analyst and LA would have duty stations in the main Criminal Justice Division (CRJ) offices in Seattle.

The increase primarily funds salary and benefits, with projected costs for travel, equipment, and incidentals built-in. Workload costs are ongoing and carried forward into future biennia.

Homicide Investigations Tracking System (HITS)

The AGO requests an additional increase in base budget to fund four AGO Senior Investigators, a Crime Victim Advocate, and a Data Compiler for its HITS Unit. These would be new positions to the AGO's base budget, although the increase would essentially fund positions previously lost during the recession.

HITS is currently staffed by only 5 FTE; three AGO Senior Investigators, an Investigator Analyst, and a Violent Crime Analyst. LAs in the Criminal Justice Division support the HITS Unit. HITS Investigators identify, collect, and enter data into the HITS database related to homicides and sexual assaults occurring in Washington State. This work entails frequent travel around the state to meet with law enforcement agencies. Each Investigator is assigned a designated geographical area.

The four HITS Investigators collect data on homicides and sexual assaults that occur on a daily basis throughout the state, as well as new information on old cases. One Investigator is designated the Chief Investigator, whose responsibilities are primarily administrative. Due to understaffing, however, the Chief Investigator also presently covers a geographical area, which limits his ability to administrate and supervise the unit. Due to understaffing, the Violent Crime Analyst covers a geographical area and participates in investigative work. HITS staff share data entry duties that would be better performed by a Data Compiler. HITS need additional Investigators and a person dedicated to data entry to perform its legislatively mandated mission. This package restores HITS to approximately 70% of the staffing it had in 1999.

The funding pays primarily for salary and benefits for the FTE mentioned above, with projected costs for travel, equipment, and incidentals built-in. Workload costs are ongoing and carried forward into future biennia.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE	0.0	1.0	1.0	1.0	Y
Object A & B	0	149,000	149,000	149,000	
LA FTE	0.0	1.0	1.0	1.0	Y
Object A & B	0	81,000	81,000	81,000	
CVA FTE	0.0	1.0	1.0	1.0	Y
Object A & B	0	119,000	119,000	119,000	
INV FTE	0.0	8.0	8.0	8.0	Y
Object A & B	0	996,000	996,000	996,000	
MA5 FTE	0.0	0.3	0.3	0.3	Y
Object A & B	0	30,000	30,000	30,000	
VCIA FTE	0.0	1.0	1.0	1.0	Y
Object A & B	0	82,000	82,000	82,000	
DC2 FTE	0.0	1.0	1.0	1.0	Y
Object A & B	0	84,000	84,000	84,000	
TOTAL FTE	0.0	13.3	13.3	13.3	
TOTAL A & B	0	1,541,000	1,541,000	1,541,000	

Strategic and Performance Outcomes

Strategic framework:

This request supports the AGO Strategic Plan and Results Washington goals of providing safe communities and protecting the people. Creating a Cold Case Unit and restoring lost HITS resources enables CRJ to protect the safety of Washingtonians by identifying and holding accountable those who kill and rape. Data and history prove that cold cases are solved only through labor-intensive investigation, which requires the dedication of resources often unavailable to local law enforcement.

A state Cold Case Unit and restoration of lost HITS resources will assist Washington law enforcement in solving cold homicide and sexual assault cases. Washington victims of crime and their survivors deserve better than what they presently receive for cold murder and sexual assault cases that remain unsolved and forgotten by everyone except the survivors. A state Cold Case Unit has the ability to bring these difficult cases to a close, or at the least, assure victims of crime and their survivors that the State of Washington did all it could to find justice.

Results Washington:

Goal: Healthy and Safe Communities

Agency Strategic Plan:

Protect the People

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A003 Criminal Litigation	001-1	-	986,000	986,000	986,000
A007 HITS	001-1	-	809,000	809,000	809,000
TOTAL		-	1,795,000	1,795,000	1,795,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
000021 - HITS Requests from Law Enforcement	#	0	0	0	0
002536 - Criminal Cases Closed	#	0	0	0	0

Performance outcomes:

With a Cold Case Unit and restored HITS capabilities, CRJ expects to be involved in many cold case investigations. CRJ currently lacks the funding to provide labor-intensive investigatory services for cold homicide and sexual assault cases on a statewide level. Incremental adjustments are indeterminate.

Other Collateral Connections**Intergovernmental:**

There are no fiscal impacts to other state agencies. There are no fiscal impacts to tribal, regional, county, or city governments. The proposal will provide investigative assistance to these entities.

Stakeholder response:

There is no known opposition to the request at this time.

Legal or administrative mandates:

The proposal is not responsive to any litigation, audit, executive order, or task force recommendation. Rather, the proposal is responsive to known unsolved homicides and sexual assaults in our state, acknowledgment by local law enforcement that assistance from the state in solving cold cases would be welcome, and the known need for cold case sexual assault investigations during this biennium and future biennia due to the large scale testing of previously un-submitted sexual assault kits.

Changes from current law:

N/A. No changes in existing statutes are necessary for implementation of this proposal.

State workforce impacts:

No collective bargaining agreement nor compensation or a benefit of any person is impacted by the proposal.

State facilities impacts:

Reference DP with increased lease costs for new FTE.

Puget Sound recovery:

N/A

Reference Documents

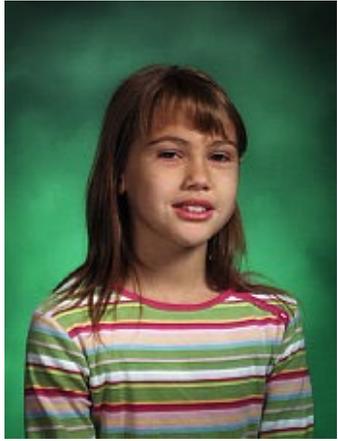
- Attachment 1.pdf
- Attachment 2.pdf
- Attachment 3.pdf
- Attachment 4.pdf
- Attachment 5.pdf
- Attachment 6.pdf
- Attachment 7.pdf

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No

A Few of Washington's Unsolved Homicides



2005
Andre'Anna Jackson
Age 10



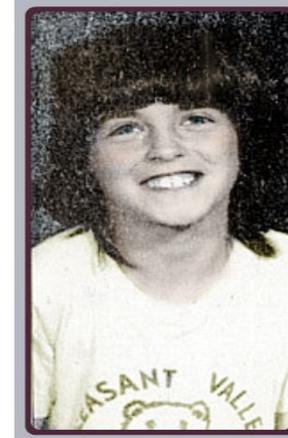
1991
Sarah Yarborough
Age 16



1982
Anna Sheehan
Age 75



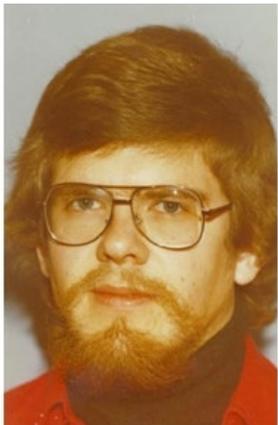
1972
Nancy Liptrap
Age 16



1982
Chila Silvernails
Age 8



2001
Lydia Varo-Braschler
Age 13



1979
Gisbert Kistemaker
Age 26



1982
Catherine Dawes
Age 27



1967
Sarah Cole



1997
Carle McConnell



1994
Misty Micheletti



1986
Adrienne Hale
Age 4

Unsolved WA Rapes & Homicides **3,347**

TOTAL HITS DATA

8,225

Total Homicides (victim deceased and identified)



6,652

Solved Homicides

1,573

Unsolved Homicides

356

Total Missing Persons and Unidentified Deceased
(generally presumed homicides)



356

Solved

42

Unsolved

8,530

Total Rape Cases



6,756

Solved Rape Cases

1,774

Unsolved Rape Cases

A.P. Wehner Jr.
109 Spengler Street
Richland, WA 99354
509-392-3582

July 26, 2019

Re: Formation of an AG statewide cold case unit

To Whom It May Concern,

After 35 years of service I retired in 2014 as a captain with the Richland Police Department. Much of my career was involved in criminal investigations. Since 2015 I have worked as a Special Investigator with the Kennewick Police Department, investigating their cold case homicides, missing persons, and unusual deaths.

I have had the opportunity to see first-hand the benefit of the Attorney General's HITS Unit. In 1997 I attended the HITS regional unsolved homicide meetings for southeastern Washington. The HITS investigator's knowledge and assistance in the then newly developed DNA front helped spark the interest that aided in the resolution of several unsolved cold cases in our area. This included the arrest and conviction of a person for a 20-year old homicide that I investigated for Richland PD.

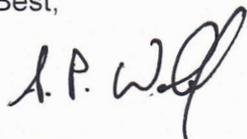
Since then I have attended HITS training that has been very beneficial. I keep in periodic contact with HITS investigators as I continue investigating cold cases. Their knowledge, experience, and willingness to assist in any way possible has been outstanding.

The quickly evolving world of DNA, especially with the advancements in forensic genealogy, is totally changing law enforcement's approach to investigating cold cases. This, coupled with the ability to dedicate specific personnel and resources to work just cold cases, will provide new hope to victim's families and friends. Even in those unfortunate cases that cannot ultimately be resolved, it's critically important for families, friends and the community to know a victim has not been forgotten and everything reasonably possible is being done to try and bring closure to their life altering event.

I very strongly support the idea of forming a statewide cold case unit in the Attorney General's Office. With the knowledge, experience, commitment and dedication of their employees, the AG's office is again in a position to lead the state in solving cold cases, much as they were in 1997. It's the right thing to do, at the right time, for the right reasons.

Please feel free to contact me should you have any questions or if I may be of any assistance.

Best,



A. P. Wehner Jr.

To: Members of the State Legislature

From: Robert D. Keppel, Ph.D.

Re: Cold Case Squad in the Attorney General's Office

This memo is written in support of creating and funding a cold case squad within the State Attorney General's Office. Some murders and rapes become more complicated and unsolved as time goes on. When I was the Chief Criminal Investigator, the cases I investigated were mostly unsolved. My first two cases were against Russ Howard of Yakima County and in Island County Nettie Ruth Neslund who were eventually convicted of murdering their spouses. The Neslund case was a no body murder case and was considered the most difficult case to solve.

The AG's Criminal Division is the best place to establish a cold case squad. It has experienced personnel to lead such an effort and has a great relationship with criminal attorneys who are needed for the follow-up and prosecution of these difficult investigations.

I would be willing to provide advice to the AG's office for this very important function. If you have any questions, please call me at 425-271-4081.

Dave Reichert
PO Box 567
Auburn, WA 98071

July 30, 2019

RE: Washington State Attorney General's Office Cold Case Unit

Greetings,

I write to express my support of the Washington State Attorney General's Office Cold Case Unit. As the former Sheriff for King County and law enforcement officer of more than 33 years, I know first-hand the value of dedicating resources to solving cold cases. I was the lead detective on the Green River serial homicides which spanned nearly two decades. These unspeakable murders devastated the victims' families, friends and the entire community.

Although the perpetrator was eventually identified thanks to a dedicated task force of investigators and advances in DNA technology, there are still unidentified victims waiting to be given their names back and missing women waiting to be found. The family members of unsolved homicide victims are left in a perpetual state of grief and each new success story they see on the news fuels their desire for answers in their loved one's case.

Now is an exciting time for cold case investigations around the country thanks to recent advances in forensic technology. I recognize the need for a statewide approach to investigating cold cases, as most agencies lack the resources necessary to dedicate full-time investigators to the crucial mission of solving cold cases. I believe the citizens of Washington would benefit greatly from the additional resources and expertise which could be provided by the Washington State Attorney General's Office Cold Case Unit.

Sincerely,



Dave Reichert
Retired King County Sheriff
Former Member of United States Congress

In Reply, Please Refer to
File No.

National Center for the Analysis of Violent Crime
Behavioral Analysis Unit-4
Violent Criminal Apprehension Program
FBI Academy
Quantico, Virginia 22135

July 29, 2019

Senior Investigator Lindsey Wade
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Dear Senior Investigator Wade,

I am writing to you to express my support for the creation of a state-wide cold case unit at the Washington State Attorney General's Office.

The need for a state-wide cold case unit has never been more critical. It is estimated that over 280,000 cases nationwide have remained unsolved since 1980 and the window of opportunity to prosecute these cases continues to narrow. Many offenders, and more importantly witnesses, are advancing in age, if they are not already deceased. Although advancements in DNA analysis and other forensic techniques have greatly enhanced the possibility of identifying and prosecuting an offender, the investigative shortfall today involves the complexity of *putting the pieces together*, especially across jurisdictional lines. Law enforcement investigators realize that many one-time and serial offenders relocate to different geographical areas after the commission of an offense. Some move because they know the challenge it presents for an investigation. Many local police departments do not have the resources to conduct extensive investigations outside their jurisdiction. A state-wide cold case unit with sufficient resources is in the best position to address these complex investigations and ensure that justice is done. Having a state-wide cold case unit will help alleviate many of the investigative hurdles that currently exist. Use of this state-wide cold case unit concept in other areas of the country has resulted in hundreds of cold cases being resolved. The closure that resolution provides for the victims' families is immeasurable.

If you have any further questions, please feel free to contact me at 703-632-4189 or kpfitzsimmons@fbi.gov.

Sincerely,

Kevin P. Fitzsimmons
Supervisory Crime Analyst
Behavioral Analysis Unit-4/ViCAP



Snohomish County Sheriff's Office
Cold Case Team
Detective James H. Scharf
August 1, 2019



RE: Washington State Attorney General's Office Cold Case Unit

To whom it may concern,

I have been a Major Crimes detective with the Snohomish County Sheriff's Office since 1995. I was assigned as one of the two founding members of the Cold Case Team in February 2005. We were the second agency in the State of Washington to have a Team working Cold Cases full time after Seattle PD. Most agencies work Cold Cases in addition to their active cases and the cold ones suffer on the back burner.

Since our Team was formed, we have been successful in solving nine cold homicide cases, one cold rape case and two missing person cases. No cold cases were ever solved when the cold cases were assigned to the Major Crimes Unit, because there was never time to work them.

Agencies in the State of Washington need a new approach. They need leadership from the Attorney General's Office to kick start these cold cases, because **they can be solved**. I know you have good homicide detectives in the AG's office that know how to work cold cases. David Heitzman was the other founding cold case investigator here. He was my original partner. I have worked on a cold case investigation with Bob Thompson when he worked in Bellevue. When Lindsey Wade was in Tacoma, she and I worked on cold cases together and she steered me in the right direction to network with the right people that got a couple of our cases solved.

I was the second detective in the country to use Forensic or Genetic Genealogy to make an arrest in a cold case and the first in the world to get a conviction from a GG arrest. This tool of Genetic Genealogy is the greatest tool law enforcement has been given since the discovery of DNA. It is the ultimate weapon to identify suspects if they leave their DNA at a crime scene. In a short period of time, most any Caucasian in this country will be at risk of being identified through the use of GG if they leave their DNA at a crime scene.

There are about 1600 unsolved homicides and 1800 unsolved rapes in Washington State. We have the ability to solve many of them if we can review all of the evidence (to determine if suspect DNA is present) being stored and ignored in police agency property rooms. Someone needs to take the lead to work with investigators throughout this state to jump start these investigations. The HITS Unit at the Attorney General's Office is just that someone.

I have worked with HITS investigators for years. People like Bob Keppel, Marv Skeen, Cloyd Steiger, Frank Tennison, Gary Trent, Dick Gagnon, Greg Mixsell, David Heitzman and Bob Thompson. Their consultation and recommendations have been so useful because we are all a team brainstorming ideas to get these cases solved. Nicole Siver has been your most wonderful resource for me as my go to person over the years. She has been invaluable.

Years ago, there were more HITS investigators than there are now. HITS investigators used to facilitate cold case meetings where we reviewed cases with numerous detectives from other agencies. That is a much needed resource that has been lost and needs to be reinstated. Now is the time to form this HITS Cold Case Team of investigators because of all of the advances in DNA and other new technologies.

My agency is back down to just me assigned to the Cold Cases. I can use the help and guidance of HITS investigators to assist me, because I don't know everything. The more minds looking at a case from different perspectives is what's needed to solve these cases and produce better detectives in every agency within the State. Please find a way to institute this Cold Case Unit in the State of Washington!

Thank you for your time and consideration. You may contact me with any questions at any time after I return from vacation on August 13th.

Sincerely,

[Jim Scharf](#)

Detective James H. Scharf #1155
Snohomish County Sheriff's Office
Major Crimes Unit - Cold Case Team
3000 Rockefeller Ave. M/S 606
Everett, WA 98201-4046
Office: 425-388-3841
Fax: 425-388-3033

jim.scharf@snoco.org



OFFICE OF
GARY SIMPSON

KITSAP COUNTY SHERIFF

614 DIVISION ST. MS-37 • PORT ORCHARD, WASHINGTON 98366 • (360) 337-7101 • FAX (360) 337-4923

August 1, 2019

Lindsey Wade
Senior Investigator, Sexual Assault Kit Initiative
Criminal Justice Division, Office of the Attorney General
800 Fifth Ave Suite 2000
Seattle, WA 98104

Subject: Washington State Attorney General's Office Cold Case Unit

Dear Ms. Wade,

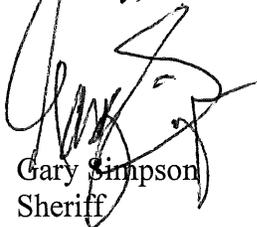
On behalf of the Kitsap County Sheriff's Office, I am in support of the Washington State Attorney General's Office implementation of a statewide cold case unit. The concept of a statewide unit would be a substantial benefit to many law enforcement agencies as we come together for a common purpose such as this.

My agency currently has thirteen cold cases, however current investigations take priority leaving little time to devote to these specific investigations. With new technology and investigative protocols and techniques many previously unsettled cases will be solved and criminals prosecuted.

I recognize the need for a statewide approach to investigating cold cases, as most agencies lack the resources necessary to dedicate full-time investigators to the crucial mission of solving these difficult cold cases. I am certain my agency and the citizens of Kitsap County would benefit greatly from these statewide resources.

The Kitsap County Sheriff's Office looks forward to working with the Washington State Attorney General's Office Cold Case Unit in the future.

Sincerely,



Gary Simpson
Sheriff



Hello,

July 25, 2019

As a parent of a child missing for 28 days and later found murdered in a local park, I can stand witness to the importance of a Statewide Cold Case Unit. Without the Tacoma Cold Case Unit and 32 years of work by both Tacoma PD and the Tacoma PD cold Case Unit the murderer of our daughter would still be unsolved.

It is only through a cold case specialist, having the time to research the ever-changing technology field to determine which current methods would apply to a certain case that not only increases the numbers of solved cases, may act somewhat of a deterrent, but most importantly provides the citizens with enhanced safety.

Justice is needed for these cases. These victims and their families need answers and the perpetrator needs to be found, stand trial and serve a sentence.

I realize Cold Case Units are expensive and further realize that not every municipality has the resources to fund one; which is why a statewide system of dedicated professionals to assist local law enforcement is essential. I hope this will become a reality in Washington as soon as possible.

Thank you,
Pattie Bastian

7/29/2019

To Whom it May Concern:

32 years ago, my only sister Jennifer went on a bike ride. At 13, she was a tomboy who often spent summer afternoons riding her bike. But this time, she never came home. Bloodhounds tracked through the park, but then lost the scent.

The Tacoma Police Department received literally hundreds of tips and the park was closed for 3 days so it could be searched by rescue teams. They found no sign of her until 24 days after Jenni left on her bike ride, when a jogger reported a terrible smell along a portion of the path her was running in Pt. Defiance Park. It was my sister's body.

Although her body had been decomposing for 24 days in the summer heat, forensic teams were able to determine that she had been strangled, sexually assaulted, and placed in a pre-arranged hiding spot. The bathing suit she'd been wearing under her shorts was taken to the lab, where DNA was found on it.

Over the years, the Tacoma Police Department formed a Cold Case Unit, in part out of a desire to solve my sister's case.

In May of last year, my mom and I got the call from Detective Lindsey Wade saying "We have made an arrest in your sister's case." After 32 years, a hit had finally been made and Robert Washburn was arrested for my sister's murder. I am now the mother of a 15 year old daughter – Sophia is the same age I was when my sister was murdered.

He originally pled not guilty but changed his plea to guilty and was sentenced in January of this year.

Although my dad died 3 years ago, my mom and I do feel some peace now that we know who killed my sweet sister, and we know that he can never hurt another child.

The tenacity and fine detective work that the Tacoma Police Department's cold case unit brought to my sister's case, and many others, has been outstanding and clearly produces results. But what about crimes that are committed in a smaller town, one that doesn't have a cold case unit? How long will it take for families of those murder victims to learn the truth? How many other crimes are those offenders committing because they have not been held accountable?

Creating a statewide cold case unit at the Attorney General's office would be the most effective way of using limited resources to ensure that no Washington family will wait in vain for justice.

Thank you for your consideration,

Theresa Bastian

To Whom it may concern,

I was a member of the King County Sheriff's Office as a patrolman, detective, and analyst from January of 1971 through 2013. I remain as a volunteer to the KCSO Major Crimes Unit. From 1984 through 1990 I was a detective and analyst on the Green River Task Force. From 1990 to 2001 I was lead detective on the Green River case, as a detective in the Major Crimes Unit. Shortly after that investigation led to an arrest in late 2001, I retired as a police officer and assumed a new role as an administrative analyst in preparation for trial. In mid-2003 I was selected as one of four primary interviewers of Gary Ridgway after he agreed to divulge his secrets. After Ridgway was sentenced to life in prison in 2004, I returned to the Major Crimes Unit and continued in my administrative analyst role on Green River, while also supporting on-going MCU investigations.

In 2009 KCSO received a federal grant to fund a Cold Case Unit. That funding included money for an analyst to assist two detectives. I was selected for that role. A second grant in 2011 extended the KCSO Cold Case Unit through 2013.

Due to the great work of the detectives assigned, the KCSO Cold Case Unit did some very good things in the first two years. That resulted in the second grant to continue that work.

Those very good things would never have been accomplished without the undivided attention of the detectives assigned to our unit.

Most cold cases became cold for a variety of factors. Many of those factors do not exist with the personnel and technology available today. We have better, more committed people working these cases, and they have tools that we not available to detectives years ago.

Before HITS was initiated, there was little or no communication between police agencies in Washington, except via VICAP. HITS gave police agencies in Washington the ability to communicate beyond county and city boundaries.

Yet, there are still hundreds of unsolved murders throughout Washington. Families of these victims grieve their losses daily.

Killers know no boundaries. They don't know a city or county line from a line in the sand.

Nor should investigative efforts to find these killers. The killers can still be made to answer.

The recent work that identified the killers of the girls at Point Defiance Park, and the killer of the Canadian kids are prime examples of what might be accomplished with the effort and manpower available by dedicating good detectives, and new technology to cold cases.

Why is this not done?

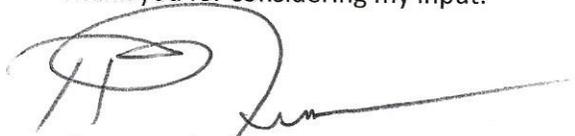
It comes down to the availability of personnel, and time. I can speak best to practices at KCSO, where Detectives, assigned to individual homicide cases, are also burdened with assaults and robberies. In smaller agencies detectives may also have responsibility for property crimes of burglary and larceny.

Detectives today barely have time to manage a current case load. Let alone assume cold homicide cases. The only way to attack and manage cold homicide cases is to devote detectives only to those cases full time.

The concept that a state agency would take responsibility for (some) cold cases might be difficult to accept for some larger police departments. I believe that HITS has the right personnel in place at this time to overcome that objection.

I am proud to have been part of, and present to witness, what law enforcement has accomplished by staying in touch with advancing technologies over the years. The idea of bringing together the best minds in criminal investigation across the state to help solve decades old cases is, in my opinion, the best way of bringing answers to families who have lost loved ones.

Thank you for considering my input.

A handwritten signature in black ink, appearing to read 'Tom Jensen', with a long horizontal flourish extending to the right.

Thomas R. (Tom) Jensen
King County S.O. Ret.

July 31, 2019

To Whom it May Concern:

This letter is in support of the formation of a Cold Case Unit in the Washington State Attorney General's Office. I have been the manager of the Washington State Patrol (WSP) Missing and Unidentified Persons Unit for over 7 years. Since taking over the MUPU it was immediately apparent that the number of unsolved unidentified human remains and missing persons cases is extremely high. At this time there are over 170 unidentified remains entries and 261 missing persons cases older than 1990 in the state system. In reading through some of the cases it's obvious the possibility of newly available biometric data could assist in these cases.

Many of the cases of unidentified human remains are from the late 1970's and 1980's at a time when DNA was not available. With the technology available today it's my belief that many of these cases, with the right attention by the right team of people can be solved. Law enforcement agencies, in general, in Washington are low staffed and low in available resources. Cold cases often take a back burner to cases of an immediate nature and also investigators with some smaller agencies are not aware of the resources available to them. The state MUPU has reached out on several occasions to offer case review and/or training on available biometric systems and we have experienced great interest.

The WSP MUPU is comprised of myself and three staff and while we are the state Missing Persons Clearinghouse, we are also the repository for all dental information related to missing and unidentified persons. As with the understaffed law enforcement agencies we are not able to even scratch the surface in helping with these cold cases and have seen the need for a dedicated group to address these issues.

As mentioned, the WSP MUPU is the repository for all dental information by state RCW and are often contacted for information on cold missing and unidentified cases. Some of our dental records date back to the 1970's and at times our files may contain information the local agencies have long lost or filed in archives.

With that I believe that the formation of a Cold Case Unit in Washington State would be an enormous boost in the states ability to solve these long-standing cases and bring to justice any suspects in the outstanding homicide or missing person cases.

Carri Gordon, Program Manager Washington State Patrol Missing Persons Unit

360-280-0403, carri.gordon@wsp.wa.gov

Coffee cup leads to arrest in 1972 cold case murder in Snohomish County

Detectives made an arrest in the 1972 murder of 20-year-old Jody Loomis in Snohomish County. DNA found on a discarded coffee cup cracked open the cold case investigation.

Author: KING Staff

Published: 7:08 AM PDT April 11, 2019

Updated: 11:28 PM PDT April 11, 2019

Thursday brought the news that authorities and family members waited nearly 47 years to hear.

Snohomish County detectives arrested a 77-year-old Edmonds man they believe is responsible for the 1972 murder of Jody Loomis.

Terrence Miller was arrested Wednesday morning at his home and has been charged with 1st degree premeditated murder. He is being held on \$1 million bail.

"Today, we're one step closer to finding justice for Jody Loomis," said Captain Robert Palmer, Snohomish County Sheriff's Office investigations commander.

WATCH: [Detectives announce arrest in 1972 cold case](#)

On August 23, 1972, Jody Loomis was biking to a horse stable near what is now Bothell-Everett Highway and 164th Street in Mill Creek. She was last seen about 5 p.m. riding up a hill on Penny Creek Road, which is now called Mill Creek Road.

Miller is accused of taking Loomis down a dirt road into a wooded area, then raping and shooting the 20-year-old in the head.

Two people found her body about 30 minutes later in the woods. Loomis died en route to the hospital.

Detectives believe Miller was living in Edmonds at the time of the murder, about five miles from where Loomis' body was found. However, Miller didn't know Loomis prior to the day she was murdered, according to Captain Palmer.

Miller is a lifelong resident of Snohomish County. For decades, he has lived with his wife in Edmonds, where they sell pottery on weekends.

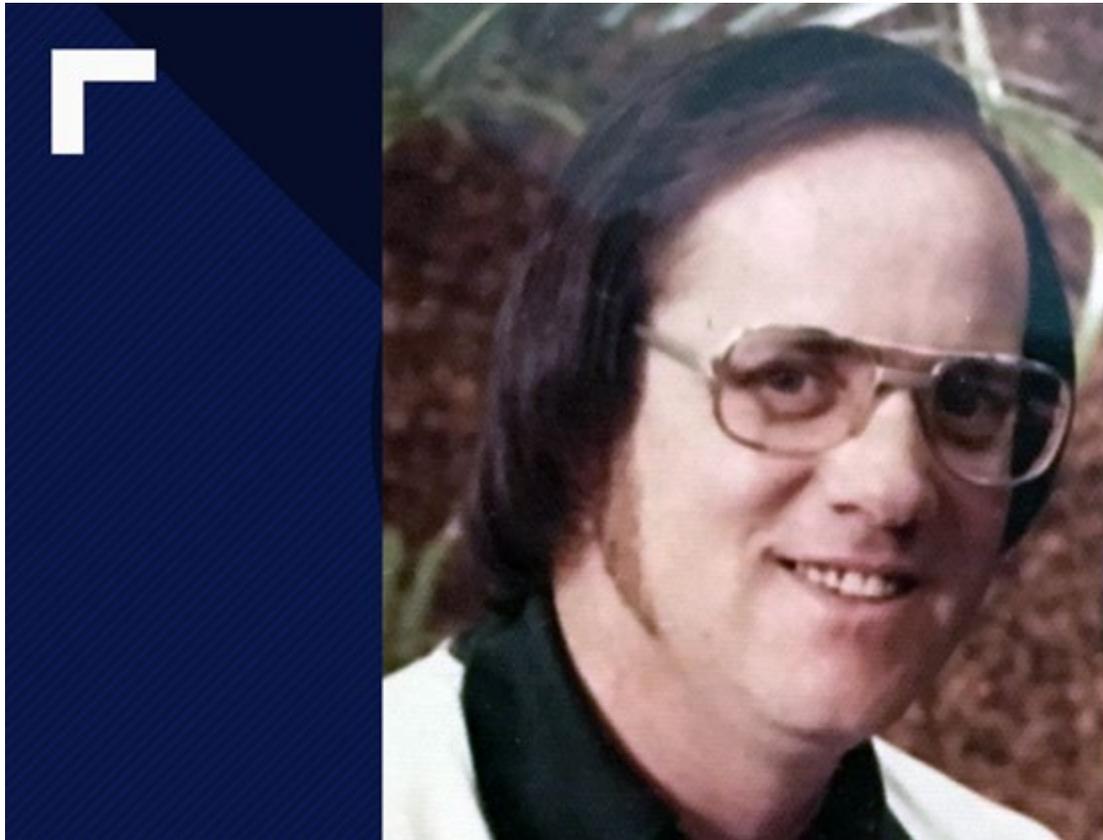
Investigators identified Miller through genetic genealogy, which uses DNA testing in combination with traditional genealogical methods to determine a relationship between a person and their relatives.

In 2008, detectives sent DNA samples from the crime scene to a lab for testing. A partial DNA profile was found on a semen sample on Loomis' boot and was uploaded into the Combined DNA Index System (CODIS) database. However, there wasn't ever a hit on the sample.

Fast forward to July 2018, and investigators sent the sample to Parabon NanoLabs for analysis. In August, detectives received the results, which named possible relatives of the suspect. Investigators then worked with a genetic genealogist, who built a family tree and helped identify a possible suspect.

"This is where Terrence Miller's name first came to our attention," Palmer said.

When prosecutors charged Miller on Thursday with first-degree murder, they also revealed a 1968 arrest for indecent exposure to a young girl, along with accusations that he molested several family members. No molestation charges were ever filed.



Terrence Miller circa 1972.
Courtesy Snohomish County Sheriff's Office

Detectives trailed Miller to a casino where they collected a used coffee cup that Miller discarded. The DNA on the cup matched the semen sample from the crime scene.

"Without the determination of our department, and advances in DNA technology we would not be here today," said Palmer.

This is the second arrest in a Snohomish County cold murder case that has been aided using genetic genealogy.

"It's exciting for us to have this opportunity and ability to solve cases and resolve questions that have been around for a long time," said Palmer. "It definitely gives us an advantage in coming up with suspect profiles in ways that we don't have another method to do."

Loomis' case is [one of many](#) the Snohomish County Sheriff's Office Cold Case Unit is working to solve. However, it is the department's oldest cold case.

Chuck Wright volunteers with the Snohomish County Sheriff's Office Cold Case Unit and has carried a card in his wallet with information about Loomis' case for the past 10 years. He has a column in the Mill Creek Beacon and said he's kept Loomis' name in the headlines because he wanted to see the homicide solved.

"I wanted people to hang on, and maybe somebody had some information," said Wright. "Some cases just grab you."

Wright said he's relieved some decades-old questions are finally being answered.

Investigators said they are still trying to find out more about a horse bridle missing from the victim.

If the public has any information about Loomis' murder or Miller's past, including any guns he owned, where he worked, what car he drove, and if he ever owned a horse bridle, they are urged to contact the sheriff's office at (425) 388-3845.

Man guilty of 1987 murders solved with genetic genealogy

In an unprecedented trial, a jury convicted William Talbott in the slayings of a young Canadian couple.

by [Caleb Hutton](#)

Saturday, June 29, 2019 7:24am

EVERETT — For three decades, the families of Jay Cook and Tanya Van Cuylenborg had only questions and fleeting memories.

On Friday morning, one long-awaited answer arrived.

A jury found William Talbott II guilty of two counts of aggravated murder in a trial that was the first of its kind.

The truck driver, 56, of SeaTac, had been identified in a pioneering investigation led by the Snohomish County Sheriff's Office.

A genealogist used a public DNA site, GEDMatch, to help build a family tree for the suspect based on DNA from a crime scene. Her research pointed to Talbott.

Since then, dozens of arrests have been made in cold-case crimes nationwide through a forensic method known as genetic genealogy, stirring a heated debate over police use of public ancestry databases.

Many suspects, including the former cop accused of being the Golden State Killer, await trial.

Talbott's case marked the first time that the technique had gone before a jury.

Other than semen at two crime scenes, little else tied the defendant to the killings. His defense argued the semen was the result of a consensual act.

He grew up seven miles from a third crime scene south of Monroe, where Jay Cook had been bludgeoned with rocks, strangled with twine and left dead under a bridge in 1987.

Talbott did not testify.

He walked into the courtroom Friday dressed in dark gray. After a law clerk read the jury's verdict — guilty as charged — he flinched and gasped.

“No,” he said, quietly. “I didn't do it.”

Moments later his head lolled back and forth, as his attorneys put their hands on his neck and back.

Jail guards pushed him out of the room in a wheelchair.

Family and friends of the victims embraced.

Judge Linda Krese set sentencing for July 24. There is only one possible sentence: life in prison.

“While the main interest on this case has been focused on the use of genetic genealogy, we’ve been trying to find a killer,” said Capt. Rob Palmer, head of investigations for the Snohomish County Sheriff’s Office, after the verdict. “It’s an amazing tool, and we’ll be using it again.” Added Laura Baanstra, the sister of victim Jay Cook: “This would not have been solved if it had not been for the DNA evidence. The use of GEDMatch — I hope more and more people will be willing to allow their DNA on these sites so that this world can be safer.”

“Our family is very grateful for all the people that helped bring this to fruition,” said John Van Cuylenborg, brother of Tanya Van Cuylenborg. He thanked the Snohomish County Sheriff’s Office and its cold case team, as well as those involved in the genetic genealogy analysis that led to Talbott’s arrest.

Jay and Tanya

Cook stood a stalky 6-foot-4.

At age 20, he hadn’t beefed out.

He’d learned to play rock ’n’ roll bass guitar with friends in his hometown on Vancouver Island. He worked at a pizza parlor for a while. One night after a shift, he rode his bike three hours through rain and darkness to a cabin where friends were staying for a weekend, balancing a pizza the whole way to bring them food, recalled his sister.

The family of 1987 murder victim Jay Cook talked about their feelings after the trial of William Talbott II during an interview Tuesday, June 25, 2019, at The Daily Herald in Everett. (Chuck Taylor / The Herald)

He had a bizarre habit of losing his clothes, she said. Sometimes after school he’d come home without his jacket, with no idea where it ended up. One day the family packed for a ski trip, about a four-hour drive.

“We get there — snow on the ground, right? — and Jay only had one shoe,” Baanstra said.

He had a sweetness about him, taking his younger sister out for dinner and, once, for high tea with the good money he’d earned on a fishing boat.

One uncle coined a phrase about his nephew: “Jay had no rough edges.”

“It’s really no wonder that Jay ended up with someone like Tanya,” Baanstra said. “Tanya was very sweet and caring, and they looked up to each other.”

She was 18.

Much like the Cooks, her family loved long boating trips around the Salish Sea. Van Cuylenborg played tennis at her family’s home on an acre, and led a student push for a girls’ basketball team at her high school, her brother said.

For years she lobbied her parents, too, to get a dog. Her mother gave in around 1982. The Golden Retriever, Tessa, became first and foremost Tanya’s pet.

She hoped to work with animals one day, maybe as a veterinarian. Cook’s dream was to be a marine biologist. Neither had concrete plans. They were young. They started dating in the summer of 1987.

Cook’s father ran a furnace business with a man named Spud, whose last name, Talbot, ended in one T. Jay Cook didn’t have a job at the time. So his father asked him to run an overnight errand to pick up about \$750 in parts from a company called Gensco, in south Seattle. He had cash for a hotel but planned to sleep in the van outside the business.

His girlfriend was invited to come along. They set out on Nov. 18, 1987, in a bronze Ford Club Wagon van. Their ferry from Vancouver Island docked in Port Angeles around 4 p.m., a half-hour before sunset. Perhaps an hour later on Highway 101, they missed the exit to the Hood Canal Bridge. They stopped in Hoodspport for snacks.

Store clerk Judith Stone testified that they wanted to know how close they were to the bridge. “Oh, you’re a little past that,” Stone recalled saying. “A long way past that.”

She told them how to reroute to Seattle.

A deli clerk spoke with them in Allyn. They did not seem distressed, and it didn’t seem like anyone else was traveling with them.

Exactly how they encountered the killer remained a mystery, even through the trial.

Prosecutors suggested they may have pulled over for directions again.

Days later police found a ticket for the Bremerton-Seattle ferry inside the abandoned Ford van. The ferry docked in Seattle around 11:35 p.m.

That’s where the couple’s path went cold.

The case

Almost a week later, a passerby collecting cans found Van Cuylenborg dead against a rusty culvert, on Nov. 24, 1987, off Parson Creek Road in Skagit County.

She was nude from the waist down. She'd been shot in the back of the head with a .380-caliber bullet.

The next day, police learned her wallet, ID, a box of .380-caliber ammo and surgical gloves had been picked up 20 miles north in downtown Bellingham under a tavern's back porch. The bronze van sat parked around the corner, next to a Greyhound station.

The money order was still inside, unused. There was blood on a comforter, a used tampon on the floor and orange Camel cigarette butts in an ash tray.

Pheasant hunters stumbled on Cook's body on Thanksgiving Day under the High Bridge over the Snoqualmie River, south of Monroe.

A blue blanket covered his head and torso. Investigators peeled it back to find he'd had been beaten around the head and strangled with twine tied to two red dog collars. Tissues and a pack of Camel Lights had been shoved down his throat. Days later police seized bloody rocks from the grass nearby.

The crime scenes were scattered over three counties. At each site, police found interlocked zip ties. Neither of the victims had obvious marks on their wrists or ankles.

A generation passed.

For Cook's parents and sisters, the gaping wound began to heal. They talked often about Jay, but in happy, friendly, joking terms.

"For us, I think we put Jay's tragic death behind us a long time ago," Laura Baanstra said in an interview. "We all assumed that whoever did it was either dead or in jail. I don't think I ever thought the guy had gotten away with it, because I just assumed he would've done something else."

John Van Cuylenborg, Tanya's brother, said his parents were never the same after her death.

When his father died in the 1990s, John became the one who kept in touch with the sheriff's office in Snohomish County.

"What I've had to live with for 31 years was just no answers to anything, in this case, other than you had a couple of dead bodies," he said.

John, his sister's only sibling, is now a civil attorney in Victoria. He was forced to accept that there was a good chance the murders would never be solved.

“You kind of had to,” he said. “You needed to have some perspective on it, and be able to focus on other things in life, rather than continuing to wait day after day, week after week, for a resolution.”

He never gave up hope, though. He knew there was evidence that could, someday, implicate somebody. His sister’s Minolta camera body had gone missing from the van, and detectives had the serial number.

A jacket and a backpack had gone missing, too.

He knew the sheriff’s office had a suspect’s DNA.

He couldn’t have predicted how police ended up using it.

Detectives had built a list of hundreds of potential suspects. Many were ruled out through DNA tests.

Semen was found both on Van Cuylenborg’s body and in the van, on the hem of her pants. The sample was sent to Parabon NanoLabs, a private lab offering a new service to help police to build a rough digital sketch of a suspect’s face, through DNA.

Behind the scenes Parabon was working on another project, using public genealogy databases to identify suspects through their family ties. Quietly, the lab uploaded the genetic profile to GEDMatch.

By chance, second cousins on both sides of Talbott’s family had uploaded genetic profiles to the database.

A genealogist, CeCe Moore, traced the family lines to Talbott’s mother and father. He had sisters. But he was the only son. The data report returned to the lab on a Friday in late April 2018. By that Monday, the genealogist had identified who it belonged to.

Until then, police had no reason to suspect Talbott.

He was a short-haul trucker with no felony record. In his spare time, he rode motorcycles, and he was well liked in his circle of friends.

Plainclothes officers put Talbott under surveillance on his driving routes for days. A paper cup fell from his work truck on May 8, in south Seattle. It was tested by a state crime lab. His DNA matched the semen. Talbott was arrested and charged with two counts of aggravated first-degree murder.

John Van Cuylenborg had been in touch with Snohomish County cold case detective Jim Scharf over the preceding months about the work Parabon was doing. Scharf called him in May 2018 with news of the arrest. Van Cuylenborg had many questions.

“And I said, ‘Well, where is he?’ And he said, ‘In the back seat.’ A shiver went down my spine, thinking Jim’s riding in the same vehicle as this guy, after 31 years, you know?” he said. “It’s just phenomenal.”

Later, detectives took a swab from Talbott’s cheek.

Again, the DNA matched.

The trial

Defense attorneys did not challenge the legality of police using genetic databases to identify a suspect.

Instead, at least in this trial, the genealogy work was treated like any tip that police might follow.

Jurors listened to 1½ weeks of witness testimony: retired police officers who uncovered evidence in 1987; the bird hunter who found Cook’s body; the Bellingham bartender who gave Van Cuylenborg’s ID to the cops; the store clerks, the last people known to have seen the couple alive; and detective Scharf, who fought tears on the witness stand as he recalled receiving word of a DNA match.

According to Talbott’s defense, the detectives had tunnel vision.

“They never stopped to consider that perhaps the person who left the DNA was not the murderer,” defense attorney Rachel Forde said during the trial.

In her closing argument, Forde said semen could’ve been the result of a consensual act. It only showed, she said, that Talbott had sexual contact with her. It didn’t prove Talbott was guilty of murder, Forde said.

The deputy prosecutor, Matt Baldock, fired back in his rebuttal.

He asked the jury if it was plausible that a teen girl would have sex with a stranger — on an overnight trip with her boyfriend? In the midst of the AIDS crisis? When she was on her period? Attorneys clashed over the credibility of a witness who found further evidence that seemed to link Talbott to the van: a palm print, on a back door.

At first, a Washington State Patrol crime lab investigator had ruled out Talbott as a match.

A colleague told forensic scientist Angela Hilliard to look again. Hilliard realized she’d been examining the sample upside down. She changed her conclusion: The print matched Talbott.

The defense pointed out how convenient that seemed for the police but did not call an expert witness to challenge the final conclusion of the lab, nor did the lawyers dispute it was Talbott’s semen in the van.

Defense witness testimony lasted about 10 minutes — a brief discussion of an address on Talbott's driver's license in Okanogan County, where he owned land.

Talbott grew up near Woodinville, in a house that's no longer there. At the time of his arrest, he lived in SeaTac.

None of his relatives recalled ever seeing him with a blue blanket, a Minolta camera, dog collars or guns.

The jury began deliberating around 4 p.m. Tuesday.

The answer

As they awaited a verdict, Cook's family spoke with The Daily Herald.

"Regardless of how this case comes out, I know they'll survive," said Cook's brother-in-law, Gary Baanstra. "I've seen them do it. Their closure is just going back to that place where they can say, 'Jay,' and there's just no baggage against it anymore."

To Cook's sister, it has seemed mind-boggling that a killer could do this once. Never before. Never again.

Tanya's brother has thought about that, too.

"We're trying to logically understand an illogical act," John Van Cuylenborg said. "Or acts, in this case. You're starting off to do the impossible."

Sitting outside the courthouse on a sunny evening this week, he said he believed Talbott was guilty.

He'd seen what the jury had seen. He could come up with no other explanation for the evidence.

Jurors returned a verdict around 11 a.m. Friday. Defense attorneys did not stay to talk with the 12 Snohomish County residents who had convicted Talbott.

After over an hour of discussion with prosecutors in a closed room, most of the group trickled out of a back exit of the courtroom. At least one juror was wiping away tears. None were willing to talk with media right away.

A national spotlight has followed the trial this month, because it is uncharted legal and ethical territory.

Snohomish County Prosecutor Adam Cornell spoke to a wall of television news cameras outside the courtroom.

"Justice arrived late for Jay and Tanya, but it arrived today," he began.

Genealogy research had been critical in cracking the case, he said, but it was dogged detective work at the sheriff's office — running down leads, using every strategy at their disposal — that brought justice for the families.

“Folks aren't going to be able to get away with murder anymore, when we have this information,” Cornell said. “And if you're a killer and you're out there, then this office and other law enforcement offices around the country may be coming for you.”

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[CRIME](#)

Another decades-old Tacoma murder solved? Suspected killer of 12-year-old Michella Welch arrested

[BY STACIA GLENN, KENNY OCKER, AND SEAN ROBINSON](#)

June 20, 2018 12:58 PM, Updated June 21, 2018 12:56 AM

Possibly solving a second high-profile cold case murder in two months, Tacoma police on Wednesday arrested a man suspected of killing 12-year-old Michella Welch more than three decades ago.

Officers booked Gary Charles Hartman, 66, into the Pierce County Jail just after 3:15 p.m. on suspicion of first-degree murder, jail records show. Prosecutors are expected to charge him Thursday.

Police declined to talk about the arrest or how they linked Hartman to Welch's death. A news conference set for Friday is expected to provide answers.

Welch was abducted March 26, 1986, from a Tacoma park and found dead later that day.

Five months later, a second young girl, Jennifer Bastian, disappeared while riding her bicycle in Point Defiance Park. The 13-year-old's body was found weeks later. Police arrested a suspect in her death last month.

Tacoma Cold Cases from 1986

[Suspected killer of Tacoma girl who disappeared in 1986 has been arrested](#)

[It was the DNA: Man charged with killing Jennifer Bastian voluntarily gave police his](#)

[Police say he killed Jennifer Bastian in 1986. Family, neighbors know him as a caring man](#)

['After all this time, justice is Jenni's': Bastian's mom speaks about arrest in daughter's death](#)

[Who was Robert Washburn in the 1980s? Police have few details on suspect in Bastian case](#)

[A child dies, but lives for decades in the mind of a once young reporter](#)

[Man accused of killing Jennifer Bastian returns to Tacoma](#)

[A young girl dies and three generations live with fear](#)

['He can't hurt anybody': Jennifer Bastian's mother sees man accused of killing her daughter](#)

The girls' deaths haunted the community, becoming two of the most heart-wrenching cold cases in Tacoma's history.

Initial searches of public and court records show no prior criminal convictions for Hartman, described as a cordial man who collected vintage cars, and lived with his wife on the shores of Steilacoom Lake.

A neighbor who asked not to be named said a swarm of law enforcement officers descended on Hartman's home early Wednesday, surprising the quiet community, though some neighbors saw signs of surveillance activity over the past few weeks.

"This is completely from left field for us, I mean like way left field," said the neighbor, a retiree who has lived in the area for five years. "I don't know the gentleman real well. We waved to each other constantly. ...

"He had four or five collectible cars that he and his wife would always drive around. Very cordial and very sweet older people. The neighbors thought he was greater than sliced bread."

Records indicate Hartman might have lived in the 4600 block of North Huson Street from 1986 to at least 1989. The two-story house, on a quiet street with a view of Commencement Bay, is a little more than a mile from the entrance to Point Defiance Park.

Other information indicates that Hartman worked at Western State Hospital in Lakewood as a community nurse specialist. State records list him as a registered nurse with an active license, first issued in 1998. No complaints are attached to the record.

A co-worker who asked not to be named said Hartman's current duties involve arranging community placements for patients discharged from the state hospital. The co-worker said he spoke to Hartman at work a week ago.

"I've known him. I've supervised him in the past, the co-worker said. "He interviews patients and so forth for placement, to go to a specific group home or facility. He's gotten a couple of very troubled patients off the ward that have been there for decades."

The neighbor and co-worker were equally surprised to hear of Hartman's possible involvement in the 32-year-old murder.

"Here's an example of when you think you kind of know people and you don't," the neighbor said.

On the day she disappeared, Welch took her two siblings to Puget Park in North Tacoma about 10 a.m. She rode her bicycle home an hour later to make lunch for them.

When she returned, she chained her bike next to her sister's bike, put lunch on the table and went looking for the two younger girls.

Her sisters returned to the park about 1:15 p.m. and didn't see her, so they went to play near a cave under a bridge for another half an hour. The girls later found the brown paper bag with their lunches and got worried about Welch.

They called her name from the edge of a gulch and started down a trail looking for her but their baby-sitter called them back.

Police began searching for the missing girl at 3:10 p.m. A tracking dog found her body late that night in a makeshift fire pit in a gulch near the park.

She'd been sexually assaulted and died of a cut to the neck.

In early August that year, Jennifer Bastian disappeared. Her body was found Aug. 26 in a wooded area off Five Mile Drive. She'd been sexually assaulted and strangled.

Detectives long believed the two deaths were linked because the girls were similar in age and appearance and both killings happened in North End parks.

Tips flooded in but no arrests were made.

In 2016, police announced that DNA tests showed different men killed Welch and Bastian.

Investigators made a list of suspects in both girls' deaths and asked them to provide voluntary DNA samples.

In May, a hit came in Bastian's murder. DNA linked her death to 60-year-old Robert D. Washburn, who lived near Point Defiance Park at the time the girl went missing.

He was arrested May 10 at his home in Eureka, Illinois, and brought back to Pierce County. He has pleaded not guilty to first-degree murder.

Staff writer Alexis Krell contributed to this report.

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Michella Welch, 12, was killed in Tacoma's Puget Park in March 1986.

The man who killed Jennifer Bastian in 1986 in Tacoma has been sentenced

[BY ALEXIS KRELL](#)

January 25, 2019 02:17 PM, Updated February 05, 2019 10:51 PM

Jennifer Bastian's family waited more than 32 years for justice.

It finally came Friday when the 13-year-old's killer was sentenced to nearly 27 years in prison.

Robert Dwane Washburn, 61, pleaded guilty to first-degree murder for Bastian's death — a cold case that detectives solved last year when [DNA linked him to the crime](#).

Superior Court Judge Elizabeth Martin then handed down the 320-month sentence.

Bastian went missing Aug. 4, 1986 while riding her Schwinn bicycle in Point Defiance Park. Her body was found in a wooded area of the park weeks later.

Washburn's plea statement said that he grabbed Bastian by the arm, led her into the woods, then strangled her.

There were signs of sexual assault, charging papers said.

On Friday, family, friends and supporters of Bastian packed the courtroom for Washburn's plea and sentencing, including detectives and Tacoma Police Chief Don Ramsdell.

The court also provided an overflow room with video.

Pattie Bastian, Jennifer's mother, described to the court how there's "always a cloud of fear and foreboding" for the family on nice summer days.

"We continued to live and laugh and love, but in a much different way," she said.

She also described how the crime changed the city.

Kids stopped playing outside unsupervised, and “walking to school became a logistical nightmare,” she said.

Half those in the courtroom gallery were kids themselves in 1986, she told the judge, and the crime influenced how they’re raising their own children.

That includes Jennifer’s sister, Theresa Bastian, who told the court that she hadn’t taught her daughter how to ride a bike.

“You made me an only child,” she told Washburn.

Washburn declined to speak on his behalf at sentencing but did write a statement that Judge Martin read aloud.

He wrote that he wanted to plead guilty from the start of his legal proceedings to spare his family and the Bastian family the trauma of a trial. The letter said he was sorry for his actions and that he recognized the impact they had on many people.

Washburn wrote that he hoped his sentencing would bring the Bastian family “one step closer in their healing process.”

The Bastian family told reporters outside court that they felt justice had been served and praised the law enforcement officers who never gave up.

“There’s a certain amount of exhaling that went on in that courtroom,” Pattie Bastian said.

She noted that Washburn looked down throughout the hearing.

“I guess that’s the picture of a guilty man,” she said.

Washburn got the sentence he deserved, she said, adding that she couldn’t imagine going to trial and having to relive details of the crime.

“He did give us the gift of not having to go to trial,” Pattie Bastian said.

Theresa Bastian noted that, at age 61, Washburn likely will die in prison.

“His sentence is a lifetime,” she said.

Until DNA showed otherwise in 2016, investigators thought that the same person killed Bastian and another girl, 12-year-old Michella Welch. Welch also went missing in 1986. Her body was found in Tacoma's Puget Park.

The gruesome crimes so close to one another [shook Tacoma](#).

Washburn contacted police about the Welch case in 1986 and said he saw someone jogging in Point Defiance Park who resembled her killer. He wasn't considered a main suspect in Bastian's murder, but he was on the list.

When the Federal Bureau of Investigation went to his home in Eureka, Illinois in March 2017, he gave investigators a DNA sample. Test results in May 2018 linked him to Bastian's death, and [he was arrested and charged](#).

[Welch's suspected killer also was arrested and charged last year, following DNA tests](#).

Prosecutors accuse 67-year-old Gary Charles Hartman of sexually assaulting and killing Welch March 26, 1986. Her body was found in the park's gulch that night. She died from a cut to her neck and blunt force trauma to her head.

Hartman has pleaded not guilty and awaits trial.

Before she sentenced Washburn, Martin noted how Bastian's death "grotesquely compared" to the innocence of a child riding a bike. She added that the murder traumatized an entire community.

"Jennifer's life was stolen right as she was poised to begin it," the judge said.

Then Martin said the high-end sentence recommended by the state and the defense was appropriate.

Thirty-two years, she said, is a long time to wait for justice.

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Jennifer Bastian was reported missing Aug. 4, 1986, while riding her Schwinn bicycle at Point Defiance Park. Her suspected killer, Robert Washburn, was arrested 32 years later. DEAN J. KOEPFLER *STAFF PHOTOGRAPHER*

Unsolved WA Rapes & Homicides **3,347**

TOTAL HITS DATA

8,225

Total Homicides (victim deceased and identified)



6,652

Solved Homicides

1,573

Unsolved Homicides

356

Total Missing Persons and Unidentified Deceased
(generally presumed homicides)



356

Solved

42

Unsolved

8,530

Total Rape Cases



6,756

Solved Rape Cases

1,774

Unsolved Rape Cases



National Best Practices for Implementing and Sustaining a Cold Case Investigation Unit



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Opinions or conclusions expressed in this paper are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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NIJ Cold Case Investigation Working Group



Since 2005, the National Institute of Justice (NIJ) has assisted state and local law enforcement agencies across the nation in investigating cold cases through NIJ's Solving Cold Cases with DNA program. In 2015, NIJ assembled a group of subject matter experts from the cold case investigation community to review the state of cold case investigations and cold case units in the United States. One identified concern was the lack of agencies addressing the growing needs of unresolved cases. As a result, the Cold Case Investigation Working Group and NIJ collaborated to create this guide in an effort to assist law enforcement agencies in creating a mechanism for addressing the cold cases in their jurisdictions.

The recommendations in this document are not mandated by any governing body; they are provided as recommended best practices based on research, well-established processes, and the extensive professional experience of the working group members.

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Sponsorship

NIJ is the research, development, and evaluation agency of the U.S. Department of Justice and is dedicated to researching crime control and criminal justice issues. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice. NIJ's Office of Investigative and Forensic Sciences is the federal government's lead agency for forensic science research and development as well as for the administration of programs that provide direct support to crime laboratories and law enforcement agencies to increase their capacity to process high-volume cases, to provide needed training in new technologies, and to provide support to reduce evidence analysis queues.

Summary of Recommendations for Best Practice



The Cold Case Working Group drafted 23 recommendations. The intention of the recommendations is to provide best practices that will assist agencies in addressing unresolved criminal cases. NIJ does not claim these recommendations to be all-encompassing directives for all agencies; there are variations among jurisdictions and agencies, and a one-size-fits-all solution is unrealistic.

The recommendations contained in this document are the result of a consensus process and do not necessarily represent the views or opinions of every individual working group member or their respective agencies and affiliates.

Determining the Needs and Scope of a Cold Case Investigation Unit

1. Define the specific parameters of a cold case with consideration for applicable laws and agency policies and practices.
2. Conduct an initial needs assessment to determine the resources needed to create and sustain a successful cold case unit.
 - 2a. Conduct an inventory of the number of unresolved cases.
 - 2b. Identify and record all unresolved cases in a computerized information management system during the initial inventory.
 - 2c. Conduct periodic needs assessments to ensure that investigative activities conform to current investigative practices and that the operational needs remain in alignment with the agency's operations and mission.

Designing a Cold Case Unit

3. Appoint a project lead to oversee the implementation of the cold case unit. Choose an individual who understands the agency, the process of unresolved case investigations, and the jurisdiction's administration.
4. Collect performance metrics relevant to cold case activities in addition to clearance rates. Use appropriate data analytics to examine the performance and needs of the unit.

5. Agencies should not assign cold case investigators to incoming cases, temporary assignments, or non-cold case projects.
6. Limit investigators to actively investigating no more than five cold cases at any one time.
7. Assemble stakeholders and representatives of affected agencies to provide input and assistance in planning the cold case unit, including how it will be structured, implemented, and operated.
 - 7a. Identify agencies of similar size and structure that have established cold case units as informational resources.
 - 7b. Formalize and document partnerships among stakeholders with a Memorandum of Understanding.
 - 7c. Bring together multidisciplinary subject matter experts to provide diverse knowledge, resources, and perspectives in all facets of cold case review and investigation.

Implementing a Cold Case Unit

8. Implement a cold case unit as a separate, defined unit within an agency. Position the unit in an existing bureau, division, or branch responsible for investigative activities.
9. Identify a lead agency for the unit, if multiple agencies and/or multiple jurisdictions are engaged.
10. Create written protocols and directives to detail cold case organization, operations, and investigations.
 - 10a. Specify the job duties for cold case investigators, supervisors, and other personnel in the unit's policies and procedures.
 - 10b. In a multiagency/multijurisdictional cold case unit, implement protocols detailing the distinct roles of each participating agency.
 - 10c. Include protocols for continuity of operations and staff transitions.
11. Incorporate a trauma-informed approach into cold case unit operations.
12. Employ a victim-centered approach in the daily operations of cold case investigations.
 - 12a. Create protocols addressing situations in which a victim does not support continued investigation of their case.
 - 12b. Include a detailed plan for communication with victims and victims' families in the cold case unit protocols.
 - 12c. Incorporate a victim specialist and/or advocate into unit protocols and operations.
13. Select experienced investigators for the cold case unit, preferably with a minimum of five years of investigative experience.

14. Assign at least two full-time investigators to cold case investigations.
15. Cold case investigators should use and consider nontraditional resources, such as volunteers and academia, in cold case investigations.
16. Assign investigators to investigative duties only. Delegate all other operational activities of the unit to support staff. Assign administrative work to noninvestigative personnel or others to increase the efficiency of the unit.

Operating a Cold Case Unit

17. Organize cases by starting with the investigations that have the most apparent means of resolution. Consider database hits, ease of resolution, and community interest when selecting cases.
18. Perform an initial comprehensive agency audit to locate, document, and package all evidence according to current standards. Perform evidence audits at least once a year and update agency files to reflect the results of the audits. Document the location, condition, and laboratory analyses of evidence in a computerized information management/tracking system.
 - 18a. Review all evidence to determine its evidentiary value and evaluate whether new forensic methods could be used for further examination.
 - 18b. Review and update evidence retention policies as needed to prevent the destruction of evidence in unresolved cases.
19. Review all case files to ensure that they are current with contemporary standards and that all investigative opportunities have been exhausted. Conduct subsequent reviews periodically to ensure that cases remain current with the available technology and investigative processes and to identify any new investigative opportunities.
20. Actively engage a prosecutor with cold case operations.
21. Maintain a public-facing list of all unresolved cases (e.g., a cold case website).
22. Develop a media information dissemination strategy. Detail this strategy in the agency protocols. Designate an agency public information officer to act as media liaison.

“Doing nothing is not an option. Victims and their families demand more and deserve nothing less — and a commitment to solving these cases demonstrates accountability to our communities.”

— Gerald LaPorte, Director, Office of Investigative and Forensic Sciences, National Institute of Justice

Identifying Support for a Cold Case Unit

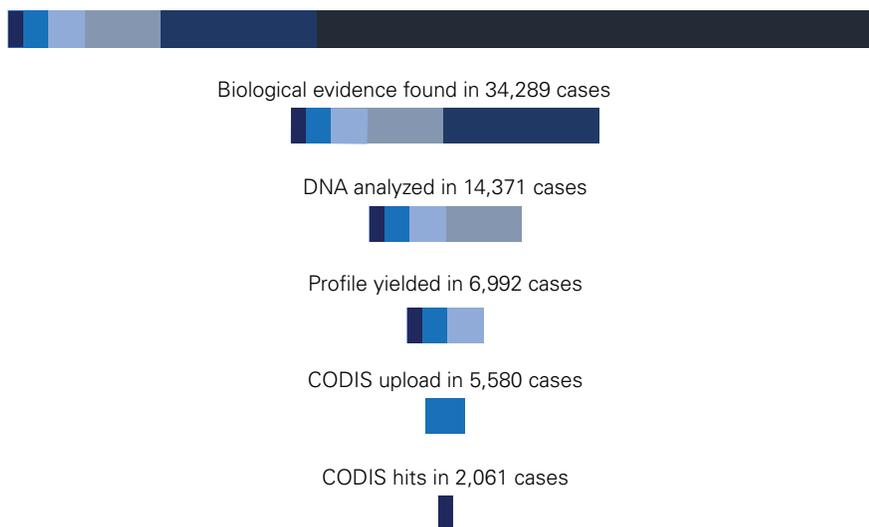
23. Utilize academic resources when possible and appropriate. These resources may include technologies, students, and faculty with subject matter expertise.

The Mission

Between 2005 and 2014, the NIJ Solving Cold Cases with DNA program provided funding assistance to state and local law enforcement agencies across the nation to resolve cold cases through 213 awards totaling approximately \$78 million (see figure 1).

As a result of the highly successful program, NIJ gained critical insight into the important issue of addressing cold case investigations. To further this effort, NIJ created an expert working group in 2015 to look more closely at the state of cold case investigations and cold case units in the United States. This group of subject matter experts came from local, state, and federal law enforcement disciplines as well as medicolegal death investigation, academia, prosecution, victim advocacy, and forensics. They brought together their collective expertise to study and identify those practices which would best enable law enforcement to construct and maintain cold case units for the investigation and resolution of unsolved crimes. This working group considered issues ranging from planning, administrative, organizational, and policy considerations to specific strategies for identifying and addressing unresolved cases in agencies both large and small. With a diversity of experience and viewpoints, this working group successfully reached substantial agreement on a variety of complex issues involved in these cases. The group's conclusions are outlined in this document.

FIGURE 1: RESULTS FROM NIJ'S SOLVING COLD CASES WITH DNA PROGRAM¹



¹ Data are reported to NIJ during the open project period of the funded award. Many successes occur after the NIJ reporting period has ended, so the final number of cases resolved is likely higher. CODIS is the FBI's Combined DNA Index System, a national DNA database.

DOCUMENT TERMINOLOGY

Cold Cases vs. Unresolved Cases

The term “cold cases” originated in the media. Due to the prevalence and acceptance of the term in most agencies, this document will use “cold cases” throughout. The working group realizes that this term can be perceived as insensitive, and it is not the intention of the working group to diminish the seriousness of any crimes nor the resolve of law enforcement to provide justice for all crimes. “Unresolved cases” is a more generic term that can include cases in which the offense recently occurred or the initial investigative process is still ongoing. As used throughout this document, cold cases and unresolved cases are synonymous terms; they include several categories of crimes and death investigations, including homicide, sexual assault, missing persons, and unidentified human remains (UHR).

Victims/Survivors

For purposes of this document, victims and survivors include the person against whom the crime was directly perpetrated as well as that person’s family and friends, since they are also affected by these violent crimes. This document uses “victims” as an all-encompassing term for consistency and readability.

Units

The word “unit” (i.e., cold case unit) is used throughout this document. However, agencies may not have a separate unit but may have specific positions designated to investigate cold cases.

Agency

Throughout this document, the term “agency” is used in a collective sense, regardless of whether the cold case unit is operated by a single entity or through the collaboration of multiple entities (e.g., multijurisdictional, multiagency, or task force cold case units).

Offenses

The working group does not specify which offenses should be considered for cold case investigations. Agencies need to set the scope of their cold case investigation operations based on their own organization and needs. Many agencies focus on homicides and/or sexual assaults. Each type of offense may require unique and varied approaches for investigation. This document will generalize approaches across offenses. The working group encourages agencies to consider addressing all unresolved violent crimes and to include unidentified persons and missing persons cases in their cold case investigations.

This publication, designed for law enforcement administrators and command staff, provides information about the importance of addressing cold cases and offers best-practice recommendations for creating and maintaining sustainable cold case units.

NIJ recognizes the diversity of law enforcement organizations in size and resources. Not all recommendations may be applicable to all agencies. The best practices presented here are recommendations compiled from many subject matter experts and from the available research. How these recommendations are implemented should be adapted to best suit each individual agency.

This document is not designed to give a specific or absolute order of implementation steps; rather, these guidelines are intended for consideration when initiating and operating a unit. Not all practices need to be incorporated for success. Nor does this document specify which offenses should be considered for cold case investigations. Although the popular conception of cold case units is that of cold case homicide

investigations, the suggestions in this document may also assist agencies in addressing other unresolved crimes.² Agencies need to determine what the scope of their cold case operations will be, based on the needs and gaps identified within the organization. Each individual cold case may require a unique investigation strategy. The most relevant practice for all agencies is to have a plan in place for resolving the unresolved cases.

² The Dallas (Texas) Police Department's Sexual Assault Cold Case Program is one example of a successful cold case program addressing nonhomicide offenses (Office for Victims of Crime, "Sexual Assault Cold Case Program—Texas"). NIJ urges agencies to include applicable missing persons and unidentified remains cases in homicide investigation caseloads. Although John and Jane Doe cases may fall under the jurisdiction of medical examiners or coroners, many of these cases are homicides that are in limbo until the victim is identified. Once the unidentified remains are placed in a cemetery, in most jurisdictions the cases move into the purview of the sheriff's office. Therefore, loss of remains in cemeteries is a concern for the entire medicolegal community.

Background On Cold Case Units



NIJ's research has revealed the existence of a cold case crisis in the United States and the need for agencies to address these unresolved cases.³

Every unresolved case represents a person, along with their family, friends, and community. Creating and maintaining a cold case unit demonstrates an agency's commitment to victims and the community by solving crimes, holding offenders accountable, and ensuring public safety. Doing so reinforces a community's confidence in its police and the criminal justice system.

"You also owe it to the victims and to their families — 'we promised.'"

— William Doogan, Detective Sergeant,
Boston (Massachusetts) Police Department

Cold case crisis

Many crimes are not solved immediately, and numerous violent crimes prove particularly difficult to resolve. Unresolved crimes become cold cases. One of the most troubling aspects of cold cases is that we do not know precisely how many exist. There has been no national survey to determine the number of unresolved criminal cases.

Identifying the scope of the problem is the first step in addressing the cold case crisis. This can be complicated by a variety of factors. For instance, variation in the definition of a cold case is one reason why the exact number of unresolved cases nationwide is unknown. In Arizona alone, the homicide cold case definition has varied to such an extent that a state-commissioned task force required law enforcement agencies to "use the same definition of a cold case homicide" in order to attempt to conduct a statewide survey.⁴ Arizona defined the term in a 2014 statute stating that "'cold case' means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads."⁵ In contrast, the Los Angeles (California) Police Department defines a cold case homicide "as any unsolved homicide in the City that was committed more than five years ago, and has no significant leads, and is no longer being actively investigated by area detectives based on a lack of solvability factor and/or workload."⁶

³ Conservative estimates tallied over 240,000 unresolved homicides in 1980-2016 with approximately 6,000 cases added to this accumulation of unresolved cases annually (Stein et al., 2017).

⁴ Arizona Cold Case Task Force, 2007.

⁵ Justia U.S. Law, 2014.

⁶ Los Angeles (California) Police Department, *Robbery-Homicide Division*.

What Is a Cold Case?

No universal definition of a cold case currently exists.

Some jurisdictions consider a case to be cold when investigative leads have seemingly been exhausted.¹ Others consider the length of time that has elapsed since the crime occurred — for example, one, three, or five years. The Metropolitan Police Department of the District of Columbia transfers the responsibility of investigating an unresolved case from the initial investigation unit to the Major Case/Cold Case Squad after no further investigative steps are identified and after a period of time that could be up to four years.² Some agencies never really regard a case as cold; rather, an investigator is simply assigned to the case, working on it when time allows until it is solved or until he or she retires or is transferred to another position.

The term “cold case” should be used with caution. The National Sheriffs’ Association states, “Law enforcement officials should be sensitive in their use of the potentially painful word ‘cold’ and may want to consider explaining to survivors why specific language is used.”³

The NIJ Cold Case Working Group developed the following working definition for a cold case:

COLD CASE

A case, such as a violent crime, missing person, or unidentified person, that has remained unsolved for at least three years and has the potential to be solved through newly acquired information or advanced technologies to analyze evidence.

1. Many agencies define a cold case as a case in which all identified leads have been exhausted. For example, the website of Houston, Texas, proclaims, “A case becomes ‘Cold’ when all probative investigative leads available to the primary investigators are exhausted and the case remains open and unsolved after a period of three years” (Houston [Texas] Police Department). The Hagerstown (Maryland) Police Department’s protocols note that “unsolved homicide cases will be referred to as ‘Cold Cases’”. Once all investigative leads are exhausted, and there is not enough evidence to place charges against a suspect(s) this case will be suspended and considered a ‘Cold Case’” (Hagerstown [Maryland] Police Department). The City of Greenville, South Carolina, defines a cold case as “an investigation of a serious crime where all leads have been exhausted and the case remains unsolved” (City of Greenville [South Carolina] Police Department).

2. Metropolitan Police Department of the District of Columbia, *Investigating Unsolved Murders in DC*.

3. National Sheriffs’ Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

Even without a defined number of cold cases, the cold case crisis continues to grow at an alarmingly rapid pace as case resolution and clearance rates continue to fall.⁷ Data contributed by most of the nation’s law enforcement agencies to the FBI Uniform Crime Reports (UCR) show an estimated 1,183,933 violent crimes nationwide in 2016, with a clearance rate of 45.6 percent.⁸ The estimated number of homicides in the United States that year was 15,566, with a clearance rate of 59.4 percent.⁹ Since 1975, when the clearance rate for homicides was 78.3 percent, clearance rates have continued to decline.¹⁰ In fact, Pew Research notes that the average total violent crime clearance rate has remained below 50 percent since 1995 and that homicide offenses have the highest clearance rate.¹¹ Less than half of the violent crimes committed in the United States

⁷ An article in the *Investigative Sciences Journal* provides detailed information on how one researcher used the FBI’s Uniform Crime Reports (UCR) and Supplemental Homicide Reports (SHR) to determine that 230,355 homicides were unsolved between 1980 and 2014 (Martin, 2017). James Adcock also used UCR and SHR to arrive at the figure of 230,355 unresolved cases for 1980-2014 (Adcock, 2017). Another publication notes that an estimated 6,000 more unresolved homicides are accumulated annually (Stein et al., 2017).

⁸ The FBI UCR annually publishes clearance rates using the simple formula of the number of crimes solved divided by the number of crimes that occurred during the same time period. UCR contributions are voluntary (FBI, *Percent of Offenses Cleared*).

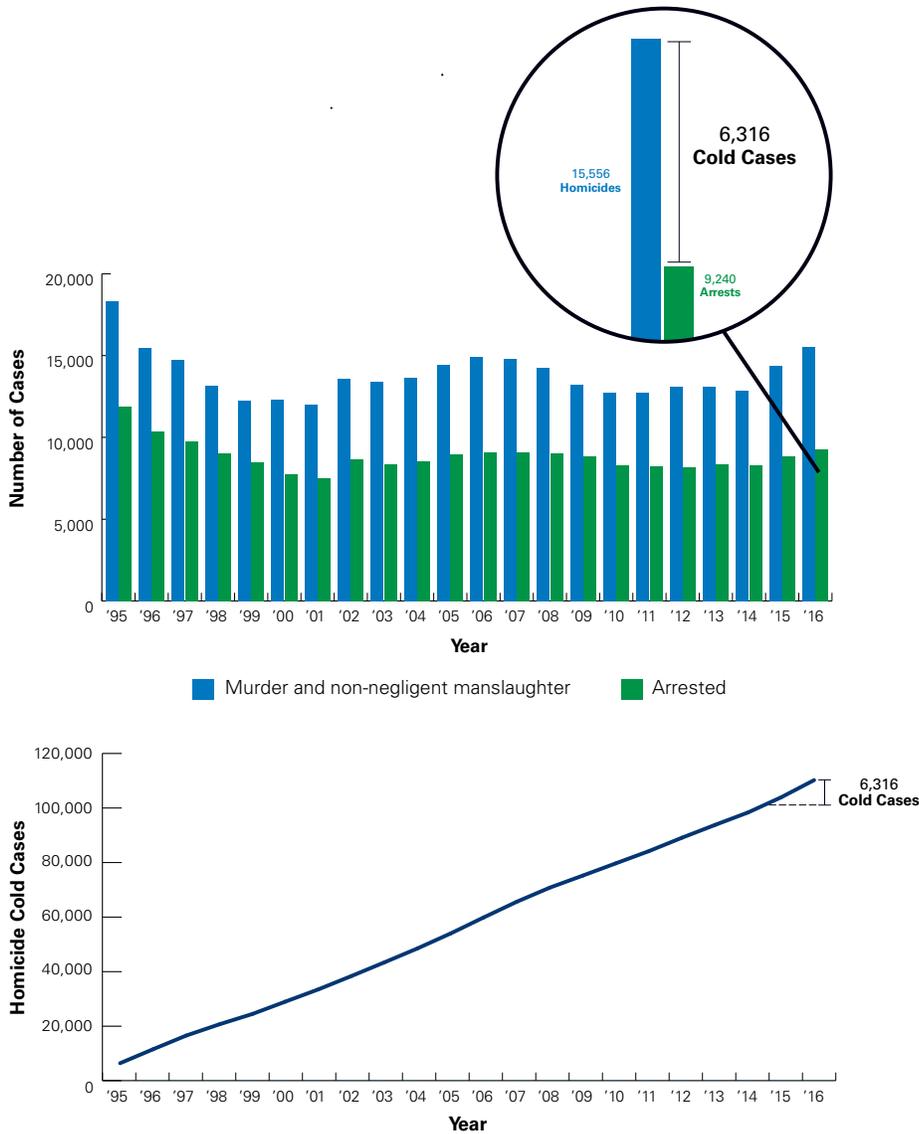
⁹ Ibid.

¹⁰ Fox & Zawitz, 2003.

¹¹ Pew Research Center, 2017.

are cleared, according to this research. Only 53.3 percent of aggravated assault offenses, 36.5 percent of sexual assault offenses, and 29.6 percent of robbery offenses were cleared in 2016 — meaning that approximately 64 percent of sexual assault perpetrators were not held accountable for their crimes.¹² Falling clearance rates mean an inevitable rise in the number of unresolved cases (see figure 2). Based on UCR data, experts estimate that there are more than 242,000 unsolved homicides in the United States.¹³

FIGURE 2: ACCUMULATING COLD CASES



Each year, the number of cold cases rises because there are more new cases than resolved cases. Homicides consistently have the highest clearance rates, but even these clearance rates are well below 70 percent. Since 1995, over 100,000 cold case homicides have accumulated in the United States.

¹² FBI, *Percent of Offenses Cleared*.

¹³ Stein et al., 2017.

Thus, approximately four out of 10 homicides are not solved; four out of 10 murderers do not receive justice and remain free to continue to commit crimes; and four out of 10 homicide victims do not receive any sort of resolution, adding to the ever-growing number of cold cases.

In addition, it must be noted that missing persons and unidentified human remains (UHR) cases are often the result of violent crime, although many of these cases are classified as having an undetermined cause. As such, they are not included in violent crime statistics; thus, the number of unresolved crimes is likely much higher than currently estimated. Out of the 27,927 active and published missing persons and unidentified persons cases listed in the National Missing and Unidentified Persons System (NamUs) in February 2019, approximately 5,163 of the unidentified persons cases, or 48 percent, have an undetermined manner of death; 1,945 out of 15,444 open missing persons cases have been marked as “foul play” by families or law enforcement, and in another 12,370 cases, or 80 percent, the possibility of foul play has yet to be determined (see figures 3 and 4).¹⁴ Realistically, 242,000 unresolved homicides is an extremely conservative estimate because a large number of death investigation and missing persons cases remain unknown.

This guide is intended to assist agencies seeking to address the cold case problem by implementing and sustaining a cold case investigation unit.

“Police don’t even know how many homicides there are in the U.S. There is only a 60 percent clearance rate; there are thousands of unsolved cases, killers on the streets. Going back to 1980, there are hundreds of thousands of unsolved cases nationally and the numbers are increasing. How can you not address that? It’s a major issue that someone isn’t working these cases.”

— Tom McAndrew, Homicide Cold Case Investigator, Pennsylvania State Police (retired)

The current picture

For some agencies, the accumulation of unresolved cases became apparent along with the need to address these cases. For example, in 1992 the Metropolitan Police Department of the District of Columbia created a cold case squad to focus on the overwhelming number of unresolved cases in D.C. Early success was evident — approximately 160 homicides were closed within the first five years of operation.¹⁵ In some agencies, such as the Miami-Dade Police Department in the early 1980s, cold case units were formed to address a specific case as well as an increased caseload, but agencies also realized the need for a specialized mechanism to address unresolved cases.¹⁶ Advancements in technology, forensics, and related databases such as those for DNA, biometric data, impression evidence,¹⁷ and firearm evidence have prompted many agencies to re-examine unresolved cases and prompted the creation of some cold case units.¹⁸

¹⁴ *NamUs*, <https://www.namus.gov>.

¹⁵ Regini, 1997.

¹⁶ Miami-Dade (Florida) Police Department (or Metro-Dade, as the agency was known at the time) is credited as forming the first cold case unit (Reyes, 2009). In fact, local newspapers covering the unit’s operations coined the term “cold case squad.” In addition to addressing a specific homicide, the unit was created to address the rising number of homicides related to the cocaine industry and the influx of Cuban refugees (Reyes, 2009).

¹⁷ Examples of impression evidence are tire impressions, footwear impressions, and fabric impressions.

¹⁸ A newspaper editorial on the resolution of the 37-year-old homicide of a 14-year-old touts, “The case provides Exhibit A for the argument that every police department should have access to cold case investigators.” The article cites that the advancement of technology promises successful case resolutions and is the reason why agencies need to review unresolved cases (Mercury News & East Bay Times Editorial Boards, December 13, 2017).

FIGURE 3: FOUL PLAY IN ACTIVE MISSING PERSONS CASES IN NAMUS

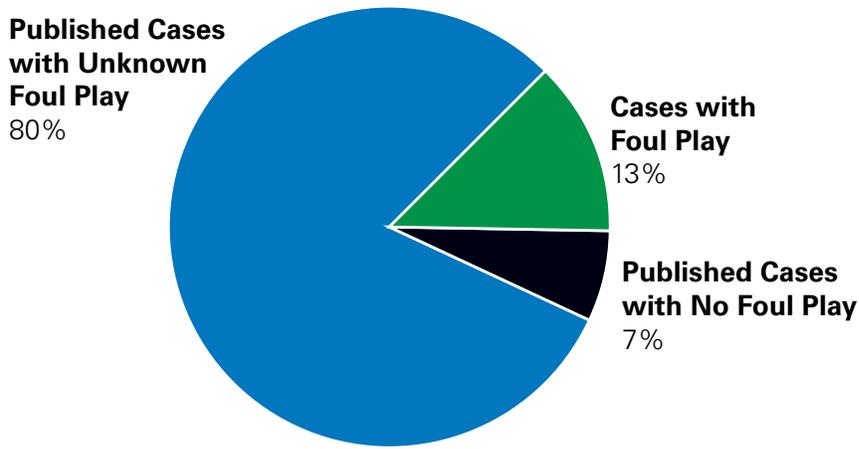
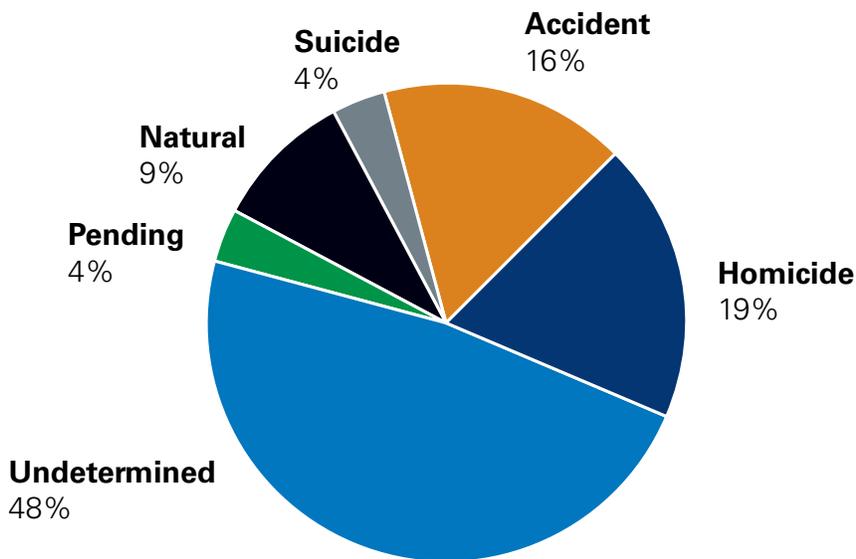


FIGURE 4: MANNER OF DEATH IN ACTIVE UNIDENTIFIED PERSONS CASES IN NAMUS



Note: Active cases include published cases only. Draft, new, accepted, unverifiable, and deleted cases are not included in active case statistics.

Source: *NamUs*, <https://www.namus.gov>.

What do we know about the number of dedicated units tasked with investigating unresolved cases in the nation’s approximately 18,000 law enforcement agencies?¹⁹ The best available data from the limited number of studies on cold case units indicate that very few law enforcement agencies maintain a cold case unit or dedicate resources to unresolved case investigations.²⁰ Major factors contributing to this situation include a lack of financial resources for supporting cold case units or cold case investigators, and a lack of formal protocols for initiating cold case investigations.²¹

TABLE 1: COLD CASE UNITS IN THE UNITED STATES

Cold Case Units in the United States	
Dedicated cold case units, all surveyed departments	7%
Dedicated units, departments with 100 or more officers	18%
Dedicated units, departments with 50 or fewer officers	1%
Investigators who work on cold cases (no dedicated unit), all surveyed departments	10%
Formal protocols for initiating cold case investigations, all surveyed departments	20%

Source: Davis, Jensen, & Kitchens, 2011.

¹⁹ The most recent Bureau of Justice Statistics (BJS) report from a 2008 census of the nation’s law enforcement agencies notes that 17,985 state and local agencies were identified in the United States (Reaves, 2008).

²⁰ A 2009 report from the Texas Law Enforcement Management and Administrative Statistics Program notes that a survey completed by 58 law enforcement agencies indicated that only 19 percent of the agencies contained an active cold case unit at the time, whereas 76 percent had never possessed such a unit and 5 percent had a unit previously. Not surprisingly, the Texas survey also revealed that lack of funding was the reason previously existing units had been extinguished. The state-commissioned Arizona Cold Case Task Force (2007) revealed that only 17 percent of the responding law enforcement agencies contained a cold case unit. Similarly, an independent study published in 2017 reported that, out of 544 agencies surveyed, 18.5 percent possessed a cold case unit. Those same agencies counted 40,512 unresolved homicides in their jurisdictions (Stein et al., 2017).

²¹ Davis, Jensen, & Kitchens, 2011.

The Need For Cold Case Units



Why are cold case units needed?

As a matter of public safety and to ensure justice for victims, a priority of all law enforcement agencies — federal, state, and local — is to solve all cases, regardless of the amount of time that has passed. As noted by the American Bar Association, “the highest duties of government, and therefore the police, are to ‘safeguard freedom, to preserve life and property,’ to protect the constitutional rights of citizens and maintain respect for the rule of law by proper enforcement thereof, and, thereby, to preserve the democratic process.”²² Solving crime is an inherent police function.

“Working cold cases is a responsibility, not a luxury.”

— Lou Eliopoulos, Cold Case Homicide Unit,
Naval Criminal Investigative Service

There are five primary justifications for creating and maintaining a cold case unit:

- Criminal justice
- Public safety
- Public trust
- Clearance rates
- Cost savings

Criminal justice

In every crime, there is at least one victim. “Victims have fundamental rights and identifiable needs” and “victims should be the primary customers of the justice system.”²³ Victims are a critical component of the criminal justice system, and their issues and concerns are an integral part of policing in the 21st century.²⁴

Faith in the criminal justice system, and in law enforcement in particular, hinges on the public’s perception that laws will be enforced. Maintaining this faith is the responsibility of the police. Victims want reassurance that

²² American Bar Association, 1973/1980.

²³ International Association of Chiefs of Police Victims Summit, 2000.

²⁴ Ibid.

they are not forgotten and that offenders will be held accountable for their criminal actions. As time passes and criminal cases are not resolved, victims and the community do not forget or give up hope.

Public safety

The mission of every law enforcement agency, regardless of its size, is to keep the public safe. This mission includes recognizing the value of human life, maintaining the public's trust, respecting the principles of the country's constitution and laws, and serving with integrity, accountability, and professional excellence.

In their efforts to enhance public safety, agencies have worked to forge ties with their communities. Many agencies have found allies through programs such as community-oriented policing, furthering their efforts to resolve cases. Conversely, failure to address the issue of unresolved cases may contribute to fear and distrust of police in the community, potentially increasing the community's reluctance and resistance to working with law enforcement.²⁵

The cold case crisis is in part the result of the accumulation of unresolved cases committed by repeat offenders. Research reveals that recidivism is disturbingly high in the United States: Within five years of their release from prison, 71 percent of violent criminal offenders are rearrested.²⁶ The Police Executive Research Forum (PERF) notes that even though time passes and investigators have not been able to resolve crimes, their caseloads increase. Mounting caseloads, in turn, create additional drain on agency resources, reducing the likelihood that incoming cases will be resolved and thus adding to the accumulation of cold cases. PERF describes this process as a vicious cycle, as offenders continue to be a threat to society.²⁷ Public safety cannot be ensured if a violent criminal is able to reoffend.

Public trust

According to a report from the International Association of Chiefs of Police (IACP), the public's image of the police has been declining since the 1960s. Citizens demand an extremely high level of performance and expect their communities to be crime free and criminal cases to be resolved.²⁹ In addition, research suggests that outcome-oriented aspects of police performance are linked to citizens' overall image of the police. Outcome-oriented elements include solved crimes as well as the community's sense of safety in the absence of fear of crime. Crime prevention — a major function of law enforcement and the

“Everything we do at the Department of Justice is dedicated to reducing crime in America.”

— U.S. Attorney General Jeff Sessions²⁸

²⁵ Cronin et al., 2007.

²⁶ Durose, Cooper, & Snyder, 2014.

²⁷ Cronin et al., 2007.

²⁸ Sessions, May 7, 2018.

²⁹ Gallagher, Maguire, Mastrofski, & Reisig, 2001.

Serial Offenders

According to the Begun Center for Violence Prevention Research and Education at the Mandel School, serial rapists are more common than previously perceived.

The Cuyahoga County Sexual Assault Kit Task Force and the Begun Center for Violence Prevention Research and Education report:¹

- Of 243 sexual assaults studied, 51 percent were tied to serial offenders, who generally had more extensive and violent criminal histories than one-time sexual offenders.
- It is very likely that a sexual offender has either previously sexually assaulted or will offend again in the future.

- Investigating each sexual assault as possibly perpetrated by a serial offender has the potential to reduce the number of sexual assaults, if investigations focus more on the offender than on single incidents.
- Rapists have long criminal histories that often begin before their first documented sexual assault and continue after it.
- The majority of both serial and one-time sexual offenders have felony-level criminal histories: 74 percent of all serial rapists studied had at least one prior felony arrest, and 95 percent had at least one subsequent felony arrest.

1. Begun Center, 2018.

community — is also an outcome-oriented element. The public holds law enforcement accountable for achieving these outcomes, and police need to manage public expectations in order to operate effectively. Police performance falls short of public expectations when criminal investigations, especially those involving violent crimes, are not resolved.³⁰

The IACP further noted, however, that the public offers “positive assessments of the police ability to achieve crime-focused outcomes.”³¹ Consequently, not producing results jeopardizes any community’s goodwill and the positive public perceptions that exist. Resolving cold cases is an important contributor to preventing crime, increasing public safety, and increasing the favorable image of law enforcement — that is, fulfilling law enforcement’s mission and maintaining public trust.³²

In addition to fulfilling its agency mission, law enforcement has become increasingly aware of potential repercussions from public perceptions of police performance. In today’s media-filled society, the accumulation of untested evidence as well as the existence of new forensics technology have become common knowledge. Citizens and the media are asking why all evidence has not been examined and why law enforcement has not used all potential tools available to resolve each and every case. Civil liability has become a real concern for law enforcement leadership. Even if agencies are able to successfully dismiss such lawsuits, jurisdictions will be faced with responding to these claims. Being proactive will help

³⁰ Ibid.

³¹ International Association of Chiefs of Police Victims Summit, 2010.

³² Gallagher, Maguire, Mastrofski, & Reisig, 2001.

agencies generate goodwill and reinstate trust, and addressing cold cases proactively may even stave off potential future legal claims.

Agencies must also realize that various policing operations do not need to be mutually exclusive. Cold case units can work in concert with particular policing initiatives, including Project Safe Neighborhoods (PSN),³³ Community Oriented Policing Services (COPS), problem-oriented policing (POP), hot spot policing, or even new and emerging initiatives such as New Orleans' Group Violence Reduction Strategy.³⁴ A cold case unit can be implemented and operated in a mutually beneficial relationship with these programs. For example, cold case units are, in essence, the embodiment of POP initiatives: to be proactive rather than reactive in resolving issues.

Clearance rates

Police agencies use performance measurements to evaluate the level of success of their operations. The four commonly recognized measures of police performance today are (1) crime rates, (2) arrests, (3) clearance rates, and (4) response times.³⁵ Often, an agency's success is evaluated based on clearance rates alone, as this data is considered an important measure of how effectively police agencies are doing their work. The annual FBI UCR is the generally accepted national resource for agency crime statistics.³⁶ When the annual report is released, the media, academia, law enforcement, and jurisdictional officials examine the data to understand current crime and law enforcement conditions and trends. Clearance rates are some of the most studied and reported data from the UCR, and declining clearance rates are further indicators of the national cold case crisis facing law enforcement leadership today.

Still, clearance rates alone do not fully reflect an agency's efforts, and this is especially true regarding the resolution of unsolved cases. Cold case investigation methods and procedures are vastly different from an initial investigation. While investigation of unresolved cases helps agencies, there is no performance instrument that reflects the true successes brought about by addressing unresolved cases. Nonetheless, as offenders are removed from the public through the resolution of unsolved cases, crime rates will likely decrease while arrests and clearances will increase. Response times will arguably improve as fewer resources are required for initial investigations.

³³ Facilitated by BJA, PSN is a DOJ crime reduction initiative designed to network local crime reduction programs (BJA, *Project Safe Neighborhoods*).

³⁴ CrimeSolutions.gov, 2016.

³⁵ Davis, Jensen, & Kitchens, 2011.

³⁶ The IACP's Committee on Uniform Crime Records started gathering crime data across the country in 1927, and in 1930 Congress mandated that the FBI obtain and control these records. Even as early as 1930, researchers and law enforcement executives realized the importance of resolving crime and initiated the use of "the number of cases cleared" as a measure of police effectiveness (CALEA, 2003). However, because of local laws and individual agency definitions of some offenses at variance with the FBI UCR definitions, FBI UCR numbers may not represent a complete picture of crimes and clearances.

Forensic Databases Provide Cost Savings

The records in forensic databases, such as those for DNA, are increasing exponentially each year. As of December 2018, the national DNA database portion of the FBI's Combined DNA Index System (CODIS) contained over 13.6 million offender profiles and over 900,000 forensic profiles.¹ As these databases grow, more connections between offenders and other crimes will be realized. Populating these databases, therefore, aids agencies in case resolution. This translates to operational cost savings for agencies by providing valuable leads, thus saving the time and expense of exploring multiple options.

A 2017 article, "The Effects of DNA Databases on Crime" by Jennifer Doleac, outlines the effectiveness of DNA databases, specifically CODIS, for crime

reduction and crime deterrence. Doleac not only described the economic impact of using DNA databases to combat rising crime rates but also found that using DNA databases was more cost-effective than other law enforcement measures such as hiring more law enforcement personnel or increasing prison sentences. By using DNA technology, the agency has an efficient, effective way to combat crime and reap beneficial returns on its investment.²

Thus, implementing a cold case unit and ensuring that all evidence is examined, identified, and uploaded to CODIS translates to long-term cost savings for the agency.

1. FBI, *CODIS-NDIS Statistics*.

2. Doleac, 2017.

Measuring the successes of a cold case unit is difficult because they are often intangible and not easily quantified. Although the community may not comprehend the complexities of a case, knowledge of ongoing activity in an investigation may still afford public reassurance and may therefore be some level of success. Other, less apparent benefits may also result from the formation of a cold case unit. These may include enhanced perceptions of "justice, integrity, fear reduction, citizen satisfaction, protection and help for those who cannot protect or help themselves."³⁷ Law enforcement leadership, the media, and the public alike must come to understand and have realistic expectations of how cold case investigations differ from initial investigations, and how each cold case resolution is a noteworthy success.

Although clearance rates are not a true indicator of the success of a cold case unit, cold case investigations can aid an agency's clearance rate. A resolved cold case is considered cleared in the year that the resolution occurs; therefore, crimes that occurred in a prior year but were resolved in the current year will be included in the current year's clearance rate.³⁸ It is possible to have a clearance rate greater than 100 percent, and some agencies have in fact used boosting clearance rates as justification for maintaining a cold case unit.

³⁷ CALEA, 2003.

³⁸ Keel, 2012.

Cost savings

For many years, researchers have struggled to calculate the economic impact of crime and the savings that can be achieved by preventing it. The annual cost of crime to the nation has been estimated in the hundreds of billions of dollars. A National Institutes of Health study, for example, estimated that as a result of the 23 million criminal offenses in 2007, victims lost close to \$15 billion and government agencies spent approximately \$179 billion.³⁹ The Minnesota House of Representatives Research Department noted that there are tangible and intangible costs of crime, all of which are difficult to calculate. Some cost considerations include property loss, medical costs, government costs, and additional security measures.⁴⁰

Some costs of crime are hard to quantify, and most do not have a numerical value. For example, victims and families may incur costs due to physical injuries and/or mental distress after a crime occurs, and due to participation in the criminal justice process itself. Sometimes, these costs are more difficult to quantify because they may arise, in part, after the primary data are collected about a criminal victimization event. Some research studies go beyond the obvious physical and monetary costs and attempt to quantify the cost of the increased fear that residents in high-crime neighborhoods have of leaving their homes, particularly at night. This increased fear may itself contribute to a decrease in neighborhood safety, to the extent that deserted streets and public areas invite additional criminal activity.

Several research studies seek to quantify other indirect or intangible costs of crime. One example is the negative effect that criminal victimization can have on children in the household. Most studies conclude that child victims are at increased risk of having school problems, psychological problems, and delinquency problems as a result of their victimization. Another example is the intangible cost to victims of their continuing pain and suffering due to the criminal event and their actual or perceived loss of quality of life. Even though pain and suffering costs are extremely difficult to measure, some research studies provide an aggregate dollar estimate of them, primarily based on data derived from jury awards in lawsuits.⁴¹

Resolving unresolved cases brings overall cost savings to an agency and to the community. Case resolutions free agency resources, lighten investigator caseloads, reduce administrative activities, and relieve potential laboratory evidence queues. Additionally, and most importantly, resolving cases can prevent future victimizations and the associated costs.

³⁹ McCollister, French, & Fang, 2010.

⁴⁰ Shapiro, 1999.

⁴¹ Ibid.

OJP's Efforts to Address the Accumulation of SAKs to Investigate Cold Cases

OJP's sister agencies NIJ and BJA have been collaborating to resolve the accumulation of SAKs across the country. Since 2000, NIJ has provided funding to address the accumulation of untested DNA evidence. The first initiative provided funding for the Convicted Offender Backlog Reduction Program; later, the No Suspect Casework DNA Backlog Reduction program was added. Currently, NIJ provides funds to state and local agencies for DNA capacity enhancement and untested evidence inventory reduction. As of December 2017, over 1,000,000 cases were analyzed for DNA and over 400,000 forensic crime scene DNA profiles were uploaded to CODIS, producing more than 200,000 CODIS hits.^{1,2}

In recent years, processing and analyzing untested SAKs for DNA has become a priority for many agencies. NIJ, in partnership with the Office on Violence Against Women, published a report in 2011 in response to the SAK evidence accumulation.³ This report spurred action-research projects in Detroit and Houston as well as additional NIJ-supported programs. For example, in 2016, NIJ provided \$3.3 million for the Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting Program

(SAFE-ITR).⁴ NIJ also partnered with the FBI to provide DNA testing for unsubmitted SAKs at no cost to the submitting agency. As of October 2018, over 3,519 cases had been processed through this NIJ-FBI partnership, providing over 1,800 CODIS entries with over 760 investigative leads.⁵ Other NIJ projects include technology research for forensic analyses, a best-practices guide for collecting SAK evidence, and knowledge transfer and technology workshop events through NIJ's Forensic Technology Center of Excellence (FTCoE).

The Bureau of Justice Assistance (BJA) also provides support for the SAK evidence accumulation through the Sexual Assault Kit Initiative (SAKI). SAKI provides funds for agencies to inventory, test, investigate, and prosecute SAK cases. From SAKI's launch in 2015 to December 2018, \$154 million was awarded to 41 jurisdictions. As of September 2018, 62,062 SAKs had been inventoried, 45,626 SAKs were sent for testing, 13,627 profiles were uploaded to CODIS, and 6,522 CODIS hits were obtained.⁶ In FY 2018, SAKI provided funding opportunities for agencies investigating and prosecuting cold case sexual assaults.⁷

1. LaPorte et al., 2017.

2. NIJ receives monthly progress reports bi-annually that are reviewed and programmatic data analyses are performed after the reporting and approval process. Therefore, there is approximately a one-year lag in the reported work performed and the real-time work.

3. Office on Violence Against Women, *About the Office*.

4. NIJ, *Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting Grant Program*.

5. FBI, private correspondence with NIJ.

6. BJA, *Sexual Assault Kit Initiative (SAKI)*.

7. BJA, *National Sexual Assault Kit Initiative (SAKI) FY 2018 Competitive Grant Announcement, 2018*.

Why now?

As elected officials and law enforcement leadership around the country ask what the actual cost of solving a cold case is, victims and the community can counter by asking, "What is the cost of not solving a cold case?"

A study into the processing of untested sexual assault kits (SAKs) by Lawrence Wein, of the Stanford Graduate School of Business, concluded that there was a moral imperative coupled with a powerful economic argument for testing every SAK: "Every dollar the police spend on analysis returns \$81 from averted sex crimes."⁴² As a byproduct of

⁴² Wang & Wein, 2018.

resolving crime, making communities safe, and realizing cost savings by deterring crime, an agency can also enhance its image and increase its positive relationships with its stakeholders.

Now is the time to address the cold case crisis. Cases once considered unsolvable can be resolved today. Reasons to reopen and investigate cold cases can include:

- Advancements in forensic technology
- Changes in relationships over time
- New leads through fresh reviews
- Increased public support and interest
- Improved information management

“Criminal prosecution is not always possible. Justice can come in many forms. Truth is also justice.”

— Erin H. Kimmerle, Executive Director, Florida Institute for Forensic Anthropology & Applied Science

Advancements in forensic technology

Today, more than ever, forensic technologies are advancing at a rapid pace.⁴³ These significant advancements can now provide investigators with valuable tools that did not exist when older cases were originally investigated.⁴⁴ As a result, crime scene evidence that was once thought to be unsuitable for testing, or that originally yielded inconclusive or negative results, may now yield probative evidence or investigative leads.⁴⁵ Furthermore, forensic databases have improved substantially in recent years as a result of increased uploading of forensic data, improved search algorithms, and interoperability across systems.

Some examples of forensic technology advancements include:

- **NamUs**
The National Missing and Unidentified Persons System (NamUs) provides a suite of services and databases for missing persons and UHR.⁴⁶
- **DNA**
DNA has become detectable in smaller amounts, and advances in DNA technology have substantially increased the likelihood that

⁴³ NIJ provides support for technology and forensic advancements through programs such as Forensic Science Research and Development (<https://www.nij.gov/topics/forensics/Pages/welcome.aspx>) and the Forensic Technology Center of Excellence (<https://forensiccoe.org>).

⁴⁴ Examples of database systems include case management programs, Geographic Information Systems (GIS), the FBI's Violent Criminal Apprehension Program (ViCAP), NIJ's National Missing and Unidentified Persons System (NamUs), the FBI's Combined Index DNA System (CODIS), the FBI's Next Generation Identification (NGI) system, the Bureau of Alcohol, Tobacco, Firearms and Explosives' National Integrated Ballistic Information Network (NIBIN), and many databases specific to the evidence described in the *NIJ Journal* article, "Forensic Databases: Paint, Shoe Prints, and Beyond" (Bowen & Schneider, 2007).

⁴⁵ An article published by IACP, "Knowledge Is Power – Using Technology to Gain Forensic Intelligence," describes using forensic databases for investigative intelligence. Linking cases, for example, multiplies the investigative information available for each of the linked cases (Roper & Morgan, "Knowledge Is Power").

⁴⁶ NamUs "assisted" in over 2,000 missing persons cases and over 1,500 unidentified persons cases.

aged, degraded, limited, or otherwise compromised biological evidence can be successfully analyzed to produce a DNA profile. The number and type of DNA profiles⁴⁷ contained in the FBI's national Combined DNA Index System (CODIS) — and in state and local databases — has increased dramatically.⁴⁸ The FBI's 2015 expansion of DNA markers included in CODIS provides greater discrimination potential for human identification and stronger statistics.⁴⁹ Moreover, new applications for technology such as familial DNA searching,⁵⁰ phenotypic DNA,⁵¹ and genealogical DNA searches⁵² can prove vital for producing investigative leads or even solving a case.

■ Friction ridge impressions

Techniques for collecting and recovering friction ridge impression evidence have improved. These include techniques for: locating and recovering impressions; recovering post-mortem fingerprints; digitizing impression evidence; record and evidence matching;⁵³ and system interoperability between jurisdictions.⁵⁴ The FBI's Advanced Fingerprint Identification Technology (AFIT), an enhanced fingerprint-matching algorithm, has been upgraded from the older Automated Fingerprint Identification System (AFIS).⁵⁵

⁴⁷ Mitochondrial DNA (mtDNA), the DNA inherited from one's maternal genetics, and Y-STR DNA, genetic material inherited from the paternal side, are now accepted into the National DNA Index System (NDIS) for missing persons cases. Short tandem repeat (STR) DNA technology only requires a minimal amount of sample to produce a DNA profile (FBI, *Frequently Asked Questions on CODIS and NDIS*).

⁴⁸ As of December 2018, the NDIS contained almost 13.6 million offender profiles, more than 3 million arrestee profiles, and more than 900,000 forensic profiles (FBI, *CODIS-NDIS Statistics*).

⁴⁹ FBI, *Notice of Release*.

⁵⁰ Familial DNA is the process of searching for potential DNA database matches with relatives of the contributor of the unknown DNA. Familial DNA searching requires that a close relative's DNA data be in a database. Several states have found great success using this process, such as California in the Grim Sleeper case (Gerber, October 25, 2016). Without familial DNA, the numerous homicides in California committed by Lonnie Franklin, Jr., would still be unresolved and more victims might have died. Currently, 10 states allow database searching for familial DNA — and the list is growing — yet, there are still many states that forbid familial DNA searches (Augenstein, December 8, 2016, and Forensic Technology Center of Excellence, *Familial DNA Searching*).

⁵¹ Phenotypic DNA analysis can suggest how the person who contributed the DNA sample may look. Several cold case arrests are attributed to this new forensic process. One such case was the arrest in 2017 of Blake A. Russell for the 2009 homicide of Sierra Bouzigard (KPLC, July 25, 2017).

⁵² Genealogical DNA searches use commercial DNA databases where people provide their DNA information to a commercial genealogical company in order to establish genealogic connections with other people who have also submitted their DNA. The DNA profiles can provide valuable leads for investigators who have a DNA profile that has not produced a connection in other DNA databases. A genealogist and a DNA analyst are often required in order to navigate any possible relationships that may be identified. Notable cases such as the Golden State Killer have identified a suspect by using genealogical DNA searches.

⁵³ Fingerprints from 109 UHR cases were rerun and 47 percent were identified, including several cold cases dating back as far as 1979 (NamUs Fingerprint/AFIS Unit, 2014 Annual Staff Meeting; Mulawka & Craig, 2011).

⁵⁴ Through the years, many law enforcement agencies have installed automated fingerprint identification systems (AFIS) from a variety of vendors who each use their own software. As a result, many agencies are unable to compare their own data with other databases, whether in neighboring jurisdictions or at the state and national levels. The National Institute of Standards and Technology (NIST) initiated an AFIS Interoperability Working Group in 2008 that is attempting to resolve these interoperability issues (National Institute of Standards and Technology, *Forensic Science*). Searching the records in one system does not mean that all systems are searched, and cold case investigators must verify which databases were searched previously.

⁵⁵ A 25-year-old sexual assault cold case was solved when Florida's Pinellas County Sheriff's Office upgraded the agency's computerized fingerprint-matching program. The suspect's fingerprints had been in the system for years, but a match was not made until the new algorithm was applied (Augenstein, March 7, 2017).

FBI and NamUs Fingerprint Collaboration Project

One of the functions of NamUs is to provide a repository of UHR records, such as fingerprint records, to be used as a resource for identifications. As of February 2017, NamUs contained over 14,000 UHR cases. In March 2017, NIJ and the FBI initiated a collaboration to compare the NamUs fingerprint files with the FBI's fingerprint files. In less than one year,

over 200 fingerprint associations were connected to UHRs. Fingerprint images continue to be submitted on a weekly basis as new UHR cases are received by NamUs.¹ At least 25 of the hits identified homicide victims, providing pertinent information for these cold cases.²

1. LaPorte, Johnson, & Schaeffer, 2018.

2. Augenstein, September 5, 2017.

■ Firearms evidence

The National Integrated Ballistic Information Network (NIBIN),⁵⁶ operated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF),⁵⁷ is an ever-growing, automated imaging database system for cartridge casing evidence. Additionally, advanced reconstruction tools can note bullet trajectories and the activities associated with the crime, potentially providing investigative leads.

■ Medicolegal death investigations

Virtual autopsies may replace or supplement gross autopsies.⁵⁸ Numerous scientific advances may provide additional information about samples upon re-examination: Bone, tissue, and other biological samples once thought to have no forensic value can be retested with more sensitive DNA techniques to yield full DNA profiles.⁵⁹ Increased knowledge of mitochondrial DNA (mtDNA) also promises to make a significant impact on missing persons and UHR cases.⁶⁰

■ Forensic anthropology

Technology can assist with locating, excavating, and documenting scenes. Trauma analysis, chemical isotope testing for geo-referencing the origin and migration of an individual, and forensic imaging and biometric analysis of skeletal and dental remains for identification are

⁵⁶ ATF's National Integrated Ballistic Information Network (NIBIN) has captured approximately 2.8 million ballistic images between 1999 and 2016 and over 74,000 matches have been identified (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2016).

⁵⁷ NIBIN has traditionally used two-dimensional comparisons. Newer comparison studies use three-dimensional images to measure marks on fired cartridge casings (Augenstein, January 23, 2013).

⁵⁸ In 2016, NIJ and several international agencies participated in the International Forensic Radiology Research Summit (IFRRS) to discuss the current status of forensic radiology as well as gaps and research needs to advance technology (Jones et al., 2016).

⁵⁹ *Newsday*, September 9, 2017.

⁶⁰ Forensic Technology Center of Excellence, April 2018.

just a few of the analyses provided by forensic anthropologists. Bones can now be printed using 3D printers for in-depth examinations. Also, anthropologists have continued to collect more data on age, sex, and race determinations to refine their analyses.

■ Crime scene analysis

Tools such as three-dimensional analysis, digital mapping, and computer animation can provide insight into the activities that occurred surrounding the commission of a crime. Reviewing notes, photographs, and information in the case files and from anyone who visited the crime scene at the time of the crime can assist in recreating scenes to provide valuable leads, regardless of the time that has passed since the date of the offense.

■ Other forensic sciences

Forensic science disciplines continue to advance, and an exhaustive list would be difficult to compile. A few examples identified through NIJ research projects include: improved trace fiber comparison examinations;⁶¹ chemical analysis of isotopes in human hair to identify where a person has lived and traveled as well as personal characteristics such as sex and race;⁶² and very small particles⁶³ to link evidence and suspects to crime scenes.⁶⁴ Recent advancements in arson investigations have provided additional information.⁶⁵

Many of the technologies that are beneficial to cold cases are those involving databases. However, the key to any database's usefulness is the addition of new information. As new cases are entered, they are compared with current data stored in the repository and are also retained for future comparisons. The inclusion of new data and comparison to existing data contribute to solving both current and unresolved cases. As these databases continue to grow, more cases will be solved.

Changes in relationships

Time may be the perfect ally in a cold case investigation. People and situations change. Those who were formerly unwilling to cooperate with an investigation may now cooperate. Marriages, friendships, and other trust relationships may deteriorate with the passage of years. Friends can become adversaries, business relationships may sour, and people may mature or relocate. A divorce may present the opportunity to glean new

⁶¹ NIJ, *Fiber Impurities*.

⁶² NIJ, *Using Isotopes in Human Hair*.

⁶³ Very small particles that are commonly referred to as dust have the potential to provide information on the origins of an object.

⁶⁴ NIJ, *Linking Suspects to Crime Scenes*.

⁶⁵ Forensic Technology Center of Excellence, February 2018.

NIJ's Support for Science and Technology Advancements

Science and technology continue to progress at an amazing rate. NIJ's Office of Investigative and Forensic Sciences (OIFS) supports the advancement and implementation of technology for use in criminal justice. Cold case investigations can reap the benefits of applying these technologies to older evidence. The mission of OIFS includes support for

research, development, and evaluation to advance current scientific investigative tools and to identify and develop new ones.¹ In addition, NIJ funds the Forensic Technology Center of Excellence (FTCoE) to support the criminal justice and forensic science community by bridging research and development activities and practice.²

1. Between 2008 and 2017, NIJ awarded 822 forensic research and development awards for a total of \$326,767,375 (<https://www.nij.gov/funding/awards/pages/awards-list.aspx?tags=and%3aForensics%2cResearch%20and%20Development>).

2. See the FTCoE website, <https://forensiccoe.org>. In 2016, the research and development projects supported by FTCoE included developing an infrared camera to identify blood stains, identifying ignitable liquids in fire debris, and creating a database of skeletal markers for human identification (RTI International, *2016 Annual Report*).

information about someone whom the victim's family or friends no longer feel obliged to protect. Other similar changes may lead to witnesses who are now willing to cooperate with an investigation.

Law enforcement investigators must periodically review cold cases and the people involved in the investigations in order to take advantage of changing relationships over time. As the National Sheriffs' Association noted in its guide for working with the survivors of homicide victims, "in some cold cases, it is specifically because of this passage of time that key information surfaces."⁶⁶

New leads through fresh reviews

Often, the key to resolving unresolved cases is case reviews with fresh eyes and viewpoints. New reviews undertaken in a context different from the original environment or from a different perspective can often identify new leads. These reviews may identify a lead that was not explored, such as an unreturned "while you were out" message. New reviewers often have the opportunity to analyze cold case files without many of the initial investigation's constraints, such as pressure from the community, media, and the agency for a quick resolution or stress from compounding caseloads. Also, the initial investigation may have focused on a particular line of inquiry and not identified other potential lines of inquiry.

It is imperative that cold cases be investigated in the present, with the understanding that past investigative actions are not to be judged. New reviewers should not assume that investigators did a poor job in the initial investigation. Investigators must move forward with the information and evidence available.

⁶⁶ National Sheriffs' Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

Increased public support and interest

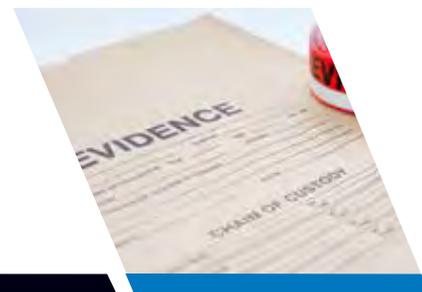
Many media outlets are reviving cold cases, increasing interest and desire in the public to assist in case resolution. Online web sleuths spend hours researching cases and trying to make connections. Television shows on cold cases, tapping the public's desire to solve these mysteries, are immensely popular and also increase the interest in cold case investigations.

Information management

Digitization of records provides law enforcement the opportunity to organize records and realize connections. Computer analyses can identify connections between cases, people, and places. Investigators and crime analysts can apply their expertise toward analyzing the relevance of the connections.⁶⁷

⁶⁷ The Tacoma (Washington) Police Department tapped into the power of an emergency management software program to organize and manage data in the agency's cold cases (Lewis, October 30, 2015).

Determining the Needs and Scope of a Cold Case Investigation Unit



RECOMMENDATION 1:

1. *Define the specific parameters of a cold case with consideration for applicable laws and agency policies and practices.*

The first step in setting up a cold case unit is to determine which cases the unit will investigate — in other words, what the agency’s definition of a cold case will be. This determination should be made based on the needs and circumstances of the jurisdiction: Deciding which cases to take on will depend on the size and composition of an agency’s accumulation of unresolved cases, along with the resources that an agency has available. Before an agency can identify the appropriate scope for cold case investigations, it must understand what kinds of unresolved cases exist and how many there are.

Case inventory

A preliminary inventory of unresolved cases must be performed to guide the planning, organization, and operation of a cold case unit. The inventory can initially be a cursory overview; however, details of each case, such as the offense and the current status of the investigation, need to be captured to best define the scope of a unit’s operations.

Identifying unresolved cases may be a significant challenge. Many unresolved case files are stored as hardcopy documents, and these records are often not consolidated or stored in an easily searchable format. Large numbers of cold case files have never been entered into a computerized records management system. Updates and upgrades to an agency’s computer system often do not include uploading legacy case files; thus, an agency must verify that all of the unresolved cases in the jurisdiction are included in the case inventory.

Lost or misplaced records are not uncommon. Staff turnover, changes in leadership, and agency or department reorganization may further contribute to the loss of institutional knowledge and investigative information. In some instances, investigation details may not have been recorded. To capture information on a case, agencies may be forced to piece together records from traditional filing systems as well as external sources. Other law enforcement agencies, prosecutors' offices, hospitals, forensic laboratories, medical examiners/coroners, and former agency personnel should all be contacted. It is beneficial to enter key case information into a computerized information management system during the inventory. Using a computerized system allows the agency to best organize unresolved cases and to create a more efficient and effective unit (see chapter 6 for more information on case management systems). However, not all investigative details should be captured during the initial review; in fact, collecting too much data initially will prolong the inventory and be counterproductive to the unit's efficiency. Full details should instead be captured during the case review process once the cold case unit is operational.

RECOMMENDATION 2:

2. *Conduct an initial needs assessment to determine the resources needed to create and sustain a successful cold case unit.*
 - 2a. *Conduct an inventory of the number of unresolved cases.*
 - 2b. *Identify and record all unresolved cases in a computerized information management system during the initial inventory.*
 - 2c. *Conduct periodic needs assessments to ensure that investigative activities conform to current investigative practices and that the operational needs remain in alignment with the agency's operations and mission.*

Determining the scope of operations

Agencies will need to direct the focus of the unit's investigations by defining the scope of its operations. Once the case inventory is completed and the agency has determined what qualifies as a cold case, the agency will then need to decide which offenses to target. Sexual assault cases tend to have more DNA evidence and may have greater chances of success with fewer resources. Homicides, however, are a greater focus for some agencies due to the nature of the crime. The cold case unit will need to prioritize its investigative efforts based on the criteria identified by the agency. Agencies should also note that some crimes may overlap. A sexual assault may occur in the commission of a homicide, for example.

Long-Term Missing Persons as Cold Case Homicides

Police agencies — generally already working with constrained resources and excessive workloads — are presented a challenging scenario once they are notified of a missing person. Juveniles often go missing intentionally, and adults have the option of travelling as they please. Unless a criminal offense is suspected at the time of the disappearance, persons missing due to harm may not be identified as victims immediately, in the near future, or possibly ever. Valuable leads are lost as time passes in missing persons cases that are actually homicides. Many missing persons cases become cold cases, often without law enforcement realizing that a homicide case exists. Missing persons cases should be

investigated as violent offenses until information is received to contradict a suspicion of criminal activity. Cold case units must inventory and analyze the missing persons cases in their jurisdiction to determine whether those cases should be added to the cold case inventory queue. Long-term missing persons cases are often not addressed in policing. Investigating these cold cases may also assist in the resolution of other investigations. One study notes that serial homicides are more prevalent than previously thought, with an estimated “hundreds of undetected, undiscovered, and uncounted serial murder victims each year in the United States.”¹

1. LePard et al., 2015.

Including *all* violent crimes in the unit’s homicide investigation activities may provide critical information for resolving other violent crimes including homicides. Missing persons cases, too, are often overlooked when setting the scope of a cold case unit. Many missing persons are victims of violent crime, yet agencies often do not investigate these cases as homicides.

SUMMARY RECOMMENDATIONS

DETERMINING THE NEEDS AND SCOPE OF A COLD CASE INVESTIGATION UNIT

1. *Define the specific parameters of a cold case with consideration for applicable laws and agency policies and practices.*
2. *Conduct an initial needs assessment to determine the resources needed to create and sustain a successful cold case unit.*
 - 2a. *Conduct an inventory of the number of unresolved cases.*
 - 2b. *Identify and record all unresolved cases in a computerized information management system during the initial inventory.*
 - 2c. *Conduct periodic needs assessments to ensure that investigative activities conform to current investigative practices and that the operational needs remain in alignment with the agency’s operations and mission.*

Designing a Cold Case Unit



After an agency inventories its cases and determines which kinds of cases will fall within the scope of the cold case unit, the next step is to design the unit itself. The unit will be shaped by the resources available, so an agency must secure support for the unit from both inside and outside the agency. Then, the agency can begin the preparation and planning stages, in which stakeholders will decide what the unit will look like and how it will operate. A cold case project lead should be identified as early as possible, to bring stakeholders together and direct this planning process.

Identifying support for a cold case unit

Once an agency determines the scope of the cold case unit, it must garner the support of key decision-makers from within the agency and from the community to provide the best opportunity for success. This support is necessary to move forward. Community stakeholders as well as the agency have a strong desire to resolve violent crimes, so it is imperative that all stakeholders work together toward accomplishing that goal.

From within an agency, support can come from administrative, supervisory, and investigation personnel who champion the activity of the cold case unit. From without, support may come from elected officials, other public and private figures, and even the media. These people can support the unit by providing personal and political backing as well as ensuring the allocation of necessary financial resources. Additional support may also be garnered through local, state, or national organizations and victims' groups as well as from regional law enforcement agencies. Chapter 7 further identifies potential sources of support for a cold case unit.

Preparation

RECOMMENDATION 3:

3. *Appoint a project lead to oversee the implementation of the cold case unit. Choose an individual who understands the agency, the process of unresolved case investigations, and the jurisdiction's administration.*

The project lead

One of the first steps in implementing a cold case investigation unit is to identify a project lead within the agency who is capable of spearheading the effort and providing support for the unit.⁶⁸ This lead will be responsible for seeking and obtaining buy-in from agency officials and area policymakers. Above all, the lead must possess good leadership and people skills and must believe in the mission of the cold case unit. The lead is responsible for the success of the project and ensures that stakeholders and project team members support the mission and the cause of the project.

Critical skills and abilities for the lead include:

- Researching and identifying best practices from other agencies and jurisdictions in similar situations.⁶⁹
- Identifying a team to implement the cold case unit.
- Managing the drafting of guidelines for unit implementation, including progress timelines, key milestones, and progress reports to administrators and other stakeholders.
- Overseeing the establishment of unit protocols and operational procedures.

⁶⁸ In project management, a lead is termed a *champion* (Pinto & Slevin, 1989). One of the most successful methods of ensuring that the cold case unit is successful and implemented in the most effective and efficient manner is to apply project management principles. Project management is a process in which a project (e.g., the implementation of a cold case unit) is executed in a planned and organized way to ensure the most successful results.

⁶⁹ NIJ's CrimeSolutions.gov is a resource that assists agencies in identifying practices and programs that work. An agency can contact CrimeSolutions.gov and request guidance for implementing a new project or program. BJA's National Training and Technical Assistance Center (NTTAC) is a law enforcement resource that provides training and technical assistance (Bureau of Justice Assistance, *Training and Technical Assistance*).

- Determining the roles for the unit's operational team:
 - defining and documenting the roles.
 - working with the agency to fill those roles.
- Overseeing the establishment of partnerships.
- Identifying resource needs and appropriation mechanisms.
- Ensuring that obstacles for implementing, operating, and retaining a cold case unit are eliminated or mitigated.
- Providing updates to the project implementation and operational teams, agency administrators, and other stakeholders, such as partnering agencies.
- Identifying and managing potential risks.

Implementation team

The lead will need to construct a cold case unit implementation team. This team will work with and under the direction of the lead. A stakeholder or representative from every unit or agency that may work with or be affected by the cold case unit's efforts should be included in the implementation team. Each individual team member's roles may vary as well as their amount of involvement. High-level officials may attend periodic meetings, while a records management staff member may be detailed to the project full time, for example.

The implementation team:

- Includes representatives for stakeholders and relevant subject matter experts, such as district attorneys' offices, medical examiners' and coroners' offices, forensic services, agency policymakers, and other relevant investigative units.
- Assists the lead in fulfilling the lead's roles.
- Assists in the development and implementation of plans for setting up and operating the cold case unit.
- Establishes unit protocols and operational procedures.
- Defines the requirements for the operational team and may assist in selecting the operational team members.
- Identifies potential obstacles and assists in risk mitigation.
- Assists in formalizing partnerships.

Members of the implementation team do not need to be the people who will ultimately serve as the operational staff of the unit, though there may be overlap between these groups. Most agencies prefer to create an implementation team that is composed of people who are internal to the

agency, but external advisors should not be discounted and can provide beneficial support and resources for the cold case unit. External advisors may be involved as much or as little as the agency deems appropriate. External allies may assist in public relations with the community, such as by securing extramural support and resources for the unit.

Planning

A plan provides a mechanism to organize and implement a cold case unit with forethought and attention, identifying and resolving issues before they can become obstacles and assisting in risk identification and mitigation. The lead's role is to work with the implementation team to construct implementation and operation plans for the cold case unit. These plans should be considered fluid and should be updated as needed during both the implementation and operational phases of the cold case unit.

Information in the cold case unit plan should include:

- A mission and vision statement for the cold case unit.⁷⁰
- The scope of the unit's work.
- The strategic objectives of the unit and how those objectives align with the agency's mission and values, including how cold case activities can support agency initiatives such as community-oriented policing, reduced use of force, predictive policing, and implementing technology.
- The goals of the unit. Clearly articulated goals will help a cold case unit achieve its mission, and they are important in measuring success. Goals can be straightforward, such as:
 - Identify and review unresolved homicides, sexual assaults, and/or missing persons and unidentified remains cases. These may or may not include specific time periods for focus (e.g., 1980-2010, or all designated offenses after 1980).
 - Bring cases up to current investigative standards, including forensics testing.
 - Identify suspects.
- Guidance on continuity of operations during staff transitions or any other changes in the unit or the agency.

⁷⁰ A simple mission statement serves as the guiding principle for a cold case unit — and although it can be detailed, it can also be very simple. For example, the mission statement of the Yellowstone County Cold Case Unit is "To speak for those who cannot speak for themselves by seeking answers and justice for victims and their families" (Yellowstone County [Montana] Sheriff's Office, *Cold Case Unit*).

Assessment of success in cold case investigation

RECOMMENDATION 4:

4. *Collect performance metrics relevant to cold case activities in addition to clearance rates. Use appropriate data analytics to examine the performance and needs of the unit.*

During the planning and design stage, parameters to assess the success of the unit should be identified. Cold case unit members and agency administrators must have reasonable expectations of what constitutes success in terms of cold case activities. Supervisors, elected officials, and the general public should understand that solving one or two unresolved cases a year is significant. Law enforcement leaders and the policymakers who support them should be mindful of the challenges of these cases.

Guidelines and protocols need to be established to define what constitutes success. A cold case unit cannot operate without the ability to assess its own performance. Plans for a cold case unit must consider questions such as: What information is relevant in gauging cold case investigation operations? What is “success” in a cold case? Should it be measured in arrests and convictions? Amount of evidence reexamined? Number of case files entered into an information management system or cases posted to a public information portal? Traditional metrics do not accurately convey the success of a cold case unit, but some means of performance measurement must be defined and incorporated into the unit’s operations.

Victims may define success differently from law enforcement. Often, what constitutes the successful resolution of a cold case will vary from victim to victim — some will find resolution from the identification of a suspect, while others will define success as nothing less than a conviction. Law enforcement must manage victims’ expectations and attempt to assist victims in understanding the realities of cold cases and the different variables that law enforcement agencies use to determine successes.

To describe the unit’s success, the agency will need to collect and examine quantitative data (i.e., metrics) relevant to cold case activities. Information such as the number of cases reviewed, hours worked, people interviewed, and cases analyzed through forensic technologies can be just as relevant as the number of arrests or prosecutions. As mentioned previously, case resolution without prosecution is pertinent in cold case investigations. Successes for the unit need to be defined and shared so that agency administrators and other stakeholders realize that cold case unit activities are productive and beneficial for the agency and the jurisdiction.

A report from the International Association of Chiefs of Police, the Institute for Intergovernmental Research, and the Bureau of Justice Assistance (BJA) suggests that jurisdictions should also consider some of the following metrics — and should work with the public to help them understand how these are important in evaluating police performance:⁷¹

- Outcome success: identification, prosecution, and conviction of factually guilty offenders.
- Procedural success: the quality of the investigative process and systems, including the number of times an investigation contributed knowledge about another case and the number of times an investigation led to the identification of other crimes.
- Community success: increasing community reassurance and public confidence, for example, implementing a method to measure the satisfaction of the survivors in homicide cases with investigative and follow-up efforts.
- Preventive success: the prediction and prevention of future homicides.

Operational considerations

RECOMMENDATION 5:

5. *Agencies should not assign cold case investigators to incoming cases, temporary assignments, or non-cold case projects.*

In law enforcement agencies that do not have a cold case unit, investigators are often tasked with investigating cold cases as their current caseload allows or, in some instances, through overtime. This ad hoc process is inefficient and not generally productive for cold case resolution. A BJA study reports that cold case investigators in jurisdictions with exceptionally high clearance rates were seldom asked to put aside an unresolved case to work on a new case.⁷² Investigators must be allowed the opportunity to pursue all investigative leads.

Working overtime hours to continue investigating a specific case can be beneficial. However, working an entire shift on incoming or recent cases and then switching to investigations of older, unresolved cases through overtime does not work. Many agencies have discovered inconsistent

⁷¹ Bureau of Justice Assistance & International Association of Chiefs of Police, 2013.

⁷² BJA partnered with IACP and the Institute for Intergovernmental Research (IIR) to study best practices in homicide investigations. An in-depth analysis of seven jurisdictions with homicide clearance rates greater than 80 percent was conducted (Carter, 2013).

commitment towards working additional time, and often investigators that work overtime on cold case projects can become fatigued. Adding unresolved cases on top of an investigator's regular caseload can impede the investigations of the recent cases as well as the older cases when both are commingled into an investigator's assignment.

NIJ's Solving Cold Cases with DNA program discovered similar issues. In many instances, NIJ awardees requested additional time for cold case projects, noting that their investigators were unavailable to work overtime or that newer cases and other priority assignments interfered with the investigators' ability to investigate cold cases. Agencies have also reported to NIJ that their cold case investigators are often reassigned to other activities. Agencies tend to view cold case investigators as a surplus resource that can be transferred as needed to respond to incoming cases or other departmental activities. Pulling away investigators stalls any momentum gained on cold case investigations, hampering the progress of the investigation. Resolving cold cases must be understood by an agency and a jurisdiction as a vital activity. Otherwise, the benefits of potentially solving current crimes, preventing future crime, making the community safer, and assisting victims will not be realized — and the expenditures of time and resources may be wasted.

RECOMMENDATION 6:

- 6. Limit investigators to actively investigating no more than five cold cases at any one time.*

Caseloads are a significant factor in the successful resolution of cases. Investigators are assigned homicides as they occur. If a case is not resolved before the next case is assigned, caseloads build, investigators are less able to resolve the cases, and the number of accumulated unresolved cases grows. This vicious cycle frustrates the efforts of investigators.⁷³ Responsibility for numerous investigations often hinders pursuit of investigative leads. Research has demonstrated that smaller caseloads correlate to higher clearance rates. In fact, investigators who served as the primary investigator on no more than five cases a year had a clearance rate 5.4 percent higher than investigators with more than five cases a year.⁷⁴ Capping caseloads and utilizing a cold case unit alleviates added pressures on homicide investigators, who are able to pursue incoming, time-sensitive, fresh leads on new cases.

⁷³ Cronin et al., 2007.

⁷⁴ Keel, 2008.

Unit models

RECOMMENDATION 7:

7. *Assemble stakeholders and representatives of affected agencies to provide input and assistance in planning the cold case unit, including how it will be structured, implemented, and operated.*
 - 7a. *Identify agencies of similar size and structure that have established cold case units as informational resources.*
 - 7b. *Formalize and document partnerships among stakeholders with a Memorandum of Understanding.*
 - 7c. *Bring together multidisciplinary subject matter experts to provide diverse knowledge, resources, and perspectives in all facets of cold case review and investigation.*

When preparing to address cold case issues in a jurisdiction, an agency needs to determine how the cold case unit will operate. Just as no two criminal cases are exactly alike, each possessing its own unique nuances, no one cold case unit model can fit all agencies. Considerations in organizing and operating a cold case unit include the number of unresolved cases, jurisdictional circumstances and resources, and the availability of external resources.

Operational cold case units should be used as models. An existing unit's structure, organization, document templates, and other established practices can be starting points for implementing a new cold case unit. An agency should also consider lessons learned from its previous and current operational units and partnerships. Above all, cold case units should not be stagnant; as the context for the unit changes, the unit must evolve as well. Successful models for cold case units include independent units as well as partnerships.

Independent model

A stand-alone cold case unit is a dedicated unit within an agency, composed solely of agency personnel and tasked with investigating agency cases. The unit is administered by the agency and included in the agency's organizational structure. Such a unit may be composed of as few as two investigators or as many as deemed appropriate by the agency. While these units are housed within an agency, they must work with other entities. Independent units should include multidisciplinary and multijurisdictional activities with prosecutors, forensic subject matter experts, medical examiners/coroners, and other resources.

Kent County Partnership Model

In 2004, the Michigan State Police, Grand Rapids Police Department, and Kent County Sheriff's Department in Kent County, Michigan, entered into a partnership to solve cold case homicides. The Kent Metropolitan Cold Case Team operates under a Mutual Police Assistance Agreement. The team is led by a detective-sergeant of the Michigan State Police and operates out of the Sheriff's Office. It has investigators from the Sheriff's Office and the Grand Rapids Police Department, and a civilian contract worker who is a retired investigator.

Any of the partner agencies can submit a cold case for consideration. If the case is accepted for investigation, the agency may — depending on criteria laid out in the agreement — have to provide an investigator to the team for the duration of the investigation, or it may have to provide an officer to serve as a liaison between the team and the originating department.

Partnership models

Collaboration and shared resources are beneficial, and agencies should consider partnership models as a viable option for addressing the cold cases in their jurisdictions. Not all agencies require or possess the resources necessary to form an independent, dedicated cold case unit. Some jurisdictions may not have enough unresolved cases to warrant cold case units within their agencies. Many agencies, especially smaller or rural ones, may simply not have the resources to handle the accumulated cold cases in their jurisdictions. About half of U.S. law enforcement agencies employ fewer than 10 full-time officers. Analysis of data from the Bureau of Justice Statistics has found that most agencies with fewer than 100 sworn officers do not use specialized units such as a cold case unit.⁷⁵ All agencies, regardless of size or resources, have a responsibility to solve all violent crime cases. Partnerships can fill the gaps in resources, allowing jurisdictions to address cold cases without placing untenable obligations on law enforcement alone. Partnerships should be chosen and maintained based on a cold case unit's current context; units may add or dissolve partnerships after reassessing their needs.

Multiagency/multijurisdictional model

Regardless of their size or caseload, agencies benefit from gaining access to subject matter experts through multiagency collaborations.⁷⁶ Joint participation with other agencies or other jurisdictions can provide opportunities for resource sharing to resolve cases in the jurisdictions of the agencies involved.

⁷⁵ Reaves, 2008.

⁷⁶ A successful partnership approach is exemplified by the Denver (Colorado) Police Department. Their triad of forensic resources, the police department, and the district attorney has created policies and procedures designed to ensure maximum cooperation and efficiency as each seeks to understand the perspectives of the other and integrate these perspectives into their own mission (LaBerge, "Cold Case Best Practices").

Cold Case Roundtables

Cold cases are unresolved for a reason. These cases are difficult to resolve, and many agencies have discovered that additional input from persons not involved in the investigation is beneficial. Some agencies, such as the Charlotte-Mecklenburg (North Carolina) Police Department, have an agency cold case review team composed of vetted civilian professionals.¹ Other agencies participate in state cold case review teams such as the one sponsored by the Sheriffs' Association of Texas. The Texas review team includes sheriffs, deputies, public safety representatives, crime laboratory representatives, Texas Rangers, and a medical doctor. The team meets quarterly to assist any law enforcement agency that presents them with an unsolved case.² Likewise, Colorado assembled a cold case review team through

the Colorado Bureau of Investigation composed of volunteers representing various disciplines from investigators to coroners to prosecutors. The team meets to discuss cold cases and bring fresh eyes and a multidisciplinary approach to uncover leads in the cases.³

In addition, several professional organizations are now offering opportunities for agencies to review unresolved cases during their meetings and professional conferences. For example, the 2019 National Homicide Investigators Association (NHIA) conference notes, "Open, 'cold' or unidentified cases can be presented to the class allowing other experienced forensic/homicide investigators to use their skills to assist in solving a crime."⁴

1. Schuster, 2008.

2. Sheriffs' Association of Texas, *Cold Case Review Team (CCRT)*.

3. Regensburger, 2014.

4. National Homicide Investigators Association, *31st Annual NHIA Conference 2019*.

"You don't always have to be the smartest person in the room. You just have to know who is. The same holds true for cold case investigations. There are so many areas of expertise that have value to cold case investigations and no one person can possibly be an expert in them all. Take the time to figure out who is in your area and then develop them as a quality contact for the future. Be sure to make yourself available to them as well should they need your assistance."

— Gene Miller, Pierce County
Prosecutor's Office, Criminal Investigator,
High Priority Offender Unit

Task force model

A task force is another version of the partnership model. Task forces unify personnel from various agencies. Interagency drug task forces may be used as models for an interagency cold case unit. Within a task force, each member agency shares resources and contributes to funding, staffing, equipment, and specialized training. Offenders often cross multiple jurisdictions, and a regional partnership may benefit all agencies through increased communication and enhanced information sharing, leading to more cases being solved.

Organizing more than one entity into a cohesive unit may present challenges, but there are many potential rewards. Caution must be exercised when working with other agencies, however, as they may have different objectives and visions for how to fulfill the mission. A Memorandum of Understanding (MOU) is encouraged when partnering with other agencies. An MOU can cement the structure of the relationship, formalize the duties and responsibilities of participating agencies, and designate oversight personnel. Appendix D contains a sample MOU. A lead agency should take responsibility for ensuring cohesiveness, keeping the task force focused on the mission, and fostering efficient and effective communication when working with multiple agencies and jurisdictions.

TABLE 2: RECOMMENDED RESOURCES FOR INCLUSION IN A MULTIDISCIPLINARY TEAM TO REVIEW UNSOLVED CASES

Expertise	Contribution
Cold Case Investigator	Provides case information, including details of the commission of the crime, evidence identified and retained, and investigation activities.
Forensic Scientist	Reviews evidence and provides insight into technology available to analyze or reanalyze evidence.
Prosecutor	Provides legal expertise on subjects including chain of custody and statute of limitations, and can provide guidance on organizing investigation activities and identifying potential legal issues.
Victim Specialist/ Advocate	Provides advice on how to work with a victim through all phases of a cold case investigation and prosecution. Assists with interviewing and coordinating communications between the investigators and the victim.
Medical Examiner	Reviews the pathological aspects of the crime such as the manner of death, how wounds were inflicted, and the possible sequence of wounds.
Crime Scene Reconstructionist	Reviews photographs and other documentation to identify the potential sequence of events, which may be compared to investigation notes and statements on file; provides expertise in reconstructing the scene, which may present potential investigative leads.
Behavioral Analyst	Evaluates crime and crime scene characteristics and their relationship to the victim and offender; offers insight into possible motive and behavioral considerations of the victim and offender.
Crime Analyst	Reviews data on offense types and locations to identify trends and patterns of criminal behavior; may assist in linking offenses by the same perpetrator.
Intelligence Analyst	Synthesizes information derived from external resources and integrates this with local police information; may assist in linking offenses by the same perpetrator or group.
Academic ⁷⁷	Provides case reviews, database creation and management, grant writing assistance, reconstructions (crime scenes, victim faces, clothing or other historical objects or places), computer animation, research, and subject matter expertise.

⁷⁷ Graduate students at the University of South Florida (USF) provide assistance in researching records such as public deeds and historical photos in order to reconstruct information about the commission of the crime at the time of the offense. Other services provided by USF include reconstruction of clothing and other artifacts such as a degraded t-shirt recovered off of a decedent which may be digitized to demonstrate how a design may have looked.

Multidisciplinary teams

Cold case investigation is a team — rather than an individual — effort.

Multidisciplinary teams are invaluable in cold case investigations. These teams may consist of law enforcement personnel (both sworn and nonsworn), forensic science experts, prosecutors, medicolegal death investigators, and others who come together to offer their expertise in the resolution of cold cases. These subject matter experts can assist cold case investigators in case prioritization, case management, and investigative strategy.

Subject matter experts can provide investigative support and offer training in addition to performing case reviews. These team members can be actively engaged in the daily operations of the unit or involved on an as-needed basis. Regardless of each member's level of involvement, multidisciplinary teams are a vital tool in the investigation of unresolved cases. Each case review will suggest those disciplines that may be of assistance in the particular investigation.

SUMMARY RECOMMENDATIONS

DESIGNING A COLD CASE UNIT

3. *Appoint a project lead to oversee the implementation of the cold case unit. Choose an individual who understands the agency, the process of unresolved case investigations, and the jurisdiction's administration.*
4. *Collect performance metrics relevant to cold case activities in addition to clearance rates. Use appropriate data analytics to examine the performance and needs of the unit.*
5. *Agencies should not assign cold case investigators to incoming cases, temporary assignments, or non-cold case projects.*
6. *Limit investigators to actively investigating no more than five cold cases at any one time.*
7. *Assemble stakeholders and representatives of affected agencies to provide input and assistance in planning the cold case unit, including how it will be structured, implemented, and operated.*
 - 7a. *Identify agencies of similar size and structure that have established cold case units as informational resources.*
 - 7b. *Formalize and document partnerships among stakeholders with a Memorandum of Understanding.*
 - 7c. *Bring together multidisciplinary subject matter experts to provide diverse knowledge, resources, and perspectives in all facets of cold case review and investigation.*

Implementing a Cold Case Unit



Unit requirements

Once the need for a cold case unit has been identified, support for the unit has been consolidated, and the unit has been designed, agency leadership must ensure that the unit has the means to do the job. The cold case unit will need to be defined within the agency's organizational structure and will need to be given physical workspace and resources. An agency has to identify the level of staffing and additional expenses that will be necessary, such as organizational and administrative personnel, vehicles and equipment, travel, and investigative resources.

Agency organization

RECOMMENDATION 8:

8. *Implement a cold case unit as a separate, defined unit within an agency. Position the unit in an existing bureau, division, or branch responsible for investigative activities.*

A cold case unit should be organized as a separate, distinct entity under the authority of a larger, established unit. For those agencies that have a relevant existing unit (e.g., a violent crimes, homicide, sexual assault, or missing persons unit), the cold case unit should be organized into the same framework. This helps maximize investigative expertise and tactics, including case consultations with other investigators. Existing protocols can be a foundation for the cold case unit's operations, with modifications for nuances specific to cold cases.

RECOMMENDATION 9:

9. *Identify a lead agency for the unit, if multiple agencies and/or multiple jurisdictions are engaged.*

In order to facilitate operations, multijurisdictional/multiagency operations should establish designated roles and appoint a lead agency. This will aid in moderating and directing the unit's activities toward unified goals.

Physical facilities and organization

Although the organization of a cold case unit works best under the umbrella of a larger, established unit such as a violent crimes unit, the cold case unit needs to be separate in its daily operations. The cold case unit will benefit from both independence and collaboration and information sharing with other stakeholders. Ideally, the cold case unit would be based in a physical location separate from the main law enforcement headquarters. The purpose of this is to allow cold case investigators to focus solely on unresolved cases without being drawn into special assignments, active homicide investigations, or other activities not associated with investigation of unresolved cases. If the cold case investigators are not defined as a separate unit, all too often they and their resources are pulled into current investigations, defeating the mission of the unresolved case activities.

Cold case unit expenses

Operating expenses for a cold case investigation unit may generally be categorized as:

- Operational expenses, such as salaries and facility costs.
- Investigative expenses, such as travel and overtime for investigators.
- Evidence analysis and expert testimony.

Operational Expenses

Agencies must realize that there will be operational expenses in cold case investigations beyond the salaries of assigned investigators. Administrative and operational activities — such as documenting unit activities, recording findings, updating statuses, and notifying relevant stakeholders and supervisors — are often overlooked, but they need to be included in resource budgeting and allocation. Records management may play an important role in the resource needs of a cold case unit. Older records need to be digitized. Documents and recordings must be copied.

Investigative Expenses

Cold case investigations are tedious processes, and the amount of time and resources required for daily investigative activities must be considered when planning and facilitating a cold case unit. Allocation of resources for activities such as reviewing the particulars of each case, identifying and locating the people involved, locating and analyzing evidence, and conducting other investigative activities should not be underestimated. Investigations may entail travel and overtime expenses. Witnesses and former investigators have to be located and reinterviewed, often after they have moved out of the area. In some instances, cold case investigators may be able to elicit assistance from investigators in other jurisdictions, but critical interviews should be done face-to-face whenever possible. Coordinating investigative efforts and potential criminal proceedings with a prosecutor requires resource commitments as well. Often, court proceedings are excluded from consideration in agency expenses and operational planning. Investigators have noted that they might be occupied with a trial for a week or more, during which time their active cold case investigations lose traction unless they are able to work overtime outside of court hours. Personnel, investigative activities, and any other incidental costs of investigations are therefore a major and necessary expense in cold case operations.

Evidence Analysis

Evidence analysis may often be the key to resolving a case; however, analysis requires resources as well. Physical evidence will have to be located and inspected to determine its condition and evidentiary value. It may need to be verified against agency records and repackaged, and the chain of custody may need to be documented. Most localities operate with a publicly funded laboratory; however, unresolved case analyses are often relegated to the back of the queue and considered a low priority, continually superseded by newer cases with more political pressures or active court processes. Outsourcing analysis to a private laboratory is a great alternative; however, agencies need to remember that using private laboratories is an additional expense, and even more funding may be required to pay for a private laboratory analyst's expert testimony and travel. Further analysis may also be required for confirmation of laboratory results; private laboratories cannot enter data into the FBI's Combined DNA Index System (CODIS) except under the auspices of a public laboratory willing to take ownership of the results for the entry. When choosing between private and public laboratories, cold case units need to consider the additional costs accrued by potential leads and case resolutions. Agencies should explore various analysis options with their local crime lab and/or prosecutor.

Protocols and directives

RECOMMENDATION 10:

10. *Create written protocols and directives to detail cold case organization, operations, and investigations.*
 - 10a. *Specify the job duties for cold case investigators, supervisors, and other personnel in the unit's policies and procedures.*
 - 10b. *In a multiagency/multijurisdictional cold case unit, implement protocols detailing the distinct roles of each participating agency.*
 - 10c. *Include protocols for continuity of operations and staff transitions.*

Every law enforcement agency, regardless of size, must have written protocols and directives regarding overall agency operation and thus should also have specific protocols and directives for investigating unresolved cases. These written protocols and directives, approved by agency leadership, are important to the success of a cold case unit. They support the overall mission of the agency and ensure good investigative practices. Protocols and directives provide direction, define job expectations, and also provide a mechanism for the unit's administration and oversight.⁷⁸ This ensures transparency, standardization, and accountability for the unit's investigators and staff members, the agency, and the public. Having written protocols mitigates the impact of staff turnover and is vital to the transfer of institutional knowledge. Written protocols are also useful in managing risk.

Cold case unit protocols should cover the scope of the unit's mission and function and must address issues such as:

- How the unit is organized and how it will operate.
- Chain of command and assignment of responsibilities.
- Personnel selection and supervisory oversight.
- Continuity of operations.
- Initial and ongoing training requirements.
- The nature and scope of cases to be investigated.
- Procedures for case review, prioritization, and assignment.
- Requirements and procedures for opening and closing cases, including administrative closures.
- Investigative procedures.

⁷⁸ As an example of these protocols, see the policies of the Phoenix (Arizona) Police Department's *Investigations Bureau, Sex Crimes Unit, Sexual Assault – Cold Case and Evidence Backlog Team*.

Unfortunately, only a minority of law enforcement agencies in the United States have written protocols for unresolved case investigations. In a 2011 survey, RAND researchers found that only 20 percent of the responding departments had a formal protocol for initiating cold case investigations.⁷⁹ A few years earlier, in 2007, the Arizona Cold Case Task Force took a survey of all 106 police departments, county sheriffs' offices, and tribal police departments in the state. Only 9 percent had written protocols for handling cold case homicides.⁸⁰

All agencies are different, and there is no overarching standard for how cold case units should operate. The size of the jurisdiction, structure of the agency, locale, types and numbers of unresolved cases, and jurisdictional legal considerations all play a role in the operation of a cold case unit and should be considered when the unit protocols are drafted. The protocols should reflect the requirements and needs of the agency and the unit.

Continuity of operations

An often overlooked aspect of implementing and operating a unit is consideration for the sustainability of the unit's operations. A unit needs to have continuity of operations in both the short term and long term. Short-term considerations might include provisions for temporary support should one of the assigned investigators be unavailable, e.g., because of extended court proceedings. Long-term considerations include measures to address the selection processes for investigative personnel and their turnover, and ways to assign new investigators to the unit with minimal impact on its daily operations. When staff and investigators leave the unit, continuity protocols should outline a process for onboarding new personnel. Detailed protocols should explain information retention and record turnover. Ideally, new personnel should be in place prior to the departure of current personnel. Plans detailed in the agency protocols should minimize the loss of institutional and case investigative knowledge due to personnel changes.

Victim-centered and trauma-informed approaches

RECOMMENDATION 11:

11. Incorporate a trauma-informed approach into cold case unit operations.

A victim-centered and a trauma-informed approach must be established and employed in the daily operations of cold case investigations, and

⁷⁹ Davis, Jensen, & Kitchens, 2011.

⁸⁰ Arizona Cold Case Task Force, 2007.

investigators must receive trauma-informed training. This includes training the investigators to understand that victims can be retraumatized during investigations and that investigators themselves can suffer from secondary trauma.

RECOMMENDATION 12:

12. *Employ a victim-centered approach in the daily operations of cold case investigations.*
 - 12a. *Create protocols addressing situations in which a victim does not support continued investigation of their case.*
 - 12b. *Include a detailed plan for communication with victims and victims' families in the cold case unit protocols.*
 - 12c. *Incorporate a victim specialist and/or advocate into unit protocols and operations.*

Being the victim of a violent crime is life altering. After the crime, victims often live in fear, all the more so if the perpetrator from their crime has eluded the criminal justice process. Employing a victim-centered approach will ensure that the victim's autonomy, safety, and well-being are maintained. Adhering to this approach can help mitigate any retraumatization and may increase victims' participation in investigations. See the sidebar "What Is a Victim-Centered Approach?" for more information.

Traditionally, law enforcement investigators have refrained from disseminating information about investigations, even to the victims of crime. Victims are not versed in law enforcement investigative practices and do not understand the reasons for withholding information. Victims and family members may feel that they are owed access to all of the case information, since they were the ones who were victimized and suffer from the repercussions. The longer the case goes unsolved, the greater the potential for the relationship between law enforcement and the victim to turn adversarial. The Arizona Cold Case Task Force's victim subcommittee voiced frustration with the lack of communication from law enforcement in a 2007 survey report.⁸¹ Consideration of the victims and an open line of communication with them helps keep a cold case unit productive.

Agency protocols need to recognize and validate the significance of victim-oriented concerns. This includes recognizing what the passage of time means for the victim; the limitations of the case with respect to evidence and witnesses; the limitations of the department with respect to destruction of evidence or the historical culture of investigations; and the need for training investigators on victim interactions and roles. Agencies also need to validate the victim's fear of reliving traumatic emotions; fear

⁸¹ Arizona Cold Case Task Force, 2007.

What Is a Victim-Centered Approach?

National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach, a guide produced by NIJ, explains that victims need to be considered in law enforcement operations. A victim-centered approach, which recognizes the ramifications of the investigation on the victim, is defined in the NIJ guide as “the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.” Considerations include “prioritizing and protecting victims’ privacy.”¹ Victim advocates can assist law enforcement in integrating victim-centered approaches into cold case investigation operations. This approach can align law enforcement and victims’ interests to best facilitate an effective investigation.

The NIJ guide’s recommendation that “agencies should collaborate and involve victim advocates early in the process to create a more victim-centered approach to the criminal justice process”² is equally applicable to cold case investigations.

After extensive research through the Detroit Sexual Assault Kit Action Research Project,³ which sought to understand the ramifications of SAK evidence accumulation, NIJ and the Office for Victims of Crime collaborated to publish a resource for law enforcement, *Notifying Sexual Assault Victims After Testing Evidence*.⁴

1. NIJ, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

2. Ibid.

3. Campbell et al., 2015.

4. NIJ, *Notifying Sexual Assault Victims After Testing Evidence*.

of unknown outcomes; any frustration with prior treatment by the agency; and disappointment if the case is not solved or charges are not filed.⁸²

Investigators and others should refrain from using the word “closure.” This is a misnomer widely found in the media. For victims and survivors, there is no closure. The hurt and pain persist, even decades later, but resolving or even merely addressing the case may allow a healing process to begin or progress.

Investigators need to understand the complicated nature of grief, the types of possible reactions to violence, and the potential for victims to be retraumatized when their unresolved cases are reopened. Although reinvestigating an unresolved case may be welcomed by some victims, others do not want to revisit the crime and do not support reinvestigation of their case. Victims may oppose reinvestigation for many reasons, including fear of facing the defendant in open court and having to relive the incident, or the wish to move forward after having put the incident behind them. However, even victims who support a renewed investigation often experience traumatic effects.⁸³ It is therefore incumbent on cold case investigators to understand the psychological effects that victims of violent crimes experience when their cases remain unsolved.

⁸² Ibid.

⁸³ National Sheriffs’ Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

What Does Trauma-Informed Mean?

People who have experienced, witnessed, or responded to traumatic events are indelibly affected by those events. Responses vary greatly among individuals and are often unpredictable. Having an awareness of the vast differences in responses allows investigators to understand the effects of trauma on the people involved in their investigations. Investigators must be aware of these differences and refrain from concluding that a person is “not acting like a victim.”

The investigators and other persons engaged in traumatic cases are also affected by the trauma. Trauma-informed approaches consider the effects of exposure to traumatic incidents and provide resources to support emotional and physical safety.¹

Trauma-informed means:²

- Attending to victims’ emotional and physical safety.
- Strengthening victims’ capacity to recover from the traumatic effects of abuse and violence by providing information, resources, services, and support.
- Educating victims, service providers, and the general community about the impact of trauma on survivors’ health and well-being.

The Office for Victims of Crime produced the *Vicarious Trauma Toolkit* to assist people who are exposed to trauma through occupational duties.³ Additional information can be found in *Tools for Transformation: Becoming Accessible, Culturally Responsive, and Trauma-Informed Organizations*, published by the National Center on Domestic Violence, Trauma & Mental Health.⁴

1. NIJ, *Sexual Assault Kits: Using Science to Find Solutions*.

2. Warshaw, Tinnon, & Cave, 2018.

3. Office for Victims of Crime, *Vicarious Trauma Toolkit*.

4. Warshaw, Tinnon, & Cave, 2018.

Lack of victim support

Lack of support from a victim for reinvestigation of a case should not preclude law enforcement from continuing the investigation. An agency should not assume that the offender in the victim’s case is a one-time perpetrator, and due diligence requires that the agency proceed with the investigation. Forensic advances and databases such as CODIS and NGI have provided investigators with significant resources for successful identification of perpetrators and resolution of criminal cases. Connecting all of a perpetrator’s offenses, even if they will not all be prosecuted, is relevant for case resolutions as well as for understanding the full magnitude of the perpetrator’s activities. In the case of unsupportive victims, the agency must determine the course of action, and consultation with a prosecutor is advised.

Victim communication

Victims are often unfamiliar with law enforcement practices and criminal investigations and need to be apprised of the current status of their case. To manage expectations, agencies need a communication plan that includes information on what details will be shared with victims, a schedule for when communications will occur, and the meaning of designating a case a “cold case.” The agency’s communication plan

Victim Communication

Agencies must define their strategies for communication among investigators, victim advocates, and victims. For example:

- Colorado requires ongoing communication between law enforcement and victims in cold case investigations, mandating that “the law enforcement agency shall provide the victim in a cold case, information concerning any change in the status of the case. In addition, upon the written request of the victim, the law enforcement agency shall provide an update at least annually to the victim concerning the status of a cold case involving one or more crimes for which the criminal statute of limitations is longer than three years.”¹
- After observing communication difficulties arise between law enforcement and victims and survivors, Arizona recommended that agencies develop a clear definition of the criteria for transitioning an active homicide investigation to inactive status.² An agency’s definition of a cold case and the transition criteria for designating cold cases need to be clearly stated in the communication protocol and shared with victims, so that both the agency and the community can manage expectations.
- The National Sheriffs’ Association notes that the “lack of criteria defining a cold case poses a problem for law enforcement in communicating with surviving family members of homicide victims and creates confusion and frustration among the survivors.”³

1. Denver (Colorado) Police Department Victim Assistance Unit, 2012.

2. Arizona Cold Case Task Force, 2007.

3. National Sheriffs’ Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

must be conveyed to victims.⁸⁴ Victims, when informed appropriately and transparently of what it means for their case to be designated a cold case, are more likely to appreciate that the transfer of their case to a special investigation unit provides additional resources and specialty investigative expertise, which can offer a greater opportunity for case resolution.

Lack of communication between victims and the agency generates difficulties for both. Victims do not know the current status of their case and may be “surprised to learn their case agent had resigned or retired, having received no subsequent communication from the law enforcement agency.”⁸⁵ A change in departmental responsibilities for a case — even one as positive as starting up a cold case unit — can impact survivors. “Shifting to a cold case unit can cause an interruption in lines of communication and trust that has [sic] been developed over time between the original homicide investigator and a victim’s family,” the Arizona Cold Case Task Force reported; the task force recommended that all state police departments adopt policies that “ensure the transfer, resignation or retirement of a detective will not adversely affect communication with the surviving family members.”⁸⁶

⁸⁴ Denver (Colorado) Police Department Victim Assistance Unit, 2012.

⁸⁵ Arizona Cold Case Task Force, 2007.

⁸⁶ Ibid.

There are resources that can help assist agencies in communicating with victims during an investigation. As just one example, the Wisconsin Department of Justice published *Assisting Survivors During Cold Case Investigations: Recommendations for Providing Victim Assistance in Reactivated Cases*.⁸⁷ This publication includes guidance on the details that should be provided to victims — such as the fact that their case is being reinvestigated — prior to sharing any information with the media.

Victim Specialists

Having a victim specialist who can assist the cold case team in implementing a victim-centered approach is extremely beneficial.⁸⁸ Much of the communication with victims can be performed by the specialist, allowing investigators to focus on investigation activities. A victim specialist can explain the investigation process and help the victims understand the procedures and the rationale behind them. Effective communication helps to minimize damage to relationships between the agency and the victim, the victim's loved ones, and the community.

If jurisdictions do not have a victim specialist, an agency spokesperson or liaison should be incorporated into the unit's activities to maintain communication with victims. Community-based victim service providers can also be a source for "essential victim services in cold case investigations; they offer emotional support for victims throughout the investigation/prosecution. These types of services can provide resources to assist victims and family members long-term."⁸⁹ If community organizations lack personnel trained in a victim-centered approach, agencies are encouraged to seek assistance and training from other agencies who have adopted these practices. Resources such as *Serving Survivors of Homicide Victims During Cold Case Investigations: A Guide for Developing a Law Enforcement Protocol* provide guidance for agencies on how to consider a cold case unit's ramifications for victims as well as to establish a cold case unit with victim partnerships.⁹⁰

Staffing

The most important resources in a cold case investigation unit are the personnel engaged in the unit. The staff of a cold case unit encompasses more than just the investigators assigned to cold cases. It includes support personnel whose collective efforts enable the investigators to work to their maximum potential.

⁸⁷ Wisconsin Victim Resource Center, 2011.

⁸⁸ Some agencies have realized success through the inclusion of a victim specialist in their operations. Houston, for example, employs a "justice advocate" to work with police and victims in the reinvestigation of unsolved sexual assaults (SAK Action-Research Task Force, Houston, Texas, 2013). Similarly, the Denver Police Department's Victim Assistance Unit has a full-time "cold case victim coordinator" who works with detectives to help ensure that victims and survivors' families receive referrals, support, and information, and the department has developed protocols for working with cold case victims (Denver [Colorado] Police Department Victim Assistance Unit, 2012).

⁸⁹ Wisconsin Victim Resource Center, 2011.

⁹⁰ National Sheriffs' Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

Investigators

The investigators are instrumental. Many cold case units have been staffed primarily by personnel who are not able to perform patrol functions, such as injured police officers on light duty; by investigators working on cold cases during overtime, on top of their current caseloads; or even by an ad hoc, temporary squad. These staffing arrangements are not the most effective way of investigating cold cases. Having the right people in the right positions — including supervisory oversight — is key to achieving the goals of a cold case unit.

RECOMMENDATION 13:

13. Select experienced investigators for the cold case unit, preferably with a minimum of five years of investigative experience.

There are numerous knowledge and skill sets that a cold case investigator should possess. A survey of 55 police departments with more than 25 homicides per year during 2000-2004 overwhelmingly showed that the greatest asset for a cold case detective is interviewing and interrogation skills.⁹¹

Ideal attributes for investigative personnel include:

- Knowledge of law.
- Background in agency organization and practices, including records systems.
- Advanced investigative skills and experience applicable to cold case investigations.
- Offense-relevant investigation experience.
- Strong communication and interpersonal skills.
- The ability to develop and foster relationships with multidisciplinary partners, including survivors and their families.
- A victim-centered approach.
- Patience and creativity.
- Motivation, enthusiasm, and tenacity.
- The ability to work with minimal supervision.
- Awareness of contemporary technology and forensic science.
- Research, database, and computer skills.
- The ability to work with nontraditional resources, such as volunteers and academia.

⁹¹ Keel, 2012.

Because cold case investigations tend to be complex, investigators should ideally have at least five years of investigative experience. Specific cold case training will be required to transition an experienced investigator to unresolved case investigations. Having untrained or temporary personnel responsible for a cold case investigation is not as efficient or effective, although temporary personnel, such as limited-duty police officers, can — under the guidance of a properly trained, full-time cold case investigator — be very beneficial for supporting the unit's operations.

RECOMMENDATION 14:

14. Assign at least two full-time investigators to cold case investigations.

Units need to maintain staffing levels so that the investigators can do their jobs. An investigative unit should always maintain two investigators working together at all times. Having at least two investigators familiar with operations and current investigative efforts allows an agency to continue operations if one investigator leaves the unit. This also ensures transparency, officer safety, and an additional witness for interviews and other investigative activities. Court proceedings benefit as well, since one of the two investigators is likely to be available to testify at any given time. In addition, having more than one person facilitates teamwork, allows the skill sets of the investigators to complement each other, and fosters the additional points of view that are essential for solving these harder cases.

Cold case investigators must be proactive thinkers and must be able to fuse jurisdictional initiatives with the cold case unit's activities. For example, Project Safe Neighborhoods,⁹² community-oriented policing, and problem-oriented policing strategies can be used to accomplish the objectives of both the jurisdiction and the cold case unit "because these approaches promise increased productivity and effectiveness by leveraging knowledge."⁹³ Agencies do not need to choose between their programs/initiatives and cold case investigations.

Cold case unit supervisors

The supervisor is responsible for (1) obtaining the resources needed for the investigators to do their jobs and (2) acting as a go-between for the administrators, media, partner agencies, and outside entities such as forensic services and victim advocacy groups. The supervisor has a critical role for ensuring quality control and support for investigators, who need not engage in distracting political or bureaucratic processes.

⁹² Project Safe Neighborhoods is a collaborative effort for public safety that incorporates law enforcement and community partnerships (Bureau of Justice Assistance, *Project Safe Neighborhoods*).

⁹³ King & Cooper, 2010.

Ideal skills for supervision of a cold case unit include:

- Strong organizational leadership and communication skills.
- Major case management experience that includes assigning cases for investigation, consulting during investigations, and reviewing completed investigations.
- Offense-relevant experience.
- A victim-centered approach.
- An awareness of current investigative processes, technology, and forensic techniques.
- The ability to work with the agency public information officer (PIO) and the media to act as a buffer between the media and the unit personnel.
- The ability to identify and acquire resources.
- Problem-solving skills.

Support staff

As previously noted, support staff are often nonsworn personnel who assist the sworn investigators in accomplishing the mission of the unit. They may include administrative staff, crime and behavioral analysts, computer and technical specialists, and other skilled personnel who supplement the efforts of the investigators.

In cold case investigations, a crime analyst can potentially identify patterns of criminal activity that investigators may not see when focusing on one case in isolation. Data analysis from previous crimes can provide potential leads for law enforcement to resolve past crimes.⁹⁴ Not all agencies have immediate access to data analysis or can dedicate an analyst to unresolved cases. The FBI Violent Criminal Apprehension Program (ViCAP) and state-level resources may provide assistance in the analysis of crimes. Academic resources, including criminal justice students and forensic and computer programmers, may also be of use.

RECOMMENDATION 15:

15. Cold case investigators should use and consider nontraditional resources, such as volunteers and academia, in cold case investigations.

Support personnel — including academics, retired law enforcement officers, and other volunteers — can increase the productiveness and efficiency of the cold case unit. Vetted volunteers, especially retired

⁹⁴ Drug Enforcement Administration, 1987.

Examples of External Assistance

- The Los Angeles County Sheriff's Office employs "hire-backs" (retired detectives) for case reviews and similar duties.
- The Tulsa (Oklahoma) Police Department uses a variety of external professionals, including professors.
- The Venice (Florida) Police Department uses retired military analysts. These volunteers have previously held high clearances, have the available time, and can bring a creative, non-law enforcement mindset to an investigation.
- The Charlotte-Mecklenburg (North Carolina) Police Department uses retired law enforcement officers, engineers, pilots, other professionals, and criminal justice professors on their cold case review teams.¹ Investigators have remarked that professionals bring education and experience outside of law enforcement to approach investigations with a different mindset.²

1. Russell, August 3, 2017.

2. Price, 2017.

persons, often have time to address these tedious cases and enjoy the opportunity to remain active and be of service to the community. Using retired investigators, on a part-time or volunteer basis, can tap a wealth of experience without a significant investment of agency resources. Other valuable volunteers include retired military analysts who are adept at intelligence and can translate their skills to criminal investigations. Agencies need to be mindful, however, of any legal commitments such as police union contracts that may require consideration when using volunteers or retired personnel.

RECOMMENDATION 16:

16. Assign investigators to investigative duties only. Delegate all other operational activities of the unit to support staff. Assign administrative work to noninvestigative personnel or others to increase the efficiency of the unit.

Although some administrative work may be performed by investigative personnel, it is preferable to maximize the unit's resources by having the investigators focus on investigative activities. Functions for noninvestigative staff could include:

- Organizing, reviewing, and summarizing files.
- Scanning documents and entering data into case management systems.
- Performing case reviews and reporting any potential leads or gaps, e.g., in cases that are not current with modern forensic analyses or investigative processes.

- Monitoring and updating cold case unit webpages and social media.
- Conducting record checks and performing database searches on witnesses and suspects.
- Monitoring and requisitioning supplies.

SUMMARY RECOMMENDATIONS

IMPLEMENTING A COLD CASE UNIT

8. *Implement a cold case unit as a separate, defined unit within an agency. Position the unit in an existing bureau, division, or branch responsible for investigative activities.*
9. *Identify a lead agency for the unit, if multiple agencies and/or multiple jurisdictions are engaged.*
10. *Create written protocols and directives to detail cold case organization, operations, and investigations.*
 - 10a. *Specify the job duties for cold case investigators, supervisors, and other personnel in the unit's policies and procedures.*
 - 10b. *In a multiagency/multijurisdictional cold case unit, implement protocols detailing the distinct roles of each participating agency.*
 - 10c. *Include protocols for continuity of operations and staff transitions.*
11. *Incorporate a trauma-informed approach into cold case unit operations.*
12. *Employ a victim-centered approach in the daily operations of cold case investigations.*
 - 12a. *Create protocols addressing situations in which a victim does not support continued investigation of their case.*
 - 12b. *Include a detailed plan for communication with victims and victims' families in the cold case unit protocols.*
 - 12c. *Incorporate a victim specialist and/or advocate into unit protocols and operations.*
13. *Select experienced investigators for the cold case unit, preferably with a minimum of five years of investigative experience.*
14. *Assign at least two full-time investigators to cold case investigations.*
15. *Cold case investigators should use and consider nontraditional resources, such as volunteers and academia, in cold case investigations.*
16. *Assign investigators to investigative duties only. Delegate all other operational activities of the unit to support staff. Assign administrative work to noninvestigative personnel or others to increase the efficiency of the unit.*

Operating a Cold Case Unit



Although it is not the purpose of this guide to detail actual investigative practices for unresolved cases, it is imperative that agency leaders have a basic familiarity with the process and the issues likely to confront the unit and its investigators. Agencies are encouraged to adapt cold case investigation operation models from successfully established cold case units in other agencies. This section offers an overview of considerations for operating a successful cold case unit.

Law enforcement leadership and policymakers should be mindful of the following cold case concerns:

- Locating case files and relevant case information and documentation.
- Identifying, locating, and analyzing evidence.
- Complying with current investigative and agency standards.
- Organizing an investigative schedule.
- Collaborating with prosecutors, noting the statute of limitations and applicable laws at the time of the offense.
- Using forensic services and other technologies.
- Working with outside experts.
- Training.

Case selection

Agencies need to determine how they will select cold cases to investigate. Factors to consider when initiating an investigation include:

- Prosecution considerations (e.g., statute of limitations, chain of custody, key witness availability, and factual analysis of the case).
- Database hits.
- New information.
- Evidence that could provide investigative leads if analyzed/reanalyzed.
- Named suspects.

- Persons of interest.
- Previously issued or recalled warrants.
- Interest and communication from the community or other stakeholders.

Involving a prosecutor early in case selection process will help identify cases that have the most potential for a quick resolution. See page 63 for more information on prosecutor roles.

RECOMMENDATION 17:

17. Organize cases by starting with the investigations that have the most apparent means of resolution. Consider database hits, ease of resolution, and community interest when selecting cases.

Statute of limitations

Agencies should prioritize cases in which the statute of limitations is expiring. Alternatively, a John Doe warrant can negate the time constraint of the statute of limitations, providing the necessary time to locate the perpetrator and adequately prepare the case for prosecution.

Database hits

Forensic database hits reveal a new connection between a crime and a suspect, or connections between known offenders and other crimes. Harnessing the power of computers and information sharing, connections can be identified within case files, between cases, and even among jurisdictions nationwide. As the information in databases increases, more connections are realized.

Agencies need to have a protocol in place to respond to such database connections and hits. Database hits often occur long after an investigation is initiated. Without a proper protocol to address hit notifications, agencies face confusion about what is needed and who should respond. Leaving a notification unaddressed equates to ignoring a suspect who is likely the perpetrator. As these cases are generally cold cases by the time a database hit occurs, cold case units are uniquely suited to respond to hit notifications. Protocols for database hit notifications must be incorporated into the unit's operations and defined in the written policies and procedures of the unit. Tasking a cold case unit with these responsibilities provides for efficient follow-up investigations by investigators who are trained in the proper procedures. It is important to keep in mind that, because of the long-term search capabilities of modern forensic databases such as the FBI's Combined DNA Index System (CODIS) and Next Generation Identification (NGI) system, cold case units should anticipate receiving ongoing database hits that will need to be investigated.

John Doe Warrants

A John Doe warrant is an arrest warrant that is issued for a suspect identified only by their DNA or genetic information. It is used when evidence provides a DNA profile that has not been linked to the name of a suspect. Issuing a warrant begins the prosecution of the crime. This is helpful when a statute of limitations deadline is approaching.

Case Example: In a 2011 case, *People v. Robinson*, the defendant was convicted of a 1994 rape based on DNA evidence collected at the crime scene. A John Doe arrest warrant was issued at the time of the offense for the person matching the DNA profile. The DNA profile on the John Doe warrant was matched to a DNA profile from a separate crime committed by Robinson after the six-year statute of limitations had already ended.¹

1. Sucherman, 2011.

Community Interest

Cold case units may want to consider cases with a strong community interest during the case selection process. Working with the community on these cases may assist in closing the cases, demonstrate fulfillment of public trust, and garner support for the unit. Agencies should communicate progress to stakeholders according to the unit's protocols. Momentum for resolving other cases will likely increase with the addition of support from community advocates.

Modernizing the case

When conducting a cold case investigation, look forward — where does the investigation go from here?

The first step in addressing cold cases is to identify and explore the investigative opportunities for each case. Modernizing a case involves reviewing the case records and the evidence to perform any investigative activities or evidence analyses that may not have been available previously. Many investigators refer to this process as bringing the case to current modern-day standards.

Investigation checklist

To assist agencies in organizing cold case investigations, an investigative lead matrix or checklist should be created during the initial case review and maintained throughout the investigation.⁹⁵ The checklist and an adjoining case summary should provide information about the investigation: What has been done? What is the current status of any investigating activity? Why did the case go cold? Were there any

⁹⁵ The Arizona Cold Case Task Force developed a cold case questionnaire that requires input from investigators, forensic services personnel, and prosecutors (Arizona Cold Case Task Force, 2007). The National Sheriffs' Association also published a checklist in its publication, *Serving Survivors of Homicide Victims During Cold Case Investigations: A Guide for Developing a Law Enforcement Protocol* (National Sheriffs' Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011).

Beyond the CODIS Hit

Once DNA is obtained and the resulting profile is entered into CODIS, the investigator's work is still not finished. After a potential match surfaces, the organization responsible for CODIS will notify the submitting agency. There must be a mechanism in place for receiving and acting on these notifications. Working with the local crime lab can help establish the best mechanism or procedure to relay CODIS hits. The hit then needs to be confirmed by collecting and comparing a known sample from the suspect to the DNA profile that generated the hit. The investigating agency is responsible for obtaining a DNA sample from the suspect to submit for this comparison.

CODIS, like other forensic databases, works by using algorithms to compare data entries. Forensic evidence is only one piece of the puzzle. Caution

must be exercised to avoid misreading evidentiary information out of the context of the criminal act; a CODIS hit does not confirm guilt. Finding a matching DNA profile from two different locations shows that the contributor was in a position to have his or her DNA deposited in both of those locations. DNA can potentially be transferred from one location to another, or the contributor may have been at the location yet uninvolved in the crime. Investigators are responsible for obtaining corroborating evidence as to the activities that occurred during the commission of a crime in order to confirm the perpetrator.

Additional information on CODIS can be found on the FBI CODIS webpage at: <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>.

witnesses, and were any of the witnesses uncooperative? Was there physical evidence? Was there a database hit to an offender or separate case? Were friction ridge impressions retained in the databases to which they were submitted? If not, are they submitted periodically for updated searches in the databases? What other factors, including operational policies at the time, might have been relevant? Using the checklists for all unresolved cases, agencies can then organize investigative activities.

Forward thinking

During the course of case review and investigation, the cold case unit should keep in mind that the primary solvability factors in cold case investigations are advances in forensic testing and analysis and changes in relationships. Although the review may identify missed investigative opportunities, investigators must not concern themselves with what might have been done differently. Looking backward is unproductive, as it is often hard to understand the full context of the initial investigation. Additionally, reviewers must understand and be aware of contextual bias without judgment.⁹⁶

⁹⁶ Contextual bias occurs when someone is influenced, often subconsciously, by known information or the context of a situation. All investigators must be aware of influences on their investigation and remain as objective as possible.

Updating case files

All records — including information from all agencies and persons engaged in any activity related to the investigation, such as the medical examiner/coroner's office — need to be compiled and entered into an electronic case management system. It is imperative that case records are properly documented and updated in the case management system whenever any activity occurs or information related to the case is discovered or learned.

Case file reviewers need to:

- Ensure that all information from all agencies regarding any case activity from the initial incident through all post-incident activities is included in the file.
- Enter any missing details from records, data, and notes into an electronic information management system.
- Ensure that all records are current and comply with agency and industry standards.
- Update the case summary with dates of review and the current status.

Older investigation files may initially be difficult to understand or interpret. They may not be in a format that is compatible with current technology, and it is important to understand the technology available and processes in use at the time of the crime. For example, prior to the incorporation of DNA analyses in criminal cases in the late 1990s, serology reports using blood type groups were the standard means of documenting biological evidence. Evidence reports from older cases will often require interpretation by forensic services experts. Additionally, the topography of the crime scene may have changed, and investigators may have to reconstruct the crime scene using old records such as newspaper photographs or assessor and other records.

Information management

A computerized case management system, as a one-stop source of data, is paramount for organizing and operating a cold case unit. Implementing a case management system should be a high priority in a cold case unit. In well-implemented systems, searches can reveal possible relationships and investigative leads, including names repeated across a number of unresolved cases. Unfortunately, limited resources often make the digitization of records a low priority. Some agencies have found it helpful to use interns and volunteers to assist in scanning documents or entering data.

Computerized Case Management

The Tacoma (Washington) Police Department's Cold Case Unit realized that a computer program designed for assisting agencies during disasters could be applied to cold case investigations. Detectives use the system to input records pertaining to people involved in a cold case. They are able to record information such as the person's current residence, previous residences, whether their DNA profile is included in any databases, and notes on interviews and investigative activity as well as pertinent documents.¹

In another example, The Los Angeles County Sheriff's Department developed a case management system, the CLUES Management Program, to organize and maintain data in investigations. Through the system, investigators can link, catalog, assign, track, and archive information. Photographs and map data can also be added to the electronic case files, and the system is helpful in conducting searches of large amounts of data.²

1. Lewis, October 30, 2015.

2. County of Los Angeles (California), 2003.

Criminal investigations have been compared to a jigsaw puzzle. Volumes of information can be generated in an original investigation, and any number of professionals (investigators, laboratory staff, and prosecutors) may have been involved. In addition to applying new technology to evidence, advancements in the digitization of records and correlation capabilities can also aid in identifying new investigative leads.

Evidence suggests that computerized case management systems contribute to higher clearance rates for homicides. These systems may be equally beneficial in clearing cold cases.⁹⁷

Agencies should consider working with other local jurisdictions to implement case management systems that are compatible and interoperable. Interagency databases can be beneficial since criminals are not confined by jurisdictional boundaries.

In addition, agencies should consider records systems that can exchange information with other agencies such as the local laboratory or prosecution office. Shared records can be compartmentalized so that only those who are approved can obtain information, even on a case-by-case or item-by-item basis. When implementing or upgrading records management systems, having the foresight to include potential collaborations will assist all agencies. Information sharing may even elevate current clearance rates and prevent future cold cases. It is far easier to create systems that are collaborative from the beginning than to force interoperability between existing incompatible systems.

⁹⁷ A 2012 survey of 55 police departments found that of departments with 25-49 homicides per year, those that used a computerized case management system had a 5 percent higher clearance rate for homicides than those that did not; in departments with 100 or more homicides per year, those that used a computerized system had a 5.5 percent higher homicide clearance rate than those that did not. In its 2013 best practices publication on homicide investigations, BJA noted that the most successful departments had robust computerized systems. In that report, BJA recommended that homicide units have a "comprehensive digital case management system that contains all reports, photographs, videos, medical examiner reports, and images or documents that constitute the entire investigation" (BJA and IACP, 2013).

Evidence review

RECOMMENDATION 18:

18. *Perform an initial comprehensive agency audit to locate, document, and package all evidence according to current standards. Perform evidence audits at least once a year and update agency files to reflect the results of the audits. Document the location, condition, and laboratory analyses of evidence in a computerized information management/tracking system.*
 - 18a. *Review all evidence to determine its evidentiary value and evaluate whether new forensic methods could be used for further examination.*
 - 18b. *Review and update evidence retention policies as needed to prevent the destruction of evidence in unresolved cases.*

Physical evidence plays a vital role in resolving many cases. In addition to its role in judicial proceedings, evidence analysis can offer important investigative leads. Identifying, locating, and physically examining evidence is the next step after compiling all available information in the case files. Supervisors and investigators must understand that this process may be more involved than anticipated. Evidence may be found in unexpected places. The victims or their families as well as previous investigators may even have potential evidence in their possession. Chain of custody will need to be confirmed, and the evidence may need to be repackaged, photographed, or otherwise secured to comply with current standards.

Evidence should be reviewed in consultation with a forensic science expert who has knowledge of what testing and analysis might be available and applicable (including any new or novel technologies). The location and condition of the evidence, and results of any past and current laboratory analyses performed on the evidence, will need to be included in the case in an information management system.

The cold case unit should identify and coordinate with a liaison in the evidence control unit as well as forensic subject matter experts. Having people who understand the processes of evidence handling and examination is instrumental for understanding the potential value of the evidence.

Evidence reviews need to include assessments of photographs, audio recordings, videotapes, and any other relevant media and their current condition. Crime scene photographs may be faded or damaged and will

Case Solved!

Systematic reviews of unsolved case files may reveal a significant number of cases that can be closed simply by recording that they have already been solved or by completing administrative processing of the files. After all of the missing persons files at one

medical examiner's office were updated, the local law enforcement agency was able to clear 200 missing persons cases by locating the individual as deceased or recovered, lowering their total number of open cases from 287 to 87.¹

1. University of South Florida, "The Florida Missing and Unidentified Persons Cold Case Program."

need to be digitally recorded and preserved. Investigators may need to locate original negatives. Additionally, friction ridge impression lifts and other physical impression evidence may need to be photographed and digitized to preserve their integrity because of deterioration over time.⁹⁸

Agencies should have written protocols governing the long-term storage of unresolved case documents and evidence to ensure that integrity of the evidence and chain of custody is maintained. Working with the appropriate forensic services, all media should be copied, preserved, and recorded in a computerized information management system. Electronic data such as recovered cell phone and image data (bit-by-bit imaging) and computer hard drives should be saved in a manner that retains all potential evidentiary value. As with any digital media, caution should be exercised to ensure that backup copies of the data are maintained and stored in a secured remote location. In many agencies, natural disasters and other events have severely impacted evidence.

All agencies should have evidence retention policies. Policies already in place need to be reviewed and updated to ensure evidence is being retained in accordance with current standards. For example, NIJ's Technical Working Group on Biological Evidence Preservation proclaims that evidence from homicide investigations should be retained indefinitely.⁹⁹

RECOMMENDATION 19:

19. Review all case files to ensure that they are current with contemporary standards and that all investigative opportunities have been exhausted. Conduct subsequent reviews periodically to ensure that cases remain current with the available technology and investigative processes and to identify any new investigative opportunities.

⁹⁸ Impression evidence created by the friction ridge detail is commonly referred to as a fingerprint. Because fingers, toes, and palms can all leave similar patterns, the technical term is "friction ridge impressions." Latent friction ridge impressions (those invisible to the unaided eye) can be visualized using print-processing techniques that enhance the print and make it visible. Friction ridge impressions can also be patent (visible) or plastic (three-dimensional).

⁹⁹ National Center for Victims of Crime, 2013.

All unresolved case evidence must be brought up to current scientific standards. Evidence will need to be retested using current technology. Something determined to have no evidentiary value 10 years ago may now yield probative evidence when submitted to examination by current technology. For example, biological evidence could be retested using methods such as Y-STR testing.

Additionally, investigators should determine whether the results of evidence analyses have already been submitted to the relevant databases. Investigators should not assume that all evidence was analyzed and that the results were entered, retained, and periodically searched in local, state, and federal databases. Confirming that evidentiary information is indeed contained in the applicable databases serves as a starting point. Partnerships with forensic services can assist in this process.

Another factor in bringing a case and its evidence up to current standards is that many federal, state, and local databases have improved comparison algorithms and expanded their file base dramatically in recent years, which may help resolve cold cases. In 2014, the FBI replaced the Integrated Automated Fingerprint Identification System (IAFIS) with the Advanced Fingerprint Identification Technology (AFIT), which uses digital imaging technology to store and analyze fingerprint, palm, and latent print data. AFIT is part of the advanced biometric NGI system; as more and more data is uploaded to the system, its effectiveness continues to grow. The National Integrated Ballistic Information Network (NIBIN), an automated imaging system for firearms-related evidence, also has an ever-growing database. Therefore, cold cases should be subjected to periodic review to ensure that they are making the best possible use of these databases to move the investigations forward.

Roles

Supervisor roles

A cold case unit supervisor is responsible for assigning and overseeing the completion of tasks for unit members, ensuring that the unit personnel have the necessary resources to complete their tasks, and acting as a liaison with other units, other agencies, and agency management. Investigators should not actively investigate more than five cases at any time, and supervisors must be aware of each unit member's workload to facilitate this. Once cases are assigned, supervisors should periodically assess the priority and progress of investigations. The frequency of the supervisor's reviews needs to be detailed in the unit's protocols, and the reviews need to be documented in the case files.

Missing Database Data

Most people assume that DNA information from known criminals is contained in CODIS; however, there are a multitude of DNA profiles that are not included in DNA databases.¹ DNA databases exist at the national, state, and local levels. Each database has defined criteria for entering DNA information into that database. If a DNA profile was recovered from evidence in a case that has gone cold, investigators in the cold case unit need to learn if the profile was eligible and into which databases it was entered.

Investigators must also realize that there are potentials for error at any point in the process of uploading the DNA profile into a DNA database as well as during the hit notification process. Investigators should confirm that DNA profiles related to their cases are indeed entered into the database and verify that no hits have been realized to date. It is imperative that investigators communicate with appropriate laboratory personnel to ensure both parties are on the same page for seamless notifications.

Several investigators have discovered that lawfully owed DNA samples from convicted offenders were not contained in the DNA databases as expected and therefore were not included in any database search results. Furthermore, the collection requirements

for DNA samples, as well as the processes and responsibility for collecting the samples, vary across the country. Missing database samples have been discovered when:

- Persons were determined not mentally competent for trial and held in a health facility.²
- Suspects were arrested prior to passage of DNA collection laws, no sample was obtained, and no retroactive collection conditions are defined in the laws.³
- Suspects died in incarceration or were deported without having a DNA sample collected.
- Protocols specified DNA collection upon prisoner release rather than entry into the prison system.⁴
- Offenders were released upon sentencing rather than incarcerated.
- Offenders were under supervision and not subject to collection.
- Offenders were awaiting execution or serving life sentences.
- Offenders refused to provide a sample and no court order was obtained.
- Logistical conditions impeded DNA collection.

1. Kentucky discovered that 6,000 (8 percent) of its lawfully owed DNA samples were not collected. The issue was identified when the Department of Corrections Commissioner noticed that DNA samples were not obtained during her review of internal reports. Approximately 4,000 felons were released from prison prior to having their DNA collected. The cause for the missing DNA samples is unknown, and Kentucky is in the process of collecting the lawfully owed DNA (Musgrave, July 25, 2013). *Forensic Magazine* reported in July 2017 that lawfully owed DNA profiles were missing from CODIS in at least seven states (Augenstein, July 17, 2017).

2. A Washington state investigator discovered that the state was retaining 49 civilly committed, sexually violent predators whose DNA samples were never collected. Additionally, samples from sexual offenders in state mental hospitals were discovered to be missing in the DNA databases (Wade, January 16, 2015).

3. A series of news stories in 2017 estimated that approximately 8,000 DNA samples were owed from violent criminals in the Nevada penal system and at least six other states were identified. Since the series was published, there have been nine hits from the testing of these samples as of September 2018. One such case resolution was a 1984 cold case where a family was murdered. In addition, the Gypsy Hill Serial Killer was identified when DNA was collected from a parolee (Augenstein, July 17, 2017).

4. Michigan amended the state's DNA collection law requiring that DNA samples be collected from incarcerated persons upon entry into prison rather than upon release. Under the amended law, an additional 5,000 DNA samples were collected from prisoners (Michigan Department of Corrections, *DNA Profile Collection Completed*).

Supervisors must also monitor the well-being of the cold case unit staff. Investigating cold cases over a long period of time can contribute to secondary trauma and burnout. As the National Sheriffs' Association notes, investigators may not recognize or acknowledge the impact that their work has on them, including, for example, anxiety, depression, sleep disturbances, anger, and hypervigilance.¹⁰⁰

¹⁰⁰ National Sheriffs' Association, Justice Solutions, and National Organization of Parents of Murdered Children, Inc., 2011.

Forensic services and medicolegal roles

Success in cold case operations is greatly bolstered through support and assistance from forensic service providers, including forensic pathologists and medicolegal death investigators. It is crucial to have an identified liaison to help develop a plan for evidence testing and to streamline the process. A forensic database hit may change the focus of the investigation, suggesting new avenues of investigation; therefore, it is important that investigators work with forensic experts and prosecutors to understand the weight of the available evidence and any results associated with it. Medicolegal experts can help investigators understand autopsy reports and the activities involved in medicolegal investigations, perhaps identifying critical information already in the file but unrealized for its investigative and probative value. In addition, investigators should be familiar with the capabilities of the forensic services at the time any evidence examinations and analyses were performed. The capabilities of current testing facilities must be understood as well; not all laboratories provide all possible analyses.

It is possible that current testing procedures may consume all of an evidentiary sample. Investigators, working in conjunction with forensic services and the prosecutor, may have to grapple with the decision of consuming the evidence now or waiting for future technological advancements.

Prosecutor roles

RECOMMENDATION 20:

20. Actively engage a prosecutor with cold case operations.

The support of the prosecutor's office is integral to the operation and success of a cold case unit. A prosecutor should be involved in the case review process as early as possible. A prosecutor provides important assistance in determining case assignments and investigative activities and is a vital component of a cold case team for identifying critical legal issues. Prosecutors help triage cases and provide advice — such as assessing the probative value and admissibility of evidence — that can increase a case's ability to be prosecuted. In addition, once a person of interest has been identified, prosecutors can provide valuable insight regarding interviewing strategies to gain information about the case. If filing charges in a cold case is not possible from the prosecutor's perspective, it is helpful to know this sooner rather later — although the

“There are many tools in the cold case tool box and no one person knows how to use them all to their full potential. Thankfully you don’t have to. You just need to have a collection of people that do. As a result, I’ve developed relationships with experts in a variety of fields so I can access their expertise when needed. In turn, I make sure to make myself available to them as well.”

— Gene Miller, Pierce County
Prosecutor’s Office, Criminal Investigator,
High Priority Offender Unit

goal of the case may not be prosecution per se but rather resolution of the case. It is important to note that the role of a prosecutor is different from that of an investigator. An investigator’s role is to identify offenders and resolve crimes; a prosecutor’s role is to litigate the case, based upon proof “beyond a reasonable doubt.” Prosecutors, therefore, must have sufficient evidence to withstand constitutional scrutiny and meet their burden of proof in court.

Supervisors and investigators must remember, however, that prosecution must be undertaken according to the laws in effect at the time of the offense, not the current laws. Cold case crimes may require a different burden of proof or have a different statute of limitations or classification than they would, had they been committed more recently.

Expert roles

In addition to establishing liaisons with agencies in their same jurisdiction, agencies should foster working relationships with subject matter experts such as crime analysts, specialized prosecutors, graphics experts, genealogists, historians, academics, research librarians, and public records managers. The unit should maintain a readily accessible list of subject matter experts with current contact information. This list should include “who to call” resources at the local, state, and federal levels.

Consultations

Cold case investigations can be aided by guidance or assistance from investigators or cold case experts outside the agency. Cold case units should find out whether their state or region has any cold case associations. Participating in meetings with others and sharing information may help provide ideas for new investigative options. Some areas have regional roundtables. Federal resources such as the FBI’s Behavioral Analysis Unit in Quantico, Virginia, which offers case consultations from a behavioral perspective, are also available. The U.S. Department of Homeland Security runs fusion centers that can send bulletins to agencies in other states seeking information on similar cold cases.¹⁰¹ There are also private, nonprofit organizations, such as the Vidocq Society, that offer expertise and assistance in cold case homicides and some disappearances.

Training and continuing education

Cold case investigators must have adequate, relevant, and continued training to remain current in new resources and technologies and to take advantage of insight from other experts. There are major differences in solving cold cases versus currently active cases. Investigators

¹⁰¹ U.S. Department of Homeland Security, *State and Major Urban Area Fusion Centers*.

who are well-trained in cold case-specific methodologies will bring greater efficiency and success for the unit — and cost-effectiveness for the agency.¹⁰²

Suggested training topics for unresolved case investigations include:

- Contemporary technology and science for investigators.
- Available resources and services.
- Cold case investigative methodologies.
- Contacting and interviewing cold case suspects.
- Victim-centered and trauma-informed approaches.
- Case management.
- Use of social media in unresolved case investigation.

There are resources and working models available for cold case training. The Advanced Training Center at the California Department of Justice, for example, created a cold case investigation training program in which experts meet twice a year in different locations within the state, inviting agencies to present their cold cases during a week-long session. The experts — including seasoned homicide investigators, a DNA expert, a general criminalist, a forensic pathologist, and a forensic behavioral analyst — may also present brief lectures about recent developments in their disciplines. This same approach can be used in regional cold case roundtable meetings, where cases are presented to facilitate the exchange of investigative ideas.

Media

RECOMMENDATION 21:

21. Maintain a public-facing list of all unresolved cases (e.g., a cold case website).

RECOMMENDATION 22:

22. Develop a media information dissemination strategy. Detail this strategy in the agency protocols. Designate an agency public information officer to act as media liaison.

¹⁰² Adcock & Chancellor, 2016.

Law enforcement agencies should use traditional news media and social media to their advantage to create positive relationships and, potentially, to help identify resources.

Agency protocols need to detail the do's and don'ts for interacting with the media and engaging the agency's public information officer (PIO). If there is no agency-identified PIO, the cold case unit should identify a person who will fulfill the PIO role for the unit. The agency also needs to include a plan for responding to received information. This includes information supplied directly to the department from call-ins as well as information given to the media. All information needs to be included in the records management system along with any associated activities and results.

There are numerous ways that the media can assist in cold case investigations. Media campaigns often cost the agency little or nothing. Social media can be used both to elicit tips in a cold case investigation and to increase the transparency and accountability of a cold case unit. For example, some law enforcement agencies use blogs, YouTube channels,¹⁰³ Facebook pages, Twitter feeds, and community-based websites such as Patch.com or iWatch. Crime Stoppers or a dedicated tip line, including an anonymous tip submission tool, is extremely beneficial to have on the department's website. Billboards and posters have long been used to draw the public's attention to cold cases, asking "Do you know who killed me?" "Do you know who I am?" or "What happened to my mother?" Many jurisdictions hold press conferences to highlight certain cases. Agencies may also involve the media in targeted campaigns, eliciting media cooperation, for example, to seek information on the anniversary of a particular cold case.

The case resolution process is often a partnership with the public, and cold case success stories must be shared with the public. This increases an agency's transparency and informs the public about how unresolved case investigations work. Developing positive media relationships serves to strengthen community relations and partnerships as well as to obtain future buy-in from the agency and the jurisdiction, which may be crucial both to future investigations and for continued support of a cold case unit. If the victim was a member of a specific community, share the successful resolution with that community's media as well. When communicating with the media, make sure the message is clear. Use statistics regarding the number of unresolved cases and offer examples of cases.

¹⁰³ The Philadelphia (Pennsylvania) Police Department has had great success, for example, using YouTube videos to ask for tips after a homicide (Bureau of Justice Assistance & International Association of Chiefs of Police, 2013).

SUMMARY RECOMMENDATIONS

OPERATING A COLD CASE UNIT

17. *Organize cases by starting with the investigations that have the most apparent means of resolution. Consider database hits, ease of resolution, and community interest when selecting cases.*
18. *Perform an initial comprehensive agency audit to locate, document, and package all evidence according to current standards. Perform evidence audits at least once a year and update agency files to reflect the results of the audits. Document the location, condition, and laboratory analyses of evidence in a computerized information management/tracking system.*
 - 18a. *Review all evidence to determine its evidentiary value and evaluate whether new forensic methods could be used for further examination.*
 - 18b. *Review and update evidence retention policies as needed to prevent the destruction of evidence in unresolved cases.*
19. *Review all case files to ensure that they are current with contemporary standards and that all investigative opportunities have been exhausted. Conduct subsequent reviews periodically to ensure that cases remain current with the available technology and investigative processes and to identify any new investigative opportunities.*
20. *Actively engage a prosecutor with cold case operations.*
21. *Maintain a public-facing list of all unresolved cases (e.g., a cold case website).*
22. *Develop a media information dissemination strategy. Detail this strategy in the agency protocols. Designate an agency public information officer to act as media liaison.*

Identifying Support For a Cold Case Unit



Agencies must identify and seek support from available resources. Support for a cold case unit can come from other local and state agencies, federal agencies, and private or community resources. Collaboration allows other agencies' operations and services to assist in law enforcement needs. Local, state, and federal agencies and academia all have operating budgets that may assist with agency activities. Tapping these available resources for cold case investigations can help local law enforcement agencies achieve their cold case goals and mitigate a lack of internal resources as a barrier for investigating cold cases.

Local and state agencies as sources of support

Successful cold case investigations often involve engaging units and agencies outside the cold case unit. Examples of such partners include the district attorney or county prosecutor, the medical examiner/coroner's office, forensic services, and other local or state agencies. These entities are all part of the team when it comes to investigating and resolving cold cases, and including them from the outset fosters development and good will for the cold case unit. Such efforts may pay great dividends in the form of enhanced cooperation and *esprit de corps*.

In addition, other noninvestigative state and local agencies may be open to service partnerships. There are a plethora of government agencies that may be able to provide assistance, especially if more creative, nontraditional approaches are used. Assistance may be tangible, such as material goods and equipment, or intangible, such as assistance in grant writing.

Community resources as sources of support

Survivors, family members, and friends in cases that have not been resolved may be among the staunchest supporters of creating and maintaining a cold case unit. News media, victims' rights groups, social services providers, and politicians may likewise be viable sources of support. In any given community, many people and organizations are critical to the success of an agency and its mission to solve cold cases. These include local and state politicians, nongovernmental organizations, community leaders, civic organizations, the media, and the community in general.

Nongovernmental organizations often have more flexibility than government agencies and can be strongly invested in obtaining results. Major corporations may be sources of financial assistance through grants or other means, and cold case units should not overlook community organizations.

Cold case units can benefit from targeted outreach to community leaders — both formal, such as an elected official, and informal, such as a popular clergy person or neighborhood resident. Initiation of a cold case unit reaffirms the agency's commitment to case resolution and enhanced public safety for all members of the community.

Academia as a source of support

RECOMMENDATION 23:

23. Utilize academic resources when possible and appropriate. These resources may include technologies, students, and faculty with subject matter expertise.

An often-overlooked source of support in cold case investigations is academia. Academic support can come in three forms: subject matter expertise, resources, and labor.

Colleges and universities can provide services that might lessen the burden on police agencies. Agencies can tap the expertise of faculty and the labor of students and gain access to new technologies, processes, and specialty equipment for investigative purposes. In addition, academics can identify and assist in procuring funding resources such as grants. Educational institutions may also be able to offer professional development and training.

Academic resources in cold case investigation include:

- Remote sensing for buried bodies
- Burial excavation and documentation
- Human identification or visualization
- Facial reconstruction and trauma analysis
- Isotope testing and analysis
- Forensic entomology remote sensing
- Forensic palynology
- Forensic genealogy
- Grant writing
- Data analysis
- Statistical analysis

Examples of Academic Subject Matter Experts

Institutions of higher education often have expertise and resources that can be beneficial for cold case investigators. Most schools provide the services as a goodwill gesture to the community. Cold case units are encouraged to explore local schools as well as identify specialty schools that may provide assistance. Below are a few examples of academic cold case partnerships.

- The University of South Florida is a nationwide service provider for cold cases, homicide cases, and missing persons cases. It provides a range of technical services as well as educational programming in the areas of:¹
 - New facial imaging and clothing approximation.
 - Case review.
 - Skeletal analysis for identification.
 - Chemical and elemental isotope analysis.
 - Trauma analysis.
 - Crime scene location and documentation.
- Mercyhurst University in Pennsylvania has provided assistance in forensic anthropology cases and for coroners.²
- The University of North Texas Health Science Center provides numerous cold case resources, including:
 - Managing the National Missing and Unidentified Persons System (NamUs).
 - Coordinating anthropology and DNA resources.
 - Providing nationwide missing and unidentified persons training courses.
 - Developing and implementing missing and unidentified persons protocols.
 - Providing case consultations and networks of resources to assist with investigations.
 - Obtaining facial reconstructions of unidentified decedents from certified forensic artists through Project EDAN.
 - Performing analytical searches to locate family members for DNA collection and next of kin for death notifications.

1. University of South Florida Institute of Forensic Anthropology and Applied Sciences, *Art of Forensics: Solving Florida's Cold Cases*.

2. Mercyhurst University, *Dennis Dirkmaat, Ph.D., D-ABFA*.

- Database creation and management
- Geographic information systems analysis

Additionally, colleges or universities may be able to offer personnel to assist with case reviews and preliminary assessments, thereby allowing investigators to concentrate on investigative functions. Some college programs have initiated partnerships wherein thoroughly vetted students assist investigations under the guidance of the law enforcement agency. Many agencies have benefited by having students upload data into information management systems or perform other administrative functions. Students may assist in the organization of files, prepare case file videos for dissemination on platforms such as social media, perform research in libraries and local records (e.g., property deed history), locate archived photographs and periodicals, prepare physical and computer models and diagrams, and provide different perspectives.¹⁰⁴

¹⁰⁴ Some graduate student programs have worked with local law enforcement to create videos of the case for dissemination, using media such as YouTube.

Examples of Student Programs

Several institutions of higher education have organized cold case investigation programs. Law enforcement should tap into the energy and services that faculty and students can bring to an investigation. The following is a short list of some of the cold case projects involving partnerships between academia and law enforcement.

- The Institute for Forensic Anthropology and Applied Sciences at the University of South Florida works with agencies to perform cold case reviews, integrating students into case assessments to ensure that case files are up to current investigative standards. The institute has also worked to organize special programming to engage the public and has assisted in more than 30 exhumations of John and Jane Does from city cemeteries for DNA analysis.
- Olivet College in Michigan participates in a joint effort with the Calhoun County Prosecutor and the Battle Creek Police Department in which a select group of students works alongside local cold case investigators.¹
- A cold case team was created in Greensboro, North Carolina, with a biology professor from Guilford College, faculty from Rockingham Community College, and a detective from the Greensboro Police Department. Students from both colleges work with law enforcement, using assessment tools and forensic science to review cold cases. The professors, also members of the Vidocq Society, bring their own cold case experience along with the student and college resources.²
- Towson University students and a faculty member who is a former crime lab forensic investigator formed the Forensic Science Student Organization. The group assists in cold case investigations, such as a case in which they helped search for the body of a missing woman who was believed to have been murdered.³

1. Olivet College, April 27, 2017.

2. Guilford College, April 20, 2017.

3. *The Baltimore Sun*, September 4, 2016.

Federal resources as sources of support

Federal agencies may offer significant financial assistance, forensic and investigative equipment, training, and resources as well as personnel and facilities. Agencies are advised to register for federal notification systems such as email distribution lists to keep abreast of any potential resources as they arise.

Federal resources for cold case investigations include:

- The FBI's Violent Criminal Apprehension Program (ViCAP), a national database for collecting and analyzing information on major violent criminal cases.¹⁰⁵
- The Computer Analysis and Response Team (CART) of the local FBI office, which can assist with computer or digital evidence investigations.¹⁰⁶

¹⁰⁵ FBI, *ViCAP Homicides and Sexual Assaults*.

¹⁰⁶ The FBI can assist with seizing and analyzing digital evidence using state-of-the-art equipment that few local or state agencies have the opportunity to access through local evidence services (FBI Laboratory, *Computer Analysis and Response Team*).

Examples of Federal Resources

Agencies can seek assistance in the form of federal partnerships from several agencies within the Department of Justice. The Office of Justice Programs (OJP) serves as an assistance agency for law enforcement, and the Bureau of Justice (BJA) offers programs such as the Sexual Assault Kit Initiative (SAKI), which creates partnerships and provides resources for cold case sexual assaults. Partnerships between federal agencies may also assist local law enforcement. For example, in early 2017 BJA initiated a partnership with the FBI's Violent Criminal Apprehension Program (ViCAP) to help ensure that case information is shared across jurisdictions and states to increase the chances of solving cases in the absence of forensic evidence. As a result of this partnership, ViCAP staff are now available to assist SAKI sites in gaining entry into the system; provide training on optimal use of the database; and conduct crime analysis on specific offenders or cases upon request.

The Naval Criminal Investigative Service (NCIS) initiated a full-time cold case program in 1995 that was the first cold case unit commissioned by a federal agency. Seasoned special agents were trained in the methodologies and concepts of cold case investigations; NCIS now teaches cold case protocols to hundreds of other federal, state, and

local law enforcement agents every year. Since 1995, NCIS agents, along with their local partners, have resolved 62 cold case homicides. An example of their partnership approach is the San Diego Police Department Cold Case Team. Created in 1995, this team is composed of investigators from the San Diego Police Department, the U.S. Drug Enforcement Administration, NCIS, and U.S. Customs and Border Protection.¹

Another source of federal support for cold case investigations is the FBI's Safe Streets Violent Crime Initiative, which is designed to foster task forces focused on gang- and drug-related violent crimes.² Many cold case investigations fall under this purview. Resolving such cold cases will naturally curb current and future violence, because violent crimes committed by gang members are not usually limited to only one criminal event. Cold cases involving crimes committed by gang members are often difficult to solve for many reasons, including the "street culture" and a lack of close proximity for evidence exchanges in instances of shooting. Tapping the FBI's knowledge and resources can be very beneficial in resolving cold cases. These resources are available for drug-related violent crimes as well. The FBI's Safe Streets Task Forces are designed to be long-term initiatives.³

1. San Diego (California) Police Department, *Cold Case Homicide Team*.

2. FBI, *Violent Gang Task Forces*.

3. *Ibid.*

- The U.S. Postal Inspection Service.¹⁰⁷
- NIJ's National Missing and Unidentified Persons System (NamUs), a national database of missing and unidentified persons as well as a source for related services.
- Local branches of the military, such as the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigative Division (CID), and the Air Force Office of Special Investigations (OSI).
- The National Crime Information Center (NCIC), a database operated by the FBI nationwide 24 hours a day year-round and consisting of seven property files and 14 persons files with an offline search capability.

¹⁰⁷ On January 18, 2018, the Department of Justice announced that 104 people had been arrested for drug trafficking through a federal task force that included the FBI, the U.S. Postal Inspection Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Puerto Rico Police Department Bayamón Strike Force, the U.S. Marshals Service, and the San Juan Municipal Police in Puerto Rico. Murder and drive-by shootings are among the charges filed against the defendants (U.S. Attorney's Office, District of Puerto Rico, 2018).

- The U.S. Marshals Service, which provides investigative assistance through joint-agency fugitive task forces, arrests out-of-state suspects, and transports suspects to the investigating agency.
- The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which maintains the National Integrated Ballistic Information Network (NIBIN), manages records pertaining to sales of firearms, and assists in fire- and explosives-related cases.
- The Drug Enforcement Administration (DEA), which assists local agencies with intelligence on the drug-related activities that commonly accompany violent crime.¹⁰⁸
- The Department of Homeland Security's Immigration and Customs Enforcement (ICE), which provides information-sharing resources for law enforcement through its Law Enforcement Information Sharing Service and its Pattern Analysis and Information Collection System (ICEPIC) database of information on persons, businesses, vehicles, and firearms.¹⁰⁹
- The National Center for Missing and Exploited Children (NCMEC), which provides investigative and forensic services such as age progression and regression composite sketches, information dissemination assistance, and forensic testing.¹¹⁰
- The FBI's Behavioral Analysis Unit (BAU), which provides consultation support for understanding criminals and their behavior to assist in identifying potential suspects.¹¹¹

For more information, see the Resources section of this guide.

Nontraditional sources of support

Most agencies cite a lack of resources as their main reason for not having a dedicated cold case unit. Many creative approaches can be employed to alleviate some of the agency's burden. In addition to sharing resources with other agencies through a regional task force and using academia, agencies can seek assistance from the public. Some agencies have found success with programs through which the public donates to a cause directly.¹¹² Soliciting other types of donations can also be successful. The

¹⁰⁸ On November 22, 2017, the DEA announced a conviction for homicide and additional charges originally filed almost two decades earlier, in 1999. The conviction resulted from joint efforts by the U.S. Drug Enforcement Administration, the New York Police Department, and the New York State Police (Drug Enforcement Administration, *Additional Charges Announced*, and Drug Enforcement Administration, *Intelligence*).

¹⁰⁹ Fort Worth Police and ICE Homeland Security Investigation agents worked together to arrest a foreign national for a 2007 homicide in December 2017. Detectives from Fort Worth connected evidence to a deported individual who illegally re-entered the country and was incarcerated in a federal prison (U.S. Immigration and Customs Enforcement, *ICE Detainee Charged With 2007 Fort Worth Murder* and U.S. Immigration and Customs Enforcement, *Law Enforcement Information Sharing Initiative*).

¹¹⁰ National Center for Missing & Exploited Children, *Case Resources*.

¹¹¹ FBI, "Behavioral Analysts."

¹¹² For example, Crimestoppers (<https://crimestoppers.org>) is a nonprofit program that participates in fundraising efforts from the public where donations can be used for rewards for information in criminal investigations.

Community Donations Fund DNA Lab

The Charlotte-Mecklenburg (North Carolina) Police Foundation's DNA Project¹ solicited community donations to help set up a DNA crime lab for unresolved cases. Donations paid for a DNA forensic laboratory analyst's salary and supplies, including DNA testing materials. In addition to community

fundraisers, the project received a boost from a Harris Teeter grocery store, which donated \$10,000 in the name of a former employee whose homicide was resolved by the Charlotte-Mecklenburg Cold Case Squad.²

1. Charlotte-Mecklenburg (North Carolina) Police Foundation, *Cold Case DNA Crime Lab*.

2. Charlotte-Mecklenburg (North Carolina) Police Department, *Homicide/ADW Unit*.

City of Boston has found success using police foundations that work with vetted corporate donors.

Some jurisdictions have developed innovative approaches for funding. Texas introduced a bill that would allow the state to crowdfund sexual assault kit testing by asking citizens to donate a dollar to the effort when they renew their driver's license.¹¹³ Many local jurisdictions are finding additional revenue streams through code enforcement, such as red light and speed cameras and parking infractions, or administrative fees, such as an increased cost for death certificates. Similar types of revenue could be used for unresolved case funding.

The internet and social media have allowed people to create fundraising efforts without going through a nonprofit agency. GoFundMe, for example, is a website where people can ask for donations toward a cause. Several GoFundMe campaigns are directed at solving cold cases.¹¹⁴ Facebook and other social media websites provide free community outreach and information sharing. Nextdoor, another free website and app, is a targeted social media platform that some law enforcement agencies have embraced for information sharing. The platform allows law enforcement to send messages to specific neighborhoods or regions by email or through the Nextdoor application.¹¹⁵

SUMMARY RECOMMENDATIONS

IDENTIFYING SUPPORT FOR A COLD CASE UNIT

23. *Utilize academic resources when possible and appropriate. These resources may include technologies, students, and faculty with subject matter expertise.*

¹¹³ For example, Mansoor, April 5, 2017

¹¹⁴ The sister of a teen killed in 1984 initiated a GoFundMe campaign in 2017 to assist in the investigation (*Helen Kilgore's COLD CASE FUND*, March 6, 2017).

¹¹⁵ The Fayetteville Police Department in North Carolina issued a press release through the Nextdoor app to share information on a cold case suspect wanted for sexual assault in August 2017 (Fayetteville [North Carolina] Police Department, *Fayetteville Police Department*).

Conclusion



Investigation of unresolved cases presents unique challenges. Not only are the cases themselves difficult, but the fiscal commitment to investigating them — particularly through a dedicated cold case unit — can be challenging to secure amid competing demands for resources. The media spotlight on high-profile new cases often puts pressure on agencies to focus on those cases, and as a result, unresolved case investigations can become a low priority.

Securing financial stability is frequently a source of difficulty for cold case units. There is anecdotal evidence that cold case units and squads around the country are being downsized or eliminated, as jurisdictions grapple with resource reallocation. In a 2011 study, RAND researchers reported that funding for unresolved cases is “tenuous.”¹¹⁶ To ensure their own long-term sustainability, cold case units should be recognized as a separate line item in an agency’s budget.

Because cold case investigations are often incorrectly deemed a luxury, they are likely to be among the first affected when decisions are made to reallocate resources toward an increased police presence in the community. The benefits of a dedicated cold case unit are not as immediately visible to the police executives, elected officials, and other policymakers who make funding decisions. A mounted horse unit, new Segways, or transferring unresolved case personnel to patrol in order to reduce response times by a few seconds may be well-received by the public, but it is critical that decision-makers understand the benefits of providing resources for unresolved crimes.¹¹⁷

At the nation’s current clearance rate, approximately 40 percent of the roughly 15,000 homicides that occur every year are not being solved. In the face of the admittedly difficult challenges that unresolved cases present, cases can go cold quickly. The options are to do nothing about this — or to do something.

“If we don’t solve them, the number of unsolved crimes will just go up and then there will be thousands of cases — more and more, committed by people who continue to offend if they are not dead or incarcerated.”

— Charles Heurich, Senior Physical Scientist, Office of Investigative and Forensic Sciences, National Institute of Justice

¹¹⁶ Davis, Jensen, & Kitchens, 2011.

¹¹⁷ Some studies indicate that decreased police response times do not correlate to increased clearance rates. One study, based in the United Kingdom, notes that the chance of clearing a crime decreases by approximately 4.6 percent when response time increases by 10 percent (Blanes i Vidal & Kirchmaier, 2016). Two studies — one in York, Pennsylvania (Stevens, Webster, & Stipak, 1980) and one performed by the New York Police Department (Russo, 2016) — found that increased response times do not increase clearance rates.

Jurisdictions with a cold case unit, or those which are engaged in a regional effort for resolving cold cases, will likely find that their return on investment is initially high, as the more easily solved cases are quickly resolved. The more difficult cases require much more time and effort. This guide has offered recommendations, based on research and input from a working group of experts, to help law enforcement leadership understand the costs of solving cold cases — and the costs if they are left unsolved.

The time has come for forward-thinking, innovative law enforcement leaders to embrace the investigation of cold cases as an integral part of their agencies' core mission. At the very least, bringing a cold case up to today's technological and investigative standards gives the case a better chance of being resolved.

Finally, those who are dedicated to solving cold cases would do well to remember the words of Thomas A. Edison: "When you have exhausted all possibilities, remember this — you haven't."

List of Abbreviations



- AFIS** – Automated Fingerprint Identification System
- AFIT** – Advanced Fingerprint Identification Technology
- BJA** – Bureau of Justice Assistance
- CODIS** – Combined DNA Index System
- IACP** – International Association of Chiefs of Police
- IAFIS** – Integrated Automated Fingerprint Identification System
- MOU** – memorandum of understanding
- NamUs** – National Missing and Unidentified Persons System
- NCIC** – National Crime Information Center
- NGI** – Next Generation Identification
- NIBIN** – National Integrated Ballistic Information Network
- NIJ** – National Institute of Justice
- NIST** – National Institute of Standards and Technology
- OSAC** – Organization of Scientific Area Committees for Forensic Science
- SAK** – sexual assault kit
- SAKI** – Sexual Assault Kit Initiative
- UCR** – Uniform Crime Reports
- UHR** – unidentified human remains
- ViCAP** – Violent Criminal Apprehension Program

Glossary



This glossary defines terms used in this best practices guide as pertaining to or addressing issues in the law enforcement and forensics arenas.¹¹⁸

The National Institute of Standards and Technology (NIST) created the Organization of Scientific Area Committees for Forensic Science (OSAC) to set nationwide standards in forensic sciences. OSAC publishes a database of standard defined terms at <http://lexicon.forensicosac.org/Term/Home/index>. Where possible, OSAC definitions are used in this glossary and are labeled as such.

Advanced Fingerprint Identification Technology (AFIT). Deployed by the FBI in 2011, this technology implemented new matching algorithms to increase accuracy in electronic automated fingerprint identification as part of the Next Generation Identification (NGI) services offered by the FBI.

algorithm. A process or set of rules to be followed in calculations or other problem-solving operations, especially by a computer. Case management and forensic databases use algorithms to identify connections such as with CODIS hits.

Automated Fingerprint Identification System (AFIS). OSAC: Biometric computer system that allows forensic examiners to encode, digitize, and search recovered fingerprint impressions against fingerprint record databases for identification purposes. AFIT replaced the FBI's AFIS segment of the IAFIS in 2011.

backlogs. Cases received by the laboratory that exceed the laboratory's capacity and are awaiting testing.¹¹⁹

ballistics. OSAC: The science and study of projectiles in motion. Usually divided into three parts: (1) *interior ballistics*, which studies the projectile's movement inside the gun; (2) *exterior ballistics*, which studies the projectile's movement between the muzzle and the target; and (3) *terminal ballistics*, which studies the projectile's movement and behavior in the target.

¹¹⁸ NIJ's Forensic Technology Center of Excellence (FTCoE) and the Center for Forensic Nursing Excellence International (CFNE International) collaborated to create a glossary that was funded in part through a sub-award from RTI International as the lead partner for the FTCoE. For terms related to sexual assault investigations, this glossary uses the CFNE International Multidisciplinary Glossary on Sexual Violence definitions (<https://www.cfnei.com/glossary-index>).

¹¹⁹ NIJ, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

behavioral analysis. The examination of an action taken by an individual, to include the analysis of why the action was taken. In criminal investigations, the analysis of the offenders and their behaviors to commit a crime.¹²⁰

Behavioral Analysis Unit (BAU). A unit of the FBI's National Center for the Analysis of Violent Crime (NCAVC) that uses behavioral sciences to assist in criminal investigations.¹²¹

Bureau of Justice Assistance (BJA). Provides leadership and assistance to local criminal justice programs that improve and reinforce the nation's criminal justice system. BJA's goals are to reduce and prevent crime, violence, and drug abuse and to improve the way in which the criminal justice system functions. In order to achieve these goals, BJA programs illustrate the coordination and cooperation of local, state, and federal governments. BJA works closely with programs that bolster law enforcement operations, expand drug courts, and provide benefits to safety officers.¹²²

Bureau of Justice Statistics (BJS). The primary statistical agency of the Department of Justice. BJS collects, analyzes, publishes, and disseminates information on crime, criminal offenders, crime victims, and criminal justice operations. BJS also provides financial and technical support to state, local, and tribal governments to improve their statistical capabilities and the quality and utility of their criminal history records. BJS provides statistical information to the President, Congress, other officials, and the public with accurate, timely, and objective data about crime and the management of criminal justice.¹²³

burnout. This term refers to the long-term psychological effects upon investigators or others due to extended periods of time exposed to the negative influences of working in the law enforcement field, for example, in child abuse or homicide investigations.

case review. Comprehensive review of all case-related documents and evidence for the purpose of solving the case.

case summary. Documentation summarizing the status of a cold case after review.

caseload. The number of cases that an investigator is actively investigating.

chain of custody. OSAC: The process used to maintain and document the chronological history of an item of evidence. The chain of custody documents the individual who collected the evidence and each person or agency that subsequently takes custody of it. This verifies evidence integrity, meaning that the evidence being analyzed is the same evidence

¹²⁰ FBI, "Behavioral Analysts."

¹²¹ Ibid.

¹²² Bureau of Justice Assistance website.

¹²³ Bureau of Justice Statistics website.

that was found at the scene and that there was no opportunity for the evidence to be tampered with or compromised. A chain of custody should be maintained for an item until it is released, disposed of, or destroyed.

clearance rate. The percentage of crimes known to law enforcement that were “cleared,” or solved, by arrest or special circumstances.

cleared by arrest. A case status meaning that a law enforcement agency has cleared a crime from active investigation when a suspect is arrested and charged with an offense.

closed case. A case where all suspects have been identified and (if possible) successfully prosecuted.

cold cases. Generally, unresolved cases where leads are not readily identifiable and/or a period of time has passed since the date of the offense without any case resolution. NIJ’s Cold Case Working Group offers a possible definition for agencies: A cold case is a case, such as a violent crime, missing person, or unidentified person, that has remained unsolved for at least three years and has the potential to be solved through newly acquired information or advanced technologies to analyze evidence.

cold case units. A designated organizational unit within a law enforcement agency, consisting of two or more investigators specifically tasked to investigate cold cases.

cold hit. An identified connection between two cases that were previously unknown to be related. A DNA cold hit, for example, is an association made between a crime scene DNA profile and a DNA profile found in a DNA database (e.g., CODIS) in the absence of any prior investigative leads. The association may be to another crime scene DNA profile or to a profile from a known individual.¹²⁴

Combined DNA Index System (CODIS). OSAC: The Combined DNA Index System, administered by the FBI, can link human DNA evidence obtained from crime scenes, thereby identifying serial criminals. Comparing crime scene DNA to known reference sample profiles can indicate the identity of a putative perpetrator. There are three levels of CODIS: the Local DNA Index System (LDIS), used by individual laboratories; the State DNA Index System (SDIS), used at the state level to serve as a state’s DNA database containing DNA profiles from LDIS laboratories; and the National DNA Index System (NDIS), managed by the FBI as the nation’s DNA database containing all DNA profiles uploaded by participating states.

Community-based victim services. An independent, usually nonprofit organization that provides comprehensive services to victims before, during, and after a criminal case.¹²⁵

Computer Analysis and Response Team (CART). Teams located at FBI field offices that provide support with computer evidence and forensic analysis

¹²⁴ Butler, 2010.

¹²⁵ Victim Support Services, November 7, 2013.

of computer-related evidence for local, state, and federal law enforcement investigations.¹²⁶

coroner. Generally, an elected (sometimes appointed) official whose duty is to oversee medicolegal death investigations, usually for a single county, and certify cause and manner of death. Coroners need not be medical professionals and therefore might not be authorized to physically conduct autopsies or other invasive procedures. These are the responsibility of a forensic pathologist.

criminalist. OSAC: One employed in a field of criminalistics. See *criminalistics*.

criminalistics: OSAC: A branch of forensic science concerned with the examination and interpretation of physical evidence for the purpose of aiding forensic investigations including drug analysis, crime scene reconstruction, firearms and tool marks, fire debris analysis, molecular biology, photography, and trace evidence analysis.

current standards. Standards currently in existence for case investigation, such as documentation of evidence, witness and suspect interviews, etc. In the cold case context, the term refers to the process of reviewing a cold case and updating the file and documentation to comport with current agency and professional standards.

database hit. OSAC: A link between two or more crimes that results when computer databases connect information or evidence from separate crimes, or connect physical evidence with a potential suspect.

database system. OSAC: An authoritative repository of information used for storage, search, and analysis. Alternatively, a collection of known samples that provides a point of reference for comparison and identification.

DNA. Deoxyribonucleic acid. The genetic life codes which individualize all human beings and other organisms with a cellular structure.

- **familial DNA.** A deliberate search of a DNA database that is conducted when a routine search has failed to yield an exact match, based on the concept that first-order relatives (such as a parent, child, or sibling) will share more DNA than unrelated individuals. States vary, however, in the admissibility of such evidence.
- **mtDNA.** Mitochondrial DNA, which exists outside the nucleus of a cell and is maternally inherited. It is less susceptible to degradation than nuclear DNA and thus helpful in identification of limited or degraded biological material (i.e., human remains).
- **Y-STR DNA.** Short tandem repeat markers located only on the male Y-chromosome.

DNA analysis. OSAC: The use of DNA technologies for the evaluation of biological evidence that may be involved in legal matters.

¹²⁶ FBI, *Computer Analysis and Response Team*.

exclusion. OSAC: The determination by a forensic examiner that there is sufficient quality and quantity of detail in disagreement to conclude that two items being analyzed did not originate from the same source.

fingerprint. OSAC: An impression of the friction ridges of all or any part of the finger.

forensic anthropology. OSAC: The application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains, to resolve legal matters.

forensic data. OSAC: The use or application of scientific knowledge to a point of law, especially as it applies to the investigation of crime.

forensic genealogy. The combined use of family histories and partial DNA matches to identify the likely donor of a DNA sample.

forensic pathologist. OSAC: A physician who is certified in forensic pathology by the American Board of Pathology (ABP) or who, prior to 2006, has completed a training program in forensic pathology that is accredited by the Accreditation Council on Graduate Medical Education or its international equivalent or has been officially “qualified for examination” in forensic pathology by the ABP. May be employed as a medical examiner or as a consultant to a coroner or justice of the peace.

Forensic Technology Center of Excellence (FTCoE). Cooperative agreement between NIJ and RTI International through awards 2016-MU-BX-K110 and 2011-DN-BX-K564. The FTCoE supports the implementation of new forensic technology and best practices by end users and is dedicated to elevating the status of forensic science through advancing technology, sharing knowledge, and addressing challenges. The FTCoE bridges the gap between the scientific and justice communities.¹²⁷

friction ridge. OSAC: A raised portion of the epidermis on the palmar or plantar skin, consisting of one or more connected ridge units. Friction ridge details are the area comprised of the combination of ridge flow, ridge characteristics, and ridge structure. The analysis of friction ridge details is used in the comparison of ante mortem and post mortem fingerprints, palm prints, and foot prints for personal identification purposes. Friction ridge impressions are more commonly called fingerprints; however, friction ridges are also found on the palms of the hands and on the feet. Friction ridge impressions recovered from a crime scene may be from any friction ridge source.

impression. OSAC: An image formed by pressure. In fingerprints, friction ridge detail deposited on a surface.

Integrated Automated Fingerprint Identification System (IAFIS). The FBI’s automated fingerprint system. NGI has replaced IAFIS.

fusion center. Fusion centers operate as focal points for the receipt, analysis, gathering, and sharing of threat-related information between federal, state, local, tribal, territorial, and private sector partners.¹²⁸

¹²⁷ Forensic Technology Center of Excellence website.

¹²⁸ U.S. Department of Homeland Security, *State and Major Urban Area Fusion Centers*.

hit. See *database hit*.

hot spot policing. Policing strategy for crime reduction focusing on improving physical and social order in a high-crime location.¹²⁹

implementation team. The persons designated to organize and implement a project such as creating a cold case unit. Project management refers to the implementation team as the project team. There is one lead person who is responsible for overseeing the implementation team and the associated activities.

inconclusive. OSAC: In forensic DNA analysis, the conclusion that there is not enough information to include or exclude a person, or that the sample is not suitable for statistics. Alternatively, not conclusive; not resolving doubts or questions; without final results or outcome. In forensic analysis, the results do not provide information to assist with the investigation.

International Association of Chiefs of Police (IACP). A professional organization of law enforcement leadership and associated members.

interoperability. The ability of two or more computer systems to share information. Forensic databases, for example, may or may not have the capability to share data. AFIS interoperability has been an issue for jurisdictions trying to share fingerprint files due to multiple database vendor systems.

latent print. OSAC: A print impression not readily visible, made by contact of the hands or feet with a surface resulting in the transfer of materials from the skin to that surface. A latent print requires enhancement either by a chemical process or through alternative lighting in order to be visible and used in forensic analysis. Once a print becomes visible, such as after the application of print powder, the print is no longer latent. Prints that are visible are patent prints.

lead.

- a. investigation – the investigator responsible for managing investigative and administrative oversight of all investigation activities in a case.
- b. project management – a person responsible for executing a task. Often the lead is referred to as a champion in project management. See *project champion*.

lift. OSAC: An adhesive or other medium used to transfer a friction ridge impression from a substrate. Lifts are often used in crime scenes when latent prints are made patent through processes such as powder print processing. Once identified, the patent print can be preserved using a lift. Electrostatic, gelatin, and adhesive lifts are all common methods of recovering prints from a scene or off of evidence.

long-term missing persons. A general term for those persons whose whereabouts have been unknown for an extended period of time. There

¹²⁹ CrimeSolutions.gov, *Program Profile: Hot Spots Policing (Lowell, Mass.)*.

is no standard definition of such persons, and the time length involved varies from agency to agency.

long-term storage. OSAC: The means of location and preservation for an item of evidence or reference sample for an extended period of time, the amount of time necessary to resolve a case.

matrix. Organization of information into a format, often tables or spreadsheets, in which it can be analyzed. Cold case investigations often use matrices to prioritize information.

medical examiner. OSAC: An appointed forensic pathologist whose duty is to oversee medicolegal death investigations, perform postmortem examinations, and certify cause and manner of death.

medical examiner/coroner (ME/C). An all-encompassing term for the person responsible for determining the cause and manner of death in a particular jurisdiction. Death investigations are not uniform across the nation. Some jurisdictions employ a coroner and some employ a medical examiner.

medicolegal death investigator. A person tasked with investigating suspicious, undetermined, or violent death of a person under the jurisdiction of a medical examiner or coroner. Investigation activities include scene investigations.¹³⁰

memorandum of understanding (MOU). A formalized agreement or contract between at least two entities defining the roles and commitments for each entity.

multidisciplinary approach. A method of applying a variety of forensic and investigative disciplines, e.g., behavioral analysis, criminalistics, and forensic anthropology, in an effort to investigate criminal events.

National DNA Index System (NDIS). See **CODIS**.

National Institute of Justice (NIJ). Federal agency in the Office of Justice Programs focused on research, development, and evaluation of crime control and justice issues. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenge of criminal justice, particularly at local and state levels. NIJ funds research, development, and technology assistance. NIJ also assesses programs, policies, and technologies. NIJ publicizes the research it conducts and the evaluation findings through conferences, reports, and the media.¹³¹

National Institute of Standards and Technology (NIST). Founded to establish nationwide standards in measurement and technology. Through research and standards improvement, NIST is addressing forensic science practice throughout the United States.¹³²

¹³⁰ American Board of Medicolegal Death Investigators, *FAQ*.

¹³¹ National Institute of Justice website.

¹³² National Institute of Standards and Technology, *Latent Print AFIS Interoperability Working Group*.

National Integrated Ballistic Information Network (NIBIN). A national database of digital images of fired bullets and cartridge cases from crime scenes, operated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

National Missing and Unidentified Persons System (NamUs). A national, central repository and resource center for the records of missing and unidentified persons. It consists of three primary databases: the Missing Persons Database, the Unidentified Persons Database, and the Unclaimed Persons Database. Unlike other databases, portions of this database are accessible to anyone using characteristics such as race, sex, and other body features. Accessible at <https://www.namus.gov>. See *long-term missing persons*.

National Sheriff's Association (NSA). A professional association dedicated to serving Sheriffs' Offices and their affiliates through police education, police training, and general law enforcement information resources.¹³³

negative results. In forensic analyses, when items or results are compared and determined not to match.

Next Generation Identification (NGI) Biometric Database. Enhances FBI biometric identification services by providing an incremental replacement of current AFIS technical capabilities. Considered the largest biometric database in the world. Stores individual fingerprint records and other biometric data for criminal and civil matters. Advanced identification technology provides rapid, efficient, and accurate fingerprint processing.¹³⁴

nondisclosure agreement (NDA). An agreement between two parties wherein the signer agrees not to disclose any information related to the activities defined in the agreement. Common NDAs restrict volunteers from discussing any information learned while assisting a law enforcement agency.

odontologist. OSAC: A dentist who deals with the proper handling and examination of dental evidence and the proper evaluation, interpretation, and presentation of such evidence in the interest of the law. The discipline of odontology deals with human identification, examination and assessment of evidence and orofacial injuries along with age assessment and cases of malpractice and fraud.

offline search. A special technique by NCIC that can be used in a variety of situations to obtain information not available through online channels.

Office of Justice Programs (OJP). Provides innovative leadership to federal, state, local, and tribal justice systems by disseminating state-of-the-art knowledge and practices across the United States and providing grants for the implementation of these crime-fighting strategies. Because

¹³³ National Sheriffs' Association website.

¹³⁴ FBI, *Next Generation Identification (NGI)*.

most of the responsibility for crime control and prevention falls to law enforcement officers in states, cities, and neighborhoods, the federal government can be effective in these areas only to the extent that it can enter into partnerships with these officers.¹³⁵

Organization of Scientific Area Committees for Forensic Science (OSAC).

OSAC: Created through an initiative by the National Institute of Standards and Technology and the U.S. Department of Justice to strengthen forensic science in the United States. OSAC coordinates development of standards and guidelines to improve quality and consistency of work in the forensic science community.

probative value. OSAC: Possessing the potential to provide details that are valuable to an investigation.

problem-oriented policing (POP). An approach to policing in which police officers attempt to perform root-cause analysis of crime issues in their jurisdiction.

profile.

- a. anthropology — OSAC: The description of an individual’s estimated age, sex, ancestry, and living stature derived from an anthropological (skeletal) analysis.
- b. behavior analysis — A term most often used by the media and public to describe what is more accurately termed behavioral analysis of a criminal. Analysis looks at the motivations for the crime, victimology, pre- and post-offense behavior, personality assessments, linkage analysis and a variety of other aspects that contribute to the reasoning for the actions of a person.
- c. DNA – OSAC: The genetic constitution of an individual at one or more defined locations (also known as loci) in the DNA.

project champion. A person who is responsible for the success of a project by ensuring that stakeholders and project team members support the mission and the cause of the project. See *lead*.

relevant existing unit. An operational division or defined section of a law enforcement agency’s organization that is tasked with relevant duties. Cold case units should operate within an operational unit which is already performing similar, or relevant, activities, e.g., a violent crime squad, a sexual assault squad, or a homicide squad.

retraumatized. When a victim has experienced something that reopens a trauma and is distressing. Notifying victims after analyzing a previously untested SAK can be retraumatizing. Experiencing secondary victimization during an initial report (or from notifying personnel) can be retraumatizing.

¹³⁵ Office of Justice Programs, *About Us*.

revictimization. Repeat victimization, that is, experiencing the same crime for a second time. Alternatively, treatment of a victim in a harsh, victim-blaming way. See **secondary victimization**.

secondary trauma. The trauma that people who work with survivors experience through their constant exposure to the pain and suffering of others. Also called vicarious trauma or compassion fatigue.

secondary victimization. Negative, victim-blaming treatment received by victims from justice system personnel during the process of reporting or seeking help after a crime.

Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting Program (SAFE-ITR). NIJ funding program to implement an evidence management program to inventory, track, and report untested and unsubmitted SAKs.¹³⁶

sexual assault kit (SAK). A package (e.g., envelope, box) containing items for collecting and preserving materials holding potential evidentiary value from the bodies of sexual assault victims, the accused, or suspects in sexual assault cases.¹³⁷

Sexual Assault Kit Initiative (SAKI). BJA funding program aimed at reducing the number of unsubmitted SAKs in law enforcement custody. Funding may be used to inventory unsubmitted SAKs, test these kits, and assign designated personnel to pursue new investigative leads and prosecutions and to support victims throughout the investigation and prosecution process.

statute of limitations. A legal time frame within which criminal charges must be filed against an accused or the case may no longer be prosecuted.

survivors. Victims, their friends, and their family who feel the effects of a crime.

trauma-informed approach. Systematic focus on victim safety and the impact of trauma. Includes generating provisions for prioritizing and protecting victim’s privacy.¹³⁸

unidentified decedents/unidentified human remains (UHR). Deceased human beings whose identity is unknown.

Uniform Crime Reports (UCR). An annual FBI statistical compilation, “Crime in the United States: The Uniform Crime Report,” which details information on crime in the United States. Law enforcement agencies across the country submit data reports to the FBI, which the FBI uses to report crime statistics.

¹³⁶ NIJ, *Sexual Assault Forensic Evidence*.

¹³⁷ Note that local and state agencies may utilize different terminology, such as a physical evidence recovery kit (PERK), sexual assault forensic evidence (SAFE) kit, sexual offense evidence collection (SOEC) kit, or biological evidence kit (National Center for Victims of Crime, *Sexual Assault Kit Testing*). NIJ has been a part of a nationwide effort to standardize sexual assault evidence practices; through these efforts, SAK was selected as the standardized term used in federal references (CFNE International, *Sexual Assault Kit (SAK)*).

¹³⁸ NIJ, *Sexual Assault Forensic Evidence*.

unresolved cases. Criminal investigations where no resolution has occurred. No time frame nor any availability of leads is inferred. See **cold cases**.

Vicarious Trauma Toolkit (VTT). Resources made available by the Office for Victims of Crime to assist persons exposed to traumatic incidents experienced by other persons. Research demonstrates that exposure to traumatic experiences not only affects victims and their survivors, but also those engaged in occupations that interact with these victims.

victim-centered approach. Systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.¹³⁹

victim specialist. A professional with specialized training and education who works with law enforcement and victims of crime.

victim survivors. Family members, friends, and allies of victims of crime who are also affected by the crime.

Vidocq Society. A private organization that provides multidisciplinary assistance to law enforcement in the resolution of cold case homicides. Membership consists of active-duty law enforcement and legal and forensic practitioners as well as retired professionals who contribute their time and experience, pro bono, to assist in the investigation of these crimes.

Violent Criminal Apprehension Program (ViCAP). FBI program that maintains a nationwide data information center to collect, collate, and analyzes violent crimes (e.g., homicide, attempted homicide, missing persons, child abductions, sexual assaults, and unidentified decedents). ViCAP analysts examine crime data and patterns to identify potential similarities among crimes, create investigative matrices, develop timelines, and identify homicide and sexual assault trends and patterns.¹⁴⁰

Y-STR. OSAC: Short tandem repeat markers found on the Y-chromosome that enable male-specific DNA testing and can be useful in cases involving sexual assault. Also used in genetic genealogy to trace male lineages.

¹³⁹ NIJ, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

¹⁴⁰ FBI, *Privacy Impact Assessment Violent Criminal Apprehension Program (ViCAP)*.

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Resources



This section contains a very limited sampling of the cold case resources available for agencies. Agencies are encouraged to develop relationships with local, state, and federal agencies to learn about current resources as well as receive notifications as new resources become available. Many federal resources are available at little or no cost to an agency.

General Resources

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

The Justice Department's Bureau of Alcohol, Tobacco, Firearms and Explosives provides many services for local law enforcement agencies. Unresolved case investigators can not only trace firearms recovered at a crime scene, but they can also enter recovered cartridge cases into the National Integrated Ballistic Information Network (NIBIN). Both of these searches could potentially provide an Investigating agency with a valuable investigative lead on a cold case.

- **E-TRACE:** a comprehensive search that identifies the origin of the weapon in question. The report will provide the investigator with the weapon's manufacturer along with the retailer in which the first sale of the weapon took place.
- **NIBIN:** a search that compares spent cartridge casings to other known ballistics available in the database. Once a casing is recovered, the investigator can enter the spent casing into NIBIN for a digital comparison to other known recovered casings, potentially linking violent crimes on a national level. NIBIN is constantly adding to its records and is the only database of its kind, making it a valuable resource for connecting crimes outside of the originating jurisdiction.

Cold Case Toolkit

Through an NIJ award, the National Clearinghouse for Science, Technology and the Law at Stetson University College of Law created an online cold case toolkit to provide resources.

<http://www.ncstl.org/education/cold%20case%20toolkit>

Computer Analysis and Response Team (CART)

The FBI provides support to local and state agencies for computer evidence search and seizure as well as forensic examinations through each field office's CART.

<https://www2.fbi.gov/hq/lab/org/cart.htm>

Forensic Technology Center of Excellence (FTCoE)

NIJ's FTCoE facilitates the transfer of forensic technologies from research into practice, identifies best practices, and provides numerous trainings and publications. Examples of resources include: webinars such as "Science, Law and Politics of Cold Case Investigations and Forensics," and "Animal DNA in Criminal Investigations"; reports such as *Familial DNA Searching: Current Approaches and Aquatic Death and Homicidal Drowning Investigation*; and workshops such as "Discovery and Recovery: Death Investigations in Natural Environments" and "Navigating the Sea of Resources for Sexual Assault Programs."

<https://forensiccoe.org/>

Military Service Records

The National Archives maintains files of veterans' service records, including their:

- enlistment/appointment
- duty stations and assignments
- training, qualifications, performance
- awards and medals
- disciplinary actions
- insurance
- emergency data
- administrative remarks
- separation/discharge/retirement (including DD Form 214, Report of Separation, or equivalent)
- other personnel actions

<https://www.archives.gov/veterans>

National Center for Missing and Exploited Children (NCMEC)

With links to the National Crime and Information Center (NCIC) and CODIS, NCMEC offers access to significant forensic services, including forensic anthropology, forensic art, age regression, and age progression. The agency can also assist in both designing a cold case unit and

providing investigative resources. It can assist in making flyers for public posting and can provide training for investigators. It can offer on-site assistance concerning missing, abducted, and sexually exploited children. While NCMEC focuses on cases where the investigation involves someone under 21 years of age, the agency's resources can be valuable in other cases. In the case of found remains, NCMEC offers resources even if investigators suspect that the remains are of a person over 21 years of age.

<http://Missingkids.com>

National Center for the Analysis of Violent Crime (NCAVC)

The FBI's NCAVC contains five behavioral analysis units (BAUs), and the primary mission of the NCAVC is to provide behavioral analysis support to federal, state, and local law enforcement investigations. ViCAP is one of NCAVC's programs. The five BAUs are:

- BAU-1: National security, including counterterrorism, arson, and bombings
- BAU-2: Threat assessment, cyber crimes, and public corruption
- BAU-3: Crimes against children
- BAU-4: Crimes against adults/ViCAP
- BAU-5: Research, strategy, and instruction

<https://www2.fbi.gov/hq/isd/cirg/ncavc.htm>

National Law Enforcement and Corrections Technology Center (NLECTC) and JUSTNET

NLECTC is an NIJ program that connects researchers and practitioners in criminal justice.

- The Justice Technology Information Center (JTIC) provides a portal for professionals to gather information on innovations in the sustainable technology that is transforming the criminal justice system. It is the go-to source for those who make decisions regarding the evaluation, selection, and purchase of proven and tested methods, equipment, and technology. JTIC also hosts the NIJ Compliance Testing Program for ballistic- and stab-resistant body armor and other officer safety equipment.
- The Justice Innovation Center for Small, Rural, Tribal, and Border Criminal Justice Agencies seeks to identify, evaluate, and disseminate technology solutions to the operational challenges of small, rural, tribal, and border law enforcement, courts, and corrections agencies.
- The National Criminal Justice Technology Research, Test and Evaluation Center performs market surveys and hands-on research on new and developing technologies.

- The Forensic Science Technology Center of Excellence (FTCoE) supports the implementation of new forensic technology by end users.
- The Criminal Justice Priority Technology Needs Initiative assesses and prioritizes technology needs across the criminal justice community.

<https://www.justnet.org/about/nlectc-system.html>

National Missing and Unidentified Persons System (NamUs)

NamUs is a national information clearinghouse and resource center for missing, unidentified, and unclaimed persons cases across the United States. It is funded and administered by the Department of Justice through a cooperative agreement with the University of North Texas Health Science Center. The NamUs database is searchable by the public. The system proposes possible matches to vetted registered criminal justice professionals. NamUs provides technology, forensic services, and investigative support to resolve missing persons cases, including DNA, fingerprint, and anthropology services, free of charge to law enforcement, medical examiners, and coroners.

The National Personnel Records Center, Military Personnel Records, collaborates with NamUs in order to obtain military dental and medical records that may assist in identification. Law enforcement can provide NamUs with information about a missing person, including their name, branch of service, social security number, date of birth, and anything else that may help locate the records. NamUs can employ this service for law enforcement, medical examiners, and coroners to garner information that may not be available outside of the military files. It will also allow records to be transferred directly from the military to NamUs staff.

<https://www.namus.gov>

<https://www.archives.gov/personnel-records-center/military-personnel>

Next Generation Identification (NGI) System

The FBI's Criminal Justice Information Services (CJIS) Division manages the Next Generation Identification (NGI) System, one of the world's largest repositories of biometric and criminal history information. Use of the NGI System has led to the identification of hundreds of unidentified decedents.

The NGI System is not limited to tenprint and latent fingerprint services; it also includes biometric capabilities such as palm prints and facial recognition.

NGI services include:

- **Advanced Fingerprint Identification Technology (AFIT):** The AFIT replaced the legacy Automated Fingerprint Identification System segment of the IAFIS in 2011. The AFIT offers enhanced fingerprint

and latent processing services, improved system availability, and a fingerprint matching algorithm that has improved matching accuracy from 92 to 99 percent.

- **Cold case/unknown decedent:** Using advanced fingerprint search algorithms, including evidence-based data, the NGI System can conduct searches against the NGI criminal and civil file repositories.
- **Latent and palm prints:** Prior to the NGI System, latent images were searched against a criminal repository; now latent prints (tenprints, palm prints, and supplemental fingerprints) can be searched in criminal, civil, and unsolved latent file repositories. The FBI's CJIS Division recommends that latent fingerprints submitted before 2013 be resubmitted, if no identification was made during the initial search. Additionally, in 2013, the NGI System added the National Palm Print System to further assist in identification services.
- **Rap Back:** Rap Back is an FBI subscription service that allows agencies to receive ongoing notifications of criminal activity by people who hold positions of trust (such as school teachers and daycare workers) or who are under criminal justice supervision or investigation.
- **Facial recognition (FR):** The Interstate Photo System (IPS) uses facial recognition to search millions of criminal mugshots that have been retained by the FBI for decades and generates a ranked list of candidates as potential investigative leads. Agencies with an existing FR system may program a type of transaction to perform FR searches. Agencies without an existing FR system will need to acquire software and work with the FBI CJIS Division to establish IPS FR search capabilities.

<https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>

Project EDAN

Project EDAN (Everyone Deserves a Name) utilizes forensic artists to create facial reconstructions of unidentified decedents.

<http://www.angelfire.com/planet/edan/CaseSubmissions.html>

Sexual Assault Kit Initiative (SAKI)

SAKI provides resources including funding and training for law enforcement to address investigations with sexual assault kits.

SAKI has added the newly launched SAKIToolkit, which serves as a comprehensive resource for all practitioners involved in working sexual assault cases (old and new).

<https://sakitta.org/toolkit/>

The Violent Criminal Apprehension Program (ViCAP)

The Violent Criminal Apprehension Program (ViCAP) is a unit of the FBI responsible for the analysis of serial violent and sexual crimes, organizationally situated within the Critical Incident Response Group's National Center for the Analysis of Violent Crime (NCAVC).

The BJA SAKI team partnered with ViCAP in 2017 in an effort to increase the use of the database and the sharing of crime intelligence information from SAKI-related cases across jurisdictions and the country. ViCAP staff are available to assist sites in gaining entry into the system; provide training on optimal use of the database; and conduct crime analysis on specific offenders/cases upon request.

<https://www2.fbi.gov/hq/isd/cirg/ncavc.htm#vicap>

Federal Agencies

- Bureau of Alcohol, Tobacco, Firearms and Explosives
<https://www.atf.gov/firearms/tools-services-law-enforcement>
- Bureau of Prisons
<https://www.bop.gov/resources/>
- Federal Bureau of Investigation
<https://www.fbi.gov/services>
- Drug Enforcement Agency
<https://www.dea.gov/law-enforcement>
- U.S. Marshals Service
<https://www.usmarshals.gov/>
- U.S. Postal Service
<https://www.usps.com>
- U.S. Customs and Border Protection
<http://www.cbp.gov/about/labs-scientific-svcs/org-operations>
- U.S. Secret Service
<https://www.secretservice.gov/>
- U.S. State Department
 - Bureau of International Narcotics and Law Enforcement Affairs (INL)
<https://www.state.gov/j/inl/>
 - Bureau of Diplomatic Security
<https://www.state.gov/m/ds/>
- International Criminal Police Organization (INTERPOL)/Interpol Washington, the United States National Central Bureau
<https://www.justice.gov/interpol-washington/services-law-enforcement-agencies>
 - Criminal investigative support to domestic and foreign law enforcement agencies

- Secure communications with foreign police officials in INTERPOL member countries
- Criminal history information and record checks from INTERPOL member countries
- Assistance with preparing and submitting INTERPOL notices for publication
- Tracing and locating fugitives wanted for prosecution or to serve sentences
- Tracing and locating missing adults or children
- International fingerprint and DNA checks
- Firearm and vehicle traces
- Stolen or lost travel document checks
- Disaster victim identification
- Identification and location of stolen art and cultural artifacts

Victim Advocacy Groups

- The National Organization of Parents of Murdered Children, Inc.
<http://www.pomc.com>
1-818-888-POMC
- The National Organization for Victim Assistance
<https://www.trynova.org>
800-879-6682
- The National Center for Victims of Crime
<https://victimsofcrime.org/>
202-467-8700
- The National Crime Victim Law Institute
https://law.lclark.edu/centers/national_crime_victim_law_institute/
503-768-6819
- The National Institute of Justice's National Missing and Unidentified Persons System (NamUs)
<https://www.namus.gov/>
1-855-626-7600
- Office for Victims of Crime
<https://www.ovc.gov>
202-307-5983
- Serving Survivors of Homicide Victims During Cold Cases
<http://www.pomc.com/docs/guidefordevelopingalawenforcementprotocolaugust172011.pdf>
- The Compassionate Friends
<https://www.compassionatefriends.org/>
630-990-0010

- Mothers Against Drunk Driving
<https://www.madd.org/>
877-MADD-HELP
- Joyful Heart Foundation
<http://www.joyfulheartfoundation.org>
212-475-2026
- Rape, Abuse & Incest National Network
<https://www.rainn.org>
800-656-4673

Databases

A few sample databases are listed below. A more comprehensive list of forensic databases can be found on the NIST Forensic Database website, <https://www.nist.gov/oles/forensic-database>.

- **Combined DNA Index System (CODIS)**
FBI's national DNA database
<https://www.fbi.gov/services/laboratory/biometric-analysis/codis>
- **Forensic Information System for Handwriting (FISH)**
U.S. Secret Service database used to digitize test writings
<http://www.secretservice.gov/investigation/#forensic>
- **Glass Evidence Reference Database**
Technical Support Working Group, with members such as U.S. Department of State and U.S. Department of Defense, maintains this glass reference database
isfsubgroup@tswg.gov
- **International Ink Library**
U.S. Secret Service and Internal Revenue Service database containing ink formulas dating from the 1920s onward
- **National Integrated Ballistic Identification System (NIBIN)**
ATF national ballistic database
www.atf.gov
- **Next Generation Identification (NGI) System**
<https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>
- **Paint Data Query (PDQ)**
Royal Canadian Mounted Police paint database for foreign and domestic cars found in North America
<http://www.rcmp-grc.gc.ca>

Publications

- ***10 Things Law Enforcement Executives Can Do to Positively Impact Homicide Investigation Outcomes, Bureau of Justice Assistance***
https://www.iir.com/Documents/IACP_Homicide_Guide.pdf

- ***A Criminal Flush: Playing Cards and Solving Cases***
<http://www.ncstl.org/news/Mitchell3-06>
- ***After the Match: Dealing with the New Era of DNA***
<https://www.ncjrs.gov/app/publications/abstract.aspx?id=242073>
- ***An Analysis of Current Practices and Factors Associated with Successful Outcomes***
https://www.rand.org/content/dam/rand/pubs/technical_reports/2011/RAND_TR948.pdf
- ***Cold Case Best Practice***
<https://nij.ncjrs.gov/multimedia/video-nijconf2010-laberge.htm#tab1>
- ***Cold Case Concept***
<https://www.ncjrs.gov/app/publications/abstract.aspx?id=171208>
- ***Cold Case Squads: Leaving No Stone Unturned***
<https://www.ncjrs.gov/html/bja/coldcasesquads/199781.pdf>
- ***Cold Cases: Resources for Agencies***
<https://www.ncjrs.gov/pdffiles1/nij/222903.pdf>
- ***Cold Cases: Strategies Explored at NIJ Regional Trainings***
<https://www.ncjrs.gov/pdffiles1/nij/222904.pdf>
- ***Cold Sexual Assault Investigations: Key Considerations & Recommendations. Sexual Assault Kit Initiative***
<https://www.sakitta.org/resources/docs/SAKI-Cold case-Recommendations.pdf>
- ***Detecting Clues in Homicide Management***
<https://www.nationalpublicsafetypartnership.org/clearinghouse/Content/ResourceDocuments/Detecting%20Clues%20in%20Homicide%20Management.pdf>
- ***Emerging Forensic Identification Technologies: Heat Shock for Cold Cases***
<http://www.ncstl.org/news/DaggettApril07>
- ***Forensic Art: Project EDAN and the Doe Network***
<https://www.forensicmag.com/article/2008/01/forensic-art-project-edan-and-doe-network>
- ***Forensic Databases: Paint, Shoe Prints, and Beyond***
<https://www.nij.gov/journals/258/pages/forensic-databases.aspx>
- ***Helping Local Police Departments Solve Cold Cases***
<http://www.policechiefmagazine.org/helping-local-police-departments-solve-cold-cases/>
- ***Homicide Investigation Case File Profile: The Los Angeles Police Department Murder Book National Resource and Technical Assistance Center for Improving Law Enforcement Investigations***
https://crimegunintelcenters.org/wp-content/uploads/2018/03/Los-Angeles-Police-Department-Murder-Book-Profile_Police-Foundation.pdf

- ***Homicide Process Mapping: Best Practices for Increasing Homicide Clearances***
https://www.iir.com/Documents/Homicide_Process_Mapping_September_email.pdf
- ***Implementing a Cold Case Unit: A Challenging Task***
<https://www.ncjrs.gov/app/publications/abstract.aspx?id=209317>
- ***Killing Time: The Application of John Doe Indictments to Keep Cases Warm***
<http://www.ncstl.org/news/GuthrieApril07>
- ***Long-Term Missing Child Guide for Law Enforcement by NCMEC***
<https://ncjtc-static.fvtc.edu/Resources/RS00002451.pdf>
- ***Missing Persons: Volunteers Supporting Law Enforcement***
https://www.bja.gov/Publications/VIPS_MissingPersons.pdf
- ***NCIS Handbook***: The Naval Criminal Investigative Service (NCIS) offers a handbook and training seminar that address cold case homicide units and investigations. The handbook discusses establishing a cold case unit, working with the media, investigating and prosecuting cases, and interacting with families. The seminar, *Cold Case Homicide Investigations: Methodology and Protocol*, provides information on videotape interviewing, psychological consultations, use of the media in cold case investigations, and other investigative methods.
- ***New Technology and Old Police Work Solve Cold Case Sex Crimes***
<https://www.ncjrs.gov/app/publications/abstract.aspx?id=202157>
- ***Resurrecting Cold Case Serial Homicide Investigations***
<https://www.ncjrs.gov/app/publications/abstract.aspx?id=232364>
- ***Serving Survivors of Homicide Victims During Cold Case Investigations: A Guide for Developing a Law Enforcement Protocol***
<http://www.sheriffs.org/sites/default/files/guidefordevelopingalawenforcementprotocolaugust172011.pdf>
- ***Using DNA to Solve Cold Cases: Special Report***
<https://www.ncjrs.gov/pdffiles1/nij/194197.pdf>
- ***Volunteers in Police Service Add Value While Budgets Decrease***
https://www.bja.gov/Publications/VIPS_add_value.pdf

Appendices



APPENDIX A: Standard Operating Procedures

This appendix outlines the recommended format for a cold case unit's operation guidelines. Since each cold case investigation unit operates under its own unique conditions, this document is intended as a starting point for creating an individualized set of standard operating procedures.

1.0 CASE IDENTIFICATION TO CASE CLOSURE

- 1.1 The investigation of a cold case begins with the examination of work conducted by the original investigating officers and entities.
- 1.2 The review and investigative processes require the efforts of personnel with varied abilities, skills, and experience.
- 1.3 These processes require sufficient time, resources, and organizational and administrative support to accomplish case review and investigative goals and objectives.
- 1.4 Cold cases may include homicides, sexual assaults, long-term missing persons cases, and unidentified human remains investigations.¹

2.0 CASE IDENTIFICATION & PRIORITIZATION

Investigators should identify cases that meet predefined criteria for an unresolved or open case within the jurisdiction of the particular investigative agency. Case priorities should be implemented to guide the review of cases.

- 2.1 Case Selection Criteria:
 - 2.1.1 The statute of limitations for each criminal offense potentially applicable to the case has not expired, and the case has not previously reached a final judicial disposition.²
 - 2.1.2 Evidence exists that can potentially provide leads through additional forensic analysis or other investigative means.
 - 2.1.3 Victim(s) and/or critical witnesses are available, and other essential evidence exists.
 - 2.1.4 The case has a named suspect or person(s) of interest.

¹ Most cold case investigations focus on cases where a violent crime was committed. Other types of cases may be considered on a case-by-case basis. Many agencies do not generally include missing persons and unidentified remains cases in the purview of their cold case investigation units; however, these cases often involve violent crimes and should be included in the unit's caseload.

² There may be reasons to investigate a cold case even though prosecution is not possible.

3.0 CASE REVIEW

A case review should be conducted for those unsolved cases that meet case selection criteria.

- 3.1 If the case review is being conducted by a task force or multidisciplinary team, investigators should ensure that the local agency (where case the originated) is consulted or included in the review and subsequent investigation.
- 3.2 The case review should be conducted by investigators different than those who originally investigated the case. This separation is necessary to minimize the potential impact of cognitive biases, including investigative “tunnel vision.”³
- 3.3 Investigators should develop a case review plan to determine which tasks will need to be completed, by whom, and in what order.⁴
- 3.4 Investigators should obtain all case-related documentation and electronic media, including police reports, crime scene photographs, and third-party records (e.g., medical records, cell phone records, financial records, media reports). These records should then be compiled, collated, and stored in a searchable electronic format.
- 3.5 Investigators should determine 1) the identities of critical witnesses; 2) their current locations and contact information; and 3) the quantity and quality (consistency, credibility, and completeness) of the information they provide.⁵
- 3.6 Investigators should obtain background information (criminal, biographical, and social history) for all critical witnesses, persons of interest, and suspects.
- 3.7 Investigators should identify and obtain all records and evidence that are referenced but not already included in the case file (e.g., hospital/autopsy records, business records, crime scene photographs, videotapes, audiotapes, other photographs, lineups).
- 3.8 Investigators should attempt to locate all case-related physical evidence and determine its present nature and condition. Locations that should be searched for evidence include, but are not limited to:
 - 3.8.1 Investigative agency evidence rooms.
 - 3.8.2 Coroner or medical examiner’s offices.
 - 3.8.3 The crime laboratory that may have originally analyzed case evidence.
 - 3.8.4 Other agencies (e.g., prosecutor’s office casefiles, evidence vaults, courtroom storage).
- 3.9 Once evidence is located, investigators should determine its probative value, in light of the critical case questions that must be answered. Experience shows a multidisciplinary team will help determine the probative value.
- 3.10 Investigators should determine whether the chain of custody of located evidence is intact. If gaps exist, investigators should consider ways in which those gaps may be addressed.
- 3.11 Investigators should ensure that the available physical evidence has been tested/analyzed with the latest available forensic technology, methods, and interpretive knowledge and expertise.

³ Interviews and coordination with the original investigators can be valuable, especially in older investigations where many changes may have occurred in the organization, the area, and society since the date of the offense. In rare cases the original investigators may have taken key case information with them upon retirement.

⁴ For information on developing a case review plan, see Adcock & Stein, “Cold Case Models for Evaluating Unresolved Homicides,” 2013.

⁵ Critical witnesses include the victims.

4.0 CASE DEVELOPMENT

4.1 Conduct interdisciplinary case review meetings with relevant stakeholders (e.g., prosecutor, medical examiner/coroner, crime lab personnel) to leverage expertise and obtain an interdisciplinary perspective on case-related medical, legal, and forensic science issues and questions. Examples of issues and questions that may need to be considered include:

4.1.1 Legal—

- 4.1.1.1 Has an applicable statute of limitations expired for one or more potential charges?
- 4.1.1.2 Does a statutory/judicial exception to the apparent expiration of the applicable statute(s) exist? Are alternative charges/remedies possible?
- 4.1.1.3 Given the current availability of victim(s), witnesses, and evidence, can a legally admissible case be made?
- 4.1.1.4 Can a legally sufficient chain of custody for contextually probative evidence be established?
- 4.1.1.5 From a qualitative perspective, are the statements made by the victims and witness consistent, credible, and complete in light of the balance of known case facts, or are they inconsistent, contradictory, dubious, or incomplete?
- 4.1.1.6 In the case of dead, missing, or unavailable expert witnesses (e.g., medical examiners or forensic analysts), can a stand-in expert legally testify in the jurisdiction in question, or will such testimony be prohibited by the confrontation clause of the Sixth Amendment, as interpreted by courts in that jurisdiction?
- 4.1.1.7 New technology may not be accepted in court or permissible under jurisdictional codes. Can the evidence be legally submitted in court? What happens if all of the evidence is consumed or compromised during testing?

4.1.2 Medical—

- 4.1.2.1 In cases involving death by apparent homicide, or in cases of discovered human remains, can the cause and manner of death be clearly determined? Are there alternative medical explanations for the cause of death other than the originally autopsy ruling? Are there alternative noncriminal medical explanations for the manner of death other than homicide?
- 4.1.2.2 If the original medical examiner is deceased or otherwise unavailable, will the stand-in expert agree or disagree with the original medical examiner's findings and ruling at autopsy?
- 4.1.2.3 Are sufficient records, photographs, and other materials available for the stand-in expert to form an independent opinion about the manner and cause of death?
- 4.1.2.4 In cases involving missing persons or unidentified human remains, what methods or techniques exist to make a positive identification? What information can be gleaned from the remains and the contextual significance of their surroundings to determine whether the death was the result of homicide or other causes?
- 4.1.2.5 In cases of sexual assault, what medical information and physical evidence is available to corroborate the victim's account of the attack?

4.1.3 Forensic—

- 4.1.3.1 Is forensic technology currently available that was not available at the time of the original investigation and that can now be utilized to test or reanalyze existing evidence?
- 4.1.3.2 Is forensic/medical expertise currently available that did not exist or was not fully developed and available at the time of the original investigation?
- 4.1.3.3 Is there evidence or information that was never analyzed, acted upon, or forensically tested?
- 4.1.3.4 If the original forensic analyst is deceased or otherwise unavailable, and the evidence cannot for some reason be retested, will the stand-in forensic expert witness agree with the original expert's findings and conclusions?
- 4.1.3.5 Types of evidence that should be considered for examination/analysis or re-examination/reanalysis include, but are not limited to:
 - 4.1.3.5.1 Items/stains potentially containing contextually probative DNA.
 - 4.1.3.5.2 DNA evidence with indeterminate results, e.g., DNA from more than one person or DNA analysis that did not provide enough information to determine an identity.⁶
 - 4.1.3.5.3 Friction ridge impression evidence and other impression evidence (e.g., shoe prints, tire treads).⁷
 - 4.1.3.5.4 Firearms, casings, and bullets.
 - 4.1.3.5.5 Trace evidence (i.e., hair, fibers, glass, and paint).
 - 4.1.3.5.6 Video or audio recordings (for enhancement purposes).
 - 4.1.3.5.7 Digital/electronic evidence (cell phones, other personal devices, media).

4.2 Develop and document a detailed victimology.

- 4.2.1 Gather all available biographical information and history on the victim.
- 4.2.2 In all cases, obtain photographs of the victim taken near in time to the offense under investigation. Photographs such as these are for investigative reference and potential use during interviews or interrogations of the suspect, persons of interest, and witnesses.
- 4.2.3 In long-term missing persons or unidentified remains cases:
 - 4.2.3.1 Check available records (e.g., credit cards, social security records, bank accounts) to verify that the individual is still missing.
 - 4.2.3.2 Ensure that all relevant case information is entered into NamUs.
 - 4.2.3.3 Verify the completeness and accuracy of all data entered into NCIC, Violent Crime Information Network (VCIN), and/or NamUs.

⁶ DNA evidence from multiple sources may be mixed together. New technologies may be able to discern the different sample contributors. Coordinate with a legal advisor in order to determine what processes may interfere with potential prosecution. Decisions of prosecution versus case closure may be required.

⁷ Friction ridge impressions include fingerprints, palm prints, and footprint pattern evidence. Note that prints may be latent, i.e., not visible with the unaided eye. Newer technologies may be applied to locate latent prints or to analyze previously recovered impression evidence.

4.2.3.4 Check missing persons records from the originating jurisdiction (if known) and surrounding jurisdictions.

4.2.3.5 Consider transient population trends such as truck driver routes, migrants, and military relocations.

4.2.4 Persons of interest.

4.2.4.1 Determine whether one or more persons of interest are named in the case file and determine if any previous investigation has been conducted regarding that person or persons.

4.2.4.2 If a person of interest is developed through a CODIS hit or the analysis of other physical evidence, determine what past relationship the victim may have had with that individual. It must be determined whether the DNA hit has probative value or is possibly the result of previous legitimate contact.

4.2.4.3 Other means by which a person or persons of interest may be developed are through witness interviews; informants; media reports; the existence of a modus operandi in common with the case under investigation and other crimes; and case-to-case linkage by forensic or nonforensic means.

4.2.4.4 Obtain photographs of all persons of interest taken close in time to the offense under investigation for: 1) reference purposes; 2) potential use during victim/witness interviews; and 3) use during the interview/interrogation of the person of interest.

4.2.4.5 Obtain a biographical and social history for each person of interest.

4.2.4.6 Interview or reinterview individuals who may have had a prior association with persons of interest.

4.2.4.7 Interview or reinterview the person of interest, as needed.

4.2.4.8 Assess whether, based on the totality of the information developed, the person of interest should be considered a suspect or can be eliminated from involvement in the case under investigation.

5.0 SUSPECT INVESTIGATION

5.1 After a suspect has been developed in a reopened cold case investigation, a case reinitiation report should be completed which documents the date, reason, and circumstances under which the case was reopened. This report creates a benchmark and a timeline from which all future cold case investigative efforts can be measured. The report also helps to orient future detectives, prosecutors, and jurors to the investigative timeline and differentiate cold case investigation from the original investigation.

5.2 Victims or their family members (if the victim is deceased) should be contacted soon after a suspect is developed. This allows investigators to determine whether the victim (if alive) is willing and able to cooperate with the ensuing investigation and prosecution. If the victim is deceased, investigators may be able to acquire valuable information from family members about the victim's habits, routines, relationships, and associations at the time of the crime.⁸

⁸ Victims and the families of victims should learn about the reopening of an investigation from the investigating agency rather than from another source such as the media. Consider involving a victim advocate who is familiar with victim interactions.

- 5.2.1 Immediate contact with the victim and/or family members allows investigators to establish a rapport with them and build trust that will continue to develop during both the investigation and prosecution phases of the case.
 - 5.2.2 Immediate contact with the victim after a suspect is developed also allows investigators to acquire any additional case-related facts, information, or details of current interest that may not have been discovered or documented during the original investigation.
 - 5.2.3 Items which can be obtained from the victim or victim's family, such as personal photographs taken near in time to the offense under investigation and any records or documents that may be of value to renewed investigative efforts can be acquired and used by investigators.
- 5.3 In cold case sexual assaults, a consensually collected buccal swab should be obtained from the victim for DNA testing as a reference sample. The DNA profile developed from this sample can be compared to the profile detected on the evidence (e.g., a 25-year-old vaginal swab). This match can provide strong circumstantial evidence that helps the prosecutor establish a legally sufficient chain of custody for the evidence even when gaps in the chain exist. These gaps may be due to deceased medical, laboratory, or police personnel, or due to missing documentation about storage and safekeeping of the evidence.
 - 5.4 In missing persons cases, DNA samples from close relatives may need to be acquired by investigators to help identify human remains.
 - 5.5 After a CODIS hit has been obtained, in order to determine the contextual significance and probative value of the match, investigators must determine whether the victim had a previous consensual relationship or — depending on the nature of the evidence — consensual contact with the subject of the hit. If the subject of the hit was a previous consensual sexual partner of the victim, or if the victim knew or had past consensual contact with the subject of the hit, the hit may not constitute a probative association with the true offender.
 - 5.6 To help determine the probative value of the evidence, investigators should obtain DNA elimination reference samples from any recent consensual partners (in cases involving sexual assault or sexual homicide) and, in other cases, from any individuals with whom the victim may have had intimate or close contact near the time of the crime, or who may have innocently left behind DNA at the crime scene. These elimination samples will help investigators determine the contextually probative value of foreign DNA profiles detected at the scene or in the evidence.
 - 5.7 In many cold cases, there will be multiple persons of interest or suspects identified in the case file by the original case investigators. In some cases, the victim may have even identified one of these individuals as the perpetrator. In these cases, if a CODIS hit has been obtained that matches a suspect not originally named in the case file (or not identified by the victim), investigators should seek reference samples from the original persons of interest or suspects for comparison with and exclusion from the probative foreign evidence profile that was the subject of the hit. At trial, this allows the DNA analyst to quickly exclude those third-party suspects as potential contributors of the evidence, and eliminate them from consideration by the jury as alternative suspects.
 - 5.8 The same general principles applicable to DNA evidence hold true if the suspect is developed from forensic evidence other than DNA. If the victim is deceased or otherwise unavailable, interviews with any relevant friends or family members of the victim should be conducted to help determine the contextual significance of any evidentiary associations.
 - 5.9 After a suspect has been developed from a cold hit, other evidentiary association, or additional investigative efforts, the prosecuting attorney with jurisdiction over the case should be contacted for purposes of legal consultation and to help determine a case-specific investigative strategy.

- 5.10 Investigators should obtain and review all available biographical, legal, work, school, and social history on the suspect, as well as any other relevant records and documents. These documents may include, but are not limited to: prior prosecution case files, prior addresses, deeds, leases, prison and jail records, probation and parole records, utilities records, bank records, vehicle records, and past police reports.
- 5.11 From these documents and witness interviews, investigators should create a timeline of the suspect's life, movements, routines, associations, and relationships at the time of the offenses under investigation. This timeline can be effectively used both during the suspect's police interview/interrogation and at a subsequent trial as evidence on issues such as motive, intent, and opportunity to commit the charged offenses.
- 5.12 If the suspect's residence, workplace, or school at the time of the offense can be located, the distance between one or more of these locations and the victim's residence, workplace, school, or the scene of the crime should be determined and documented in a police report. This helps to establish the suspect's access to the victim at the relevant time, and an opportunity to have committed the crime.
- 5.13 Investigators should identify and interview all associates and family members of the suspect who may have information relevant to the investigation.
- 5.14 Investigators should obtain all prior police booking photographs of the suspect taken contemporaneously with the offenses under investigation for reference purposes and potential use during interviews and interrogations.
- 5.15 Investigators should discuss with the prosecutor which interview/interrogation strategies and styles may be most beneficial to the case under investigation. The chosen approach will depend upon the unique set of facts in each case.
- 5.16 Arrest versus request: In some cold cases, it may be most beneficial to first seek the suspect's consent to voluntarily accompany case detectives to the station before resort is made to a formal arrest. This is especially true when an interview, rather than an interrogation, is contemplated. Placing the suspect at ease may facilitate and promote maximal sharing of useful information. The suspect can always be arrested, if warranted, after the interview has concluded.
- 5.17 In cases involving a suspect incarcerated at a correctional facility, investigators should coordinate with corrections officials to ensure that the suspect is not informed in advance of the impending visit and interview by investigators; that adequate private facilities are available for the interview that are equipped with, or can accommodate, electronic recording devices; and that if the suspect will be arrested and transported back to the investigating agency's jurisdiction upon completion of the interview, prison officials do not inform the suspect of these facts ahead of time. In sum, strategic investigative secrecy should be maintained to protect the integrity of the investigation.
- 5.18 Photographs of the victim at the time of the offense, photographs of the suspect, and crime scene photographs should all be assembled for strategic use by investigators before the suspect's interview/interrogation.⁹
- 5.19 Investigators should interview/interrogate the suspect and digitally record the event. Video interviews are extremely helpful as courtroom tools for real-time impeachment if the suspect's defense changes from its pretrial iteration to its final trial version.

⁹ One very useful investigative tactic in cold hit DNA cases is to present the suspect with photos of the victim and the crime scene and obtain the suspect's denials that he/she has ever seen the victim before, has ever had a previous relationship with him/her or had consensual contact with him/her, or has ever been at the crime scene with him/her. The suspect should then be asked to document that denial on the back of the photograph and sign his/her name to that assertion. If the suspect's defense changes at trial from denial or alibi to consensual contact, then the video-recorded interview, the documented assertion of no contact, and the suspect's attestation with his/her signature can all be effectively used to impeach his/her credibility, in real time, before the jury.

- 5.20 Investigators should immediately locate and interview any individuals named by the suspect as potential witnesses to corroborate the suspect's version of events.
- 5.21 Immediately interviewing individuals named by the suspect (before the suspect has a chance to speak to them) maintains the independence of their statement from any influence of the suspect or the media and helps protect the integrity of the investigation.
- 5.22 The service of any search warrants, consent forms, or subpoenas on the suspect for purposes of collecting biological reference samples should not be executed until after the interview/interrogation is completed. To do so before may unwittingly tip the investigator's hand, causing the suspect to prematurely question why a sample is needed and to withhold or alter information in a way that would adversely affect the integrity of the investigation. It may also cause the suspect to request an attorney or refrain from answering questions.
- 5.23 The suspect's friends, family, and associates should be approached and interviewed contemporaneously with the suspect's interview/interrogation so that they do not have the opportunity to confer with the suspect before being asked to provide investigators with case-related information.
 - 5.23.1 Since alibi defenses are common in cold cases, it is critical that investigators not provide the suspect's friends and family with the exact date, time, and location of the offense(s). Disclosing this case-sensitive information may allow these individuals to provide the suspect with a false alibi.
 - 5.23.2 Witnesses should be asked if they can account for the suspect's whereabouts on any particular dates and times during period at issue, such as the month and year during which the offense(s) occurred.
- 5.24 After the suspect has been arrested and criminal charges are imminent, investigators and/or the prosecutor, in conjunction with a victim advocate, should contact the victim or the victim's family members to notify them of impending charges. Trust between victims, family members, prosecutors, and investigators is enhanced when information about the victim's case is shared through personal or telephonic contact, rather than being learned through media reports.
- 5.25 As a general rule, case-related information should not be released by investigators to the media, either before or after charges are filed, until all potential witnesses are located and interviewed. If necessary, the prosecutor can file a temporary motion to seal the filing of charges from public access until all witnesses are located and interviewed.
- 5.26 Case-specific information broadcast by the media and learned by witnesses before they have been interviewed by investigators has the potential to bias or shape the witnesses' independent recollection of dates, times, locations, and events. It also permits unscrupulous or untruthful witnesses to provide a suspect with a false alibi based on information not acquired from first-hand experience but rather learned from media sources.
- 5.27 Investigators and prosecutors should determine if any additional supplemental evidence (other than the cold hit or other evidence that restarted the investigation) is available for testing. If additional, potentially probative evidence is available, prosecutors and investigators should request that it be analyzed to provide additional corroborative evidence for the prosecution of the case. These decisions should be made during interdisciplinary meetings with investigative partners.
- 5.28 Investigators must ensure that lessons learned during the course of each cold case investigation are disseminated to all investigators and interdisciplinary partners involved in cold case review and investigation. This information can be conveniently shared in after-action case review

meetings. The lessons learned from cold case reviews, investigations, and prosecutions should form the basis for interdisciplinary cold case protocol modifications and trainings so that mistakes are not repeated and investigative techniques that worked well can be continued, enhanced, and fully disseminated to all partner agencies.

6.0 CASE CLOSURE

Cold case investigations may be closed for a number of reasons. These include:

- 6.1 Clearance by arrest, charge, or issuance of a warrant.
- 6.2 Exceptional clearance. Reasons for exceptional clearance include the suspect's death; the victim's refusal to cooperate; the victim's death; cases in which charges against a juvenile offender are not pursued in the interests of justice; and circumstances (such as a statute of limitations) beyond the control of law enforcement that prevent an arrest.
- 6.3 The report of a crime is unfounded. Examples include cases determined to be suicide, accident, noncriminal homicide, or the false report of a crime.
- 6.4 Cases that are inactivated but not cleared. In these cases, the investigation is essentially dormant, but the case has not been formally closed because a suspect has not been developed.

7.0 COLD CASE INVESTIGATION FOR NONPROSECUTION PURPOSES

There are reasons that cold case investigators may wish to pursue a case for purposes other than prosecution. These reasons include activities designed to:

- 7.1 Identify violent offenders for public safety purposes (even in those cases where an applicable statute of limitations may have expired).
- 7.2 Provide information to a correctional institution at which a cold case suspect is incarcerated (e.g., in DNA hit cases) to guide institutional classification and security designations, or to change parole release dates based on investigative information that connects the inmate with other crimes.
- 7.3 Provide probation and parole officers with additional intelligence about a subject under their supervision. For example, informing a probation officer who currently supervises a probationer convicted of a minor offense that the probationer has been identified through DNA evidence as the suspect in the sexual assault of a young child may impact the officer's future supervision of the suspect (e.g., prohibiting him from continued employment as a school bus driver).
- 7.4 Identify candidates for sexually violent offender status in a state or initiate federal civil proceedings when criminal prosecution is no longer possible.
- 7.5 Use the cold case under investigation as a link to a different case that will be prosecuted.
- 7.6 Provide the cold case victim or victim survivors with information about the identity and current status of the perpetrator (e.g., deceased, incarcerated for life) to help alleviate lingering concerns about personal safety, promote closure, and provide case-related answers to questions the victim may still have.
- 7.7 Refer the case to a different governmental agency (e.g., referral to the federal government for consideration of potential charges not available at the state level, referral to state-level agency responsible for sexual violent predator civil commitment prosecutions).

APPENDIX B: Investigation Checklist Template

UNIVERSITY OF TEXAS SYSTEM POLICE COLD CASE QUESTIONNAIRE

Was this case classified as a homicide or sexual assault per penal code definition at the time of incident?		
If not, how was this case classified?		
If a homicide, was the victim's body located?		
If a sexual assault, was a rape kit collected?		
Were there witnesses to the homicide/sexual assault?		
Are the witnesses still available?		
Is the victim of the sexual assault available and willing to testify?		
Is there evidence related to the homicide/sexual assault still available?		
Was a crime laboratory analysis performed?		
If "Yes," were any DNA results obtained?		
Was this case presented to the County Attorney's Office for issuing?		
If "Yes," what was their opinion?		
Was all the evidence related to this case reviewed?		
By which investigator?		
By which crime lab DNA analyst?		
Is the evidence viable for current scientific examination standards?		
By which DNA analyst?		
Is the evidence viable for current prosecution standards?		
By which investigator or prosecutor?		
After round table review, is this a workable "cold" case?		
Assigned Investigator		Date
DNA Analyst Date		Prosecutor (if applicable) Date

Note: This sample Cold Case Questionnaire can be found on the University of Texas System Police website at <https://www.utsystem.edu/offices/police/forms>.

APPENDIX C: Sample Contents of an Investigative Case File

No two cases are the same; no two case files will have the same content. Below is a list of items that should be considered to be included in the investigative case file. Note that some agencies have traditionally referred to the investigative case file as the “murder book.” This list is modified from the 2018 *Los Angeles Police Department Murder Book*.¹

- Chronological Record
- Crime Scene Log
- Police Reports
- Death Report
- Property and Evidence Reports
- Crime Lab Reports
- DNA
- Latent Prints
- Chain of Custody Records
- Vehicle Reports
- Arrest Reports
- Related Crime Reports
- Supplemental/Follow-Up Reports
- Victim Information
 - Statements
 - Photographs
 - Background Information
 - Probation/Parole Status
 - Rap Sheet
- Suspect Information
 - Statements
 - Arrest Warrant
- Photographs
- Probation/Parole Status
- Rap Sheet
- Photo Line-Ups
- Witness List
 - Statements
- Officer at Scene Reports/Notes
- Crime Scene Notes/Diagrams
- Crime Scene Photographs
- Ambulance/Medical Records
- Medical Examiner’s Report
- Communications
 - Teletypes
 - Press Releases
 - Police Bulletins
 - Newspaper Clippings
- Search Warrants
 - Cell Phone Records
- Miscellaneous Notes
- Miscellaneous Computer Runs
- Video/CCTV
- Eliminated Suspects

¹ Los Angeles (California) Police Department, *The Los Angeles Police Department Murder Book*.

APPENDIX D: Memorandums of Understanding (MOUs)

Samples of MOU templates with guidance can be found online:

- Office on Violence Against Women
<https://www.justice.gov/sites/default/files/ovw/legacy/2008/10/21/sample-mou.pdf>
- Oregon Department of Justice
http://www.doj.state.or.us/wp-content/uploads/2017/08/mou_sample_guidelines.pdf

Examples of completed MOUs can be found on the U.S. Department of Justice's Justice Information Sharing website: <https://it.ojp.gov/implementation/ppm/collaboration>.

The following MOU was adapted from an online sample MOU published by the Oregon Department of Justice.¹

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between:

A. Purpose

B. Roles and Responsibilities

_____ agrees to:

_____ agrees to:

C. Reporting Requirements

¹ Oregon Department of Justice, *Guidelines for a Memorandum of Understanding*.

D. Time Frame

This MOU will commence on _____
and will dissolve upon _____.

E. Confidentiality

In order to ensure the safety of clients, all parties to the MOU agree to adhere to the confidentiality expectations as outlined in the agreement.

The designated lead agency accepts full responsibility for the performance of the collaborative organizations/agencies.

This MOU is the complete agreement between _____ and _____ and may be amended only by written agreement signed by each of the parties involved.

Authorized Official:

Signature Printed Name and Title

Address:

Telephone(s): _____

Email Address: _____

Authorized Official:

Signature Printed Name and Title

Address:

Telephone(s): _____

Email Address: _____



APPENDIX E: Nondisclosure Agreement (NDA)

Below is an example of a nondisclosure agreement (NDA) that was adapted from the Portland (Oregon) Police Bureau's NDA.¹

NONDISCLOSURE AGREEMENT

I understand that:

1. As a result of my association with the AGENCY and my association with AGENCY personnel, files, and documents, I may be the recipient of information which, in itself or by implication, is confidential or sensitive. These confidentiality provisions include information contained in all law enforcement data systems, manual or automated, and accessed by the AGENCY.
2. I will be responsible for not disclosing such information by any means except in accordance with the AGENCY regulations. I am responsible for the safekeeping of such information, documents, and material in the facilities and in the manner approved by the AGENCY and for the handling of such information, material, and documents so as to prevent their disclosure to unauthorized persons.
3. I have a personal and individual responsibility for the protection of all such information, documents, and material in my possession, no matter how acquired.
4. I am not to disclose to anyone, after separating my association with the AGENCY, any confidential or sensitive information, documents, or material of any kind obtained by me as a result of my association with the AGENCY without the authorization of the AGENCY HEAD.
5. I have not been convicted of a felony, nor have I or will I be involved in serious criminal activity during my association with the AGENCY. I will not associate with persons involved in criminal activity during my period of association with the AGENCY.
6. If a breach of any provision of this agreement occurs, it may result in loss of my association with the AGENCY, access to AGENCY facilities, documents, and records.

I am aware that the signing of the Nondisclosure Agreement is a condition of my association with the AGENCY as required by the AGENCY REGULATIONS/GENERAL ORDERS.

Printed Name

Signature

Date: _____

Personnel Commander

Date

¹ Portland (Oregon) Police Department, *Non-Disclosure Agreement*.

APPENDIX F: Sample Application for Case Review

This sample is adapted from the Colorado Bureau of Investigation's Cold Case Review Team Application for Case Review.¹

Application for Case Review

Agency Name:	
Agency Contact:	
Agency Phone:	
Agency Case Number:	
Type of Crime:	
Date of Crime:	
Victim's Name:	

Agency Reports:

Are all police reports available?	Y	N
Investigating Agency	Y	N
Other Agency Reports	Y	N
Interviews	Y	N
Are all case investigator/detective notes accounted for?	Y	N
Does a complete index of all names associated with the case exist?	Y	N
Are all current and available leads exhausted?	Y	N
Are all laboratory reports available?	Y	N
Is a crime scene reconstruction available?	Y	N
Are crime scene photographs available?	Y	N
Are additional photographs available from the crime lab?	Y	N
Is a crime scene video available?	Y	N
Is a crime scene sketch/diagram available?	Y	N
Is a crime scene description available?	Y	N

¹ Colorado Bureau of Investigation, *Colorado Bureau of Investigation Cold Case Review Team Application for Case Review*.

Victimology (If multiple victims, please complete for each victim):

Name	
Photograph from the time of the offense	
Aliases	
Nicknames	
Address	
Social Security Number	
Date of birth	
State Identification Number (SID)	
FBI number	
Gender	
Race	
Age	
Physical age	
Height	
Weight	
Hair color	
Hair length	
Eye color	
Facial hair	
Dental characteristics	
Description of clothing, jewelry, glasses	
Scars, marks, and tattoos	
Location	
Outstanding features	
Occupation	
Employer	
Lifestyle	
Did the lifestyle contribute to the crime?	
Member of associated group, organization, or gang	
Marital status	
Living arrangements	
Was the victim's property taken?	
Was stolen property entered into NCIC?	
Involvement in other crimes	
If so, are reports available?	
Is this case suspected to be part of a series of homicides or sexual assaults?	

ViCAP:

Was a ViCAP entry made?	
Was a ViCAP report obtained?	
Is the report available?	
Is any investigation currently in progress?	
Is any investigation currently in progress by any other agency?	
Is this case suspected to be part of a series of homicides?	
Copies of all property receipts	

Suspect/Person of Interest:

Is there a suspect/person of interest?	
Photograph from the time of the homicide	
Suspect background	
Current location of suspect known	
DNA known sample obtained	
DNA known sample analyzed	
Lifestyle	
CCIC Work-up QH/DL/PHOTO	
Suspect interview conducted	
Audio recording	
Video recording	

Complete Timelines for:

Crime scene	
Victim	
Suspect, if known	
Completed case	

Medical Examiner/Coroner Information:

Are all autopsy photographs available? (agency, pathologist, coroner's office)	
Is the autopsy report available?	
Are all coroner's office reports and toxicology reports available?	
Are any reports by anyone else who examined the case available?	
If reports are not available, please explain:	

Sexual Component to the Crime:

Indication of sexual activity or attempted sexual activity with the victim	
Type of sexual activity or attempt	
Sequence of sexual activity	
Foreign object insertion	
Where?	
Type of object?	
Was the victim sexually assaulted?	
Semen located?	
Where?	
Did the offender possess any sex-related paraphernalia/devices?	
What type?	
Did the offender possess sex-related collections?	
What type?	
The offender's sexual practices and preferences	
Did the offender experience sexual dysfunction?	
What type?	
Level of force used by the offender	
Offender verbal activity	
What was said?	
Did it appear the offender was operating from a ritual/mental script or fantasy?	
Did the offender display any obvious fetishes?	
Did the offender use any special props?	
Who disrobed whom?	
How did the offender/victim contact end?	
Was the victim sexually mutilated?	

Laboratory Information:

Is there physical evidence?	
Has the physical evidence been inventoried recently, and is it still available?	
Has the evidence been examined by the current detective?	
Has all physical evidence been located?	

Prints

Were fingerprints recovered?	Victim:	Suspect:	Other(s):

Where were the fingerprints recovered?

Have fingerprints been retained in the fingerprint databases they were submitted to?		Date	
If not, are fingerprints periodically resubmitted/rerun?		Date	
Into which databases have the fingerprint records been entered?		Date	
Which local, state, regional, and/or federal databases were used to search fingerprint records?		Date	

Biological Evidence

DNA	
Known	
Unknown	
Blood	
Spermatozoa	
Saliva	
CODIS	Date
Other	
What type of DNA testing was performed?	

Has a DNA identification been made?			
Has DNA analysis been completed?			
Are results of the DNA analysis available?			
DNA profile obtained			
Trace Evidence			
Trace evidence			
Fiber, glass, paint, other _____			
Analyzed		Date	
Results			
Bite Marks			
Bite marks			
Examined by a forensic odontologist		Date	
Results			
Other Pattern Injuries			
Other pattern injuries			
Examined by a forensic odontologist		Date	
Results			
Tire Impressions			
Are there tire impressions?			
Evaluated		Date	
Results			
Tool Marks			
Is there toolmark evidence?			
Evaluated		Date	
Results			
Footwear/Print Impressions			
Are there footwear/print impressions?			
Evaluated		Date	
Results			

Handwriting Analysis			
Was handwriting analysis conducted?			
Evaluated		Date	
Results			

Investigation Information:

Are there witnesses?			
Are the witnesses showing deception?			
Are the witnesses living?			
Are key witnesses' locations known?			
Polygraph			
Polygraph administered			
Results		Date	

Weapon Information:

What kind of weapon was used?			
Was the weapon recovered?			
Firearms			
Firearm			
Type			
Evaluated		Date	
Results			
Were projectiles/casings recovered?			
Were the projectiles/casings entered into NIBIN?		Date	
Results			
NIBIN hits received			
Blunt Force Trauma			
Blunt force object			
What type of object?			

Recovered			
Analyzed		Date	
Edged Weapon (e.g., knife)			
Edged weapon			
Recovered			
Analyzed		Date	
Other Evidence			
Other evidence			
Type			
Recovered			
Analyzed		Date	
Other evidence			
Type			
Recovered			
Analyzed		Date	
Other evidence			
Type			
Recovered			
Analyzed		Date	

Complete Case Timeline (Include case personnel, and indicate when duties changed):

Are the detectives previously involved in this case available?	
Name(s)	
By phone?	
In person?	
Has the case ever been reviewed before?	
By whom?	
When?	
Findings	

Questions:

How much time is needed to present your case to the Review Team?	
--	--

Media Releases:

CrimeStoppers	
Copy of what was done	
Newspaper	
Copy of what was done	
Television	
Copy of what was done	
Radio	
Copy of what was done	
Internet	
Copy of what was done	

Potential Legal Concerns:

Chain of custody	
Miranda rights	
Search and seizure	

Attach a brief synopsis of the case in 1,000 words or less (or 6,000 characters or less):

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice
8660 Cherry Lane
Laurel, MD 20707-4651

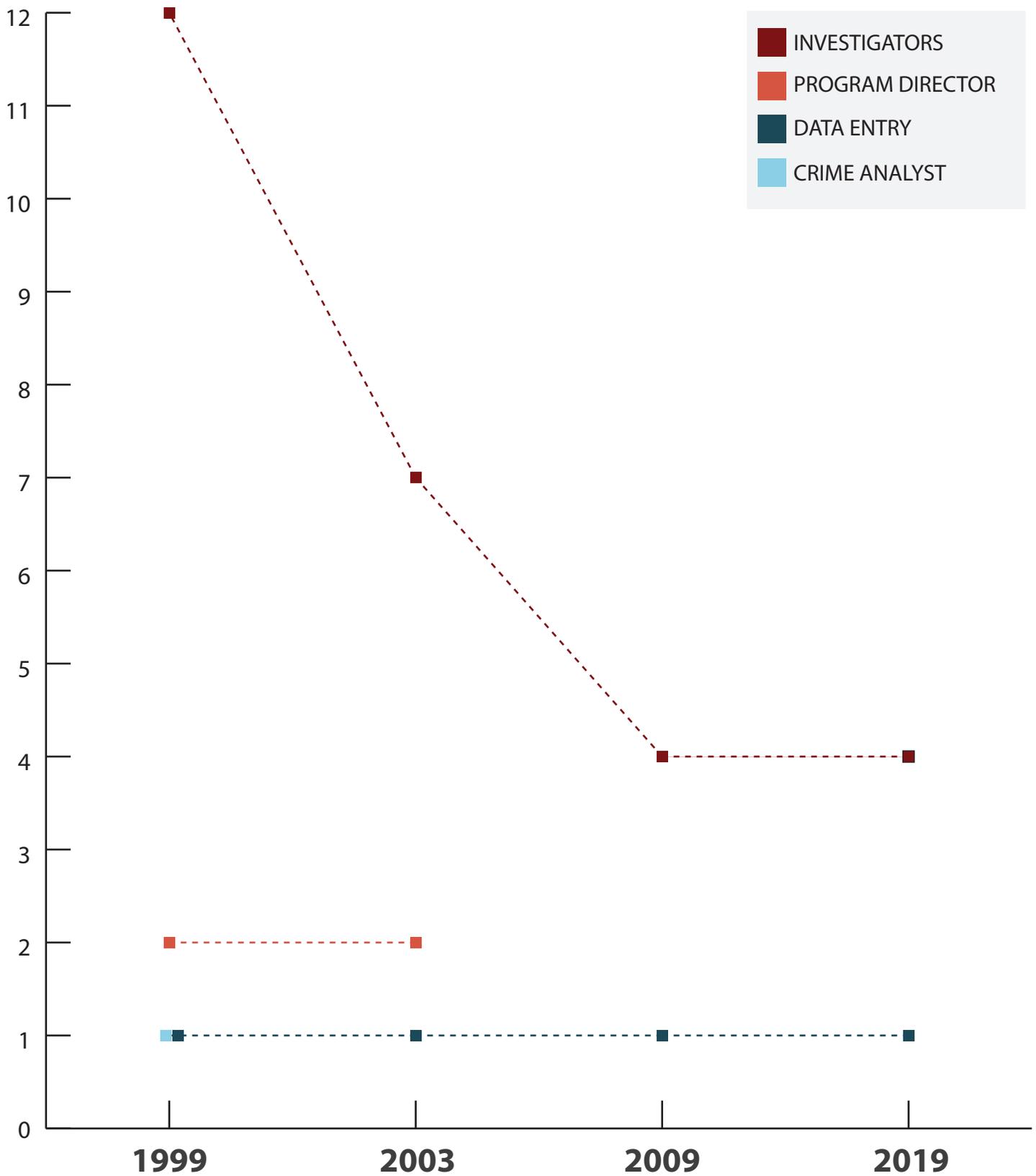


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2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 08 - Orca and Puget Sound Recovery
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
 (360) 586-2104
 edward.giger@atg.wa.gov

Agency Recommendation Summary

The Attorney General's Office (AGO) Counsel for Environmental Protection Division (CEP) requests two Assistant Attorneys General (AAG) and one Legal Assistant (LA) to address Orca whale recovery and Puget Sound water quality. These positions are essential to implement the recommendations of the Governor's Southern Resident Orca Task Force and continued litigation efforts regarding the U.S. Navy for Clean Water Act violations, and Monsanto for harm caused by polychlorinated biphenyl (PCBs). These positions would also support litigation related to increased vessel traffic due to tankers and naval vessels in Puget Sound.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001 - 1	\$490	\$503	\$503	\$503
Total Expenditures	\$490	\$503	\$503	\$503
Biennial Totals		\$993		\$1,006
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	3.5	3.5	3.5	3.5
Average Annual		3.5		3.5
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$319	\$328	\$328	\$328
Obj. B	\$107	\$110	\$110	\$110
Obj. E	\$56	\$58	\$58	\$58
Obj. G	\$3	\$3	\$3	\$3
Obj. J	\$5	\$4	\$4	\$4

Package Description

The AGO requests funding for two AAG and one LA in CEP to support Orca whale recovery and improve the water quality in Puget Sound.

The AGO has the opportunity to bring a range of litigation directly related to the environmental health of Puget Sound and the recovery of Southern Resident Orca whales. The AGO continues to pursue litigation against the U.S. Navy for Clean Water Act violations in Sinclair Inlet. This litigation will involve significant record review, expert analysis, and increased attorney time going forward. In addition, the AGO is pursuing environmental and Endangered Species Act claims stemming from expanded Navy training operations. Associated actions involve litigation addressing the Navy's continued unpermitted discharges of pollutants at Naval Station Kitsap. All of those matters will require close collaboration with Tribes and community or stakeholder organizations.

The AGO's lawsuit against Monsanto for harm caused by PCBs will move into a very intensive stage in 2020. The case is complex and requires the State to demonstrate the effect of Monsanto's PCBs on uplands, aquatic lands, shellfish, fish, and marine mammals, including orcas. PCBs have been in common use since the 1930s and are present everywhere in the environment. The State will require detailed, high-level legal work to preserve relevant records and produce documents in response to future discovery requests.

The AGO has pursued this litigation by contracting with outside counsel on a contingent fee basis. Consequently, the State does not have to advance the costs of litigation, and will only pay attorneys a percentage of the recovery if the case is successful. However, the AGO must coordinate the activities of 34 different state agencies that have records related to PCBs or Monsanto, and provide management of the team of outside attorneys and staff.

This work involves high-level work on discovery-related matters that will have significant implications for AGO and state agencies, as well as rigorous oversight of outside counsel to ensure that the case is proceeding in a timely fashion and in a manner consistent with high legal standards. Since March 2017, the AGO has reassigned an AAG to work 100% on this litigation. However, this is an unsustainable stopgap measure. Additionally, this staffing model does not allow the AGO to devote the resources necessary to staff the case through trial and appeals.

The unique nature of this case and the way it affects many state agencies has made AGO involvement critical to the success of the case and therefore the potential financial recovery for the State. In addition, the extensive records preservation and discovery obligations associated with the Monsanto litigation require the State to take special care communicating and coordinating with agencies and the many records custodians therein.

Other potential lawsuits to protect the health of Puget Sound will also require additional staff. For example, the Navy's publication of its 2015 Supplemental Northwest Training and Testing program for 2020 and beyond has identified significant increases in vessel traffic that would strongly affect Orca whale habitat. Consequently, we anticipate litigation will be necessary to protect Washington's rights and to ensure the Navy's compliance with the National Environmental Policy Act.

Both of these matters will be staffed appropriately with additional attorneys to focus on and drive the litigation. Furthermore, with two AAG positions the AGO would be capable of additional litigation related to vessel traffic, which is expected to increase due to oil tankers and naval vessels in the Salish Sea. These matters are critical for effective progress on the three recommendations of the Governor's Southern Resident Orca Task Force.

These additional resources would also support further lawsuits aimed at protecting Washingtonians and our environment. For example, in 2019, after a two-year investigation, the AGO successfully resolved a claim against Amazon.com for the sale of children's school supplies containing elevated concentrations of toxic lead and cadmium. With additional attorneys, the AGO would accelerate and expand similar cases across the state, protecting consumers and children.

Assumptions and Calculations

Expansion or alteration of a current program or service:

There is no funding in the AGO's base budget for these positions.

Since March 2017, the AGO has reassigned an AAG to work 100% on this litigation. However, this is an unsustainable stopgap measure as the AGO has reallocated resources away from other work. Additionally, this staffing model does not allow the AGO to devote the resources necessary to staff the case through trial and appeals.

Detailed assumptions and calculations:

The two AAG would be assigned to ongoing litigation against corporations or government entities that are in violation of federal or state environmental law. Those cases could include cases against the U.S. Navy, the U.S. Coast Guard, the National Marine Fisheries Service, and other Federal entities. They could also include cases against corporations that own or operate vessels or other facilities that harm Puget Sound waters and other sensitive Washington ecosystems. The AGO expects these cases to be document-intensive and seriously contested by their defendants. Consequently, case records management requires support from a LA.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE	2.0	2.0	2.0	2.0	Y
Object A & B	289	298	298	298	
LA FTE	1.0	1.0	1.0	1.0	Y
Object A & B	78	81	81	81	
MA5 FTE	0.5	0.5	0.5	0.5	Y
Object A & B	58	60	60	60	
TOTAL FTE	3.5	3.5	3.5	3.5	
TOTAL A & B	425	439	439	439	

Strategic and Performance Outcomes

Strategic framework:

Results Washington identifies as an Outcome Measure, “Sustainable Energy and Clean Environment,” with the goal of “Keeping Puget Sound Ecosystem Healthy.” This Results Washington priority identifies Toxic Chemical Pollution as a critical factor influencing Puget Sound Ecosystem Health.

These resources would directly support the Governor’s 2019-21 actions, which takes steps to save the Southern Resident Orcas and Chinook salmon. These resources will also benefit the region’s entire ecosystem by directly addressing the effects of toxic chemical pollution on Puget Sound – specifically, Monsanto’s PCBs, copper and zinc from the Navy’s ship-scraping activities, and other harmful pollutants. Beyond the Department of Ecology’s civil penalty capacity, there is currently no other state program designed to hold Monsanto, the Navy, and other violators accountable for these actions.

The **AGO Strategic Plan** identifies a goal entitled “2-2-1 Protect the environment and public health.”

Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
A 001 Admin	001-1	490,000	503,000	503,000	503,000
TOTAL		490,000	503,000	503,000	503,000

AGO Performance Measures:

Performance Measure 2533: Total AG Formal and Informal Opinions Issued
Target: 45 AG Opinions (formal or informal) per biennium, reported quarterly.
Key Divisions: HQ-Admin Divisions

Indeterminate incremental adjustments for this Performance Measure.

Performance outcomes:

Performance Measure 2533: Total AG Formal and Informal Opinions Issued
Target: 45 AG Opinions (formal or informal) per biennium, reported quarterly.
Key Divisions: HQ-Admin Divisions

Performance Measure	Fund	FY2020	FY2021	FY2022	FY2023
2533: Total AG Formal and Informal Opinions Issued	001-1				
TOTAL		-	-	-	-

Indeterminate incremental adjustments for this Performance Measure.

Other Collateral Connections

Intergovernmental:

The litigation supported by these funds would be of interest to a number of Tribes, which support Puget Sound and Orca whale recovery. To the extent that a successful verdict or settlement in *Washington v. Monsanto* may provide support for municipal storm water system improvements, county or city governments may be interested in it as well.

Stakeholder response:

There is no known opposition to this request.

Legal or administrative mandates:

This budget request supports the following Governor’s Southern Resident Orca Task Force goals:

- Goal 3 – “Reduce the exposure of Southern Resident orcas and their prey to contaminants. Prevent further use and release of toxics that could harm orcas and their prey. Recommendation 30: Identify, prioritize and take action on chemicals that impact orcas and their prey.
- Goal 4 – “Ensure funding, information and accountability mechanisms are in place to support effective implementation.”
 - Provide sustainable funding
 - Recommendation 34: Provide sustainable funding for implementation of all recommendations.

Because PCBs are a significant threat to Orcas and Chinook salmon, these goals and recommendations would be served by the *Washington v. Monsanto* litigation that would hold the contaminants producer responsible for their harm, and would provide funding to implement solutions.

In addition, this proposal would serve the Task Force report’s goals and recommendations by offering a wider range of lawsuits aimed at contaminants in Puget Sound, including the zinc and copper that gave rise to *Washington v. Navy*, a case dealing with the scraping of an aircraft carrier hull in Sinclair Inlet.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 09 - Eastern State Hospital Legal Svcs
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
 (360) 586-2104
 edward.giger@atg.wa.gov

Agency Recommendation Summary

There has been a dramatic 139% increase in felony commitment petitions at Eastern State Hospital that has led to significant growth in the litigation workload. In addition to these petitions, the AGO Spokane Division handles the regular civil commitment dockets and show cause hearings due to lack of bed capacity. The statutory and court-ordered deadlines create very short time-frames in which to prepare for felony commitment trials and other hearings. Adding paralegal support, which does not exist now, is crucial to effective preparation and legal representation in civil commitment hearings and enables an attorney to efficiently handle more cases.

Fiscal Summary

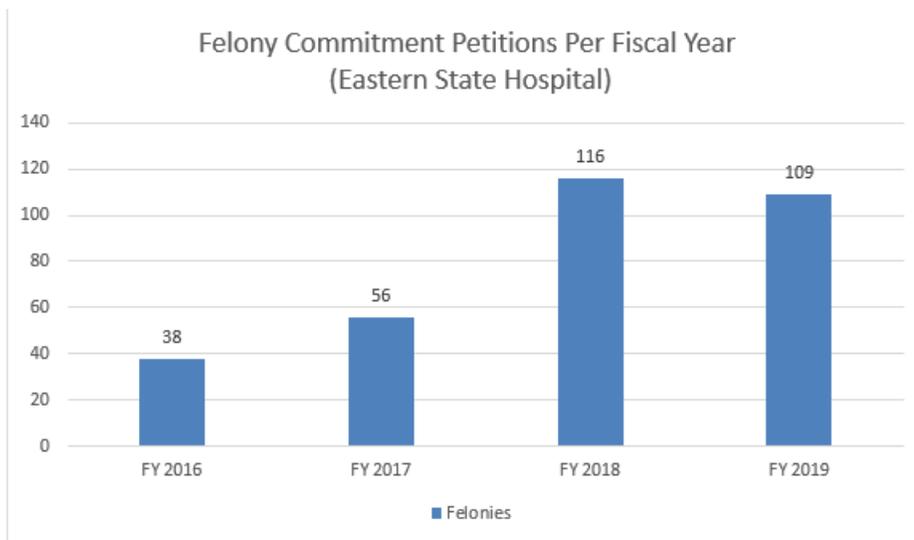
Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$113	\$115	\$115	\$115
Total Expenditures	\$113	\$115	\$115	\$115
Biennial Totals		\$228		\$230
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	1.0	1.0	1.0	1.0
Average Annual		1.0		1.0
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$67	\$69	\$69	\$69
Obj. B	\$26	\$26	\$26	\$26
Obj. E	\$17	\$17	\$17	\$17
Obj. G	\$1	\$1	\$1	\$1
Obj. J	\$2	\$2	\$2	\$2

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$113	\$115	\$115	\$115
Total	\$113	\$115	\$115	\$115
Biennial Totals		\$228		\$230

Package Description

This is a request for 1.0 Paralegal 2 FTE to be assigned to the AGO's Spokane (SPO) Division to provide Paralegal (PL) support for mental health related legal work for Eastern State Hospital (ESH). The SPO Division provides legal advice and litigation services to ESH, including representing the state in civil commitment hearings, felony commitment trials, and show cause hearings. The legal services workload has increased due in large part to the increasing number of individuals whose felony charges have been dismissed and are subsequently referred to ESH for evaluation for civil commitment. **The total number of felony commitment petitions in the FY15-FY17 biennium was 94. In the FY17-FY19 biennium the number increased to 225, an increase of 131 petitions or 139%.**



In addition to the regular civil commitment dockets and show cause hearings due to lack of bed capacity, the dramatic increase in felony commitment petitions has led to significant growth in the litigation workload at ESH. Felony commitments are civil commitment cases resulting from criminal defendants whose felony charges have been dismissed due to incompetency to stand trial, and who are then referred to the state hospitals for civil commitment proceedings. These specialized civil commitment proceedings require the state to prove the acts constituting a felony, minus the element of intent, which means the state must be prepared to put on a “criminal” trial in the context of a civil commitment hearing.

The AGO Spokane Division currently does not have paralegal support for ESH litigation work. Paralegals play an important role in preparing cases for hearings, including contacting witnesses, gathering evidence from law enforcement agencies and prosecutors, drafting declarations, and organizing exhibits. Due to statutory and court-ordered deadlines, there are very short time-frames in which to prepare for felony commitment trials, regular civil commitment hearings, and show cause hearings. Paralegal support allows the assigned attorney to

provide more effective legal representation because the attorney is not acting as both the paralegal and counsel for the state. Having paralegal support enables an attorney to efficiently handle more cases and ensures that attorneys are not doing work that can be done more effectively by a paralegal.

Assumptions and Calculations

Expansion or alteration of a current program or service:

The litigation workload for eastern State Hospital is a subcomponent of the legal services provided to DSHS, and is not separately identified within the overall Central Service Model allocation. The current allocation is insufficient to absorb the addition of 1.0 PL2 FTE to accommodate the workload increase and need for appropriate paralegal support of a litigation caseload.

Detailed assumptions and calculations:

This request should permanently fund 1.0 PL 2 FTE added to the SHS Section of the AGO's Spokane Division. This will provide paralegal support, where none currently exists, to meet litigation workload needs of Eastern State Hospital.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
PL2 FTE	1.0	1.0	1.0	1.0	Y
Object A & B	46,500	47,500	47,500	47,500	
TOTAL FTE	1.0	1.0	1.0	1.0	
TOTAL A & B	46,500	47,500	47,500	47,500	

Strategic and Performance Outcomes

Strategic framework:

Relationship to Results Washington:

1. Goal 4. Healthy and Safe Communities

1. Safe People – Help keep people safe in their home, on their jobs and in their communities.

Relationship to AGO Strategic Plan:

Priority – Serve the State

Goal 1 – Deliver high quality, timely, and efficient legal services.

Goal 3 – Proactively engage in risk management efforts to reduce the state's liability and improve outcomes for the public.

Relationship to AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405	113,000	115,000	115,000	115,000
TOTAL		113,000	115,000	115,000	115,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental changes are indeterminate.

Other Collateral Connections

Intergovernmental:

DSHS has statutory and constitutional obligations to provide mental health services and due process to individuals who are civilly committed or under the care of the state. The AGO provides essential legal services to DSHS in the form of advice and representation in court in order for DSHS to fulfill its obligations. The AGO is integral to the success of DSHS meeting its statutory and court ordered obligations to conduct timely and proper hearings. Funding for a paralegal to support this important litigation workload will significantly contribute to having an adequate number of trained staff to meet the mounting demand for legal services related to hearings at Eastern State Hospital.

Client	Fund	FY2020	FY2021	FY2022	FY2023
DSHS	405	113,000	115,000	115,000	115,000
TOTAL		113,000	115,000	115,000	115,000

Stakeholder response:

Legal work supports DSHS services to the mentally ill and criminally insane residents of Washington State. This vulnerable population is also carefully monitored by advocacy groups such as Disability Rights Washington and the ACLU.

Legal or administrative mandates:

DSHS' obligations with respect to civil commitments and services for the mentally ill and criminally insane have been the subject of multiple court cases, *e.g., Trueblood & DRW v DSHS*. Statutes and court orders mandate hearings involving this vulnerable population, which require that DSHS have effective legal representation.

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 10 - L&I Employment Standards
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
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Agency Recommendation Summary

The Office of the Attorney General (AGO) Labor and Industries Division (LNI) division requests funding for increased legal services to the Department of Labor and Industries (L&I). Recent litigation brought before the U.S. Supreme Court resulted in workers losing access to certain private remedies against employers for labor violations. Legislation passed in the 2019 session increased L&I's powers and responsibilities in pursuing enforcement actions to protect worker rights. To maximize the effectiveness of L&I and AGO initiatives in this area, the LNI division will need additional personnel.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 405 - 1	\$23	\$626	\$869	\$869
Total Expenditures	\$23	\$626	\$869	\$869
Biennial Totals		\$649		\$1,738
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	0.2	4.7	6.4	6.4
Average Annual		2.5		6.4
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$15	\$399	\$556	\$556
Obj. B	\$5	\$139	\$192	\$192
Obj. E	\$3	\$78	\$107	\$107
Obj. G	\$0	\$5	\$7	\$7
Obj. J	\$0	\$5	\$7	\$7
Revenue	FY 2020	FY 2021	FY 2022	FY 2023

Revenue	FY 2020	FY 2021	FY 2022	FY 2023
405 - 0420	\$23	\$626	\$869	\$869
Total	\$23	\$626	\$869	\$869
Biennial Totals		\$649		\$1,738

Package Description

The AGO seeks permanent funding for 3.0 Assistant Attorneys General (AAG), 1.5 Legal Assistant 3 (LA 3), and 1.0 Paralegal 2 (PL 2) to do work on behalf of L&I.

Staffing levels for FY 2021 are anticipated to be 2.0 AAG, 1.0 LA, and 1.0 PL2 and will increase to levels described above.

In last year's decision package, L&I described their plan as developing a group of five investigating agents with a goal of conducting investigations, taking regulatory actions where warranted, and being prepared to litigate resulting challenges to those actions. L&I has asked the AGO to estimate the resources needed to both advise and pursue litigation on behalf of this new unit. Specific detail is included in Section 5.

An AGO LNI Senior Counsel researched this issue, then met and discussed this program with; L&I managers who would oversee this process; colleagues on the AGO LNI Employment Standards team; and the leader of a counterpart division at the Office of the Massachusetts Attorney General, which has done similar work.

In addition, **ESHB 1696** (wage and salary information) has added additional L&I responsibilities. The resource needs were calibrated during the fiscal note process and along with the work described below add an additional 0.1 AAG and 0.1 LA FTE to our previous request.

Assumptions and Calculations

Expansion or alteration of a current program or service:

This request supports a new program L&I is requesting in their FY 2020 Supplemental Budget Request. These programs did not exist in prior biennia.

Detailed assumptions and calculations:

For company-wide audits:

The employment standards company-wide unit at L&I would include one supervisor and four agents dedicated to company-wide investigations.

Each of the four agents would initiate 25 cases per year for a total of 100 cases per year.

These cases would be selected based on a yet to be determined list of factors such as specific issues of concern, number of employees affected, whether the company is still viable, whether L&I can assess personal liability, testing grey areas of the law, pursuing impact litigation, etc.

Some level of legal advice will be necessary during the investigations as issues arise. For example, an employer may claim preemption as a defense or argue a particular exemption applies. In these instances, L&I may request legal review and guidance.

The AGO anticipates that two-thirds or more of the cases will be resolved before coming to the AGO for litigation and recognizes that L&I will be selective in the cases it pursues. The reasons for the resolutions will vary (e.g., the company going out of business, not finding violations, settling cases, etc.)

The AGO's estimate does not include AGO resources necessary to institute collection efforts when the company does not pay. Unlike some other programs, there is no specific collection mechanism for collection of company-wide actions beyond those used for normal civil lawsuits. There may be additional costs required depending on how L&I chooses to pursue collection in these cases.

The cases that L&I refers to the AGO will have a varying degree of complexity (number of employees, a wide range of issues, etc.) but should be significantly developed before the cases are referred to us.

The cases that L&I refers to the AGO will represent more complicated cases because L&I will have tried to resolve them before referral. It is more likely that the referred cases will have legal issues that must be resolved in court; that the employers are intransigent despite evidence of violations; or that the case will require additional fact development. The average case will likely be labor-intensive at the AGO level as a result.

Of the 34 anticipated cases referred to the AGO, almost all of these will require the filing of civil lawsuits. Otherwise, they likely would have resolved at the L&I level if they were going to resolve amicably. Cases in litigation will require additional paralegal and legal assistant resources.

Some employers will appeal cases to appellate courts. An appellate case generally requires significant attorney time to brief and prepare for oral argument.

The AGO will need to conduct substantial discovery, including written discovery and depositions in litigation.

The cases will require motion practice including dispositive motions.

Travel will be required statewide depending on the location of the case.

The AGO may need to employ experts for some of the damage assessments.

The AGO will seek attorneys' fees and costs as entitled by law.

An unknown percentage of cases will proceed to trial, while others will be resolved through dispositive motions or settlements.

AAG time will include litigating the cases as well as case development, providing legal advice during some investigations, working on appeals, as well as additional time for the program advisor and management of this work.

For ESHB 1696:

Section 2 & 3 create new requirements in RCW 49.58—limiting requests for an applicant’s wage and salary information and requiring employers to provide salary information to applicants that will lead to violations of those provisions. Alleged violations will lead to complaints and new investigations.

The AGO assumes 120 new investigations beginning in 2019. L&I has a historical average of 14 percent of investigations proceeding to citation so 17 cases would proceed to citation.

Of that number, 20 percent are appealed, so approximately three cases would be sent to OAH and would require assignment to an AAG for representation. The historical average for cases of similar complexity is 0.1 FTE per 10 cases. The AGO would need 0.1 FTE for FY 2020 for client advice on implementation, rulemaking, and ongoing investigations. Beginning in FY 2021, the AGO will need 0.1 FTE for appeals and client advice: 30 percent of the 0.1 FTE time would be spent on appeals and 70 percent of the 0.1 FTE time would be spent on client advice to identify violations during investigations.

Workforce Assumptions:

FTE	FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG FTE	0.1	2.1	3.1	3.1	Y
Object A & B	14,000	299,000	442,000	442,000	
LA FTE	0.1	1.1	1.6	1.6	Y
Object A & B	4,000	81,000	120,000	120,000	
PL FTE		1.0	1.0	1.0	Y
Object A & B		96,000	96,000	96,000	
MA5 FTE	0.0	0.5	0.8	0.8	Y
Object A & B	2,000	62,000	90,000	90,000	
TOTAL FTE	0.2	4.7	6.5	6.5	
TOTAL A & B	20,000	538,000	748,000	748,000	

Strategic and Performance Outcomes

Strategic framework:

Results Washington:

Healthy & Safe Communities

Increasing the Economic Security of Washingtonians

Factors that influence Economic Security:

Living wage jobs – Higher wages allow individuals and families to better support themselves and their communities, as well as help reduce poverty, increase the purchasing power of workers, reduce housing instability, and reduce expenses for government programs. Employment support, training and education help people secure higher-paying jobs.

Increasing Access to Living Wage Jobs

This request advances Results Washington Healthy & Safe Communities because companywide audits and prevailing wage investigations are enforcement actions designed to protect wages. They do so in at least two ways: (1) providing remedies for specific workers whose employers have underpaid their wages under the law; and (2) providing a sentinel effect to the community that employers need to comply with Washington wage laws.

Wage & Salary Information (ESHB 1696) is designed specifically to mitigate the wage among workers in Washington, especially women. The Legislature has found that income disparities limit the ability of women to provide for their families, leading to higher rates of poverty among women and children. By investigating and taking enforcement action against employers who violate these provisions, the AGO and L&I will be furthering protections for specific workers and improving industry practices in general.

AGO Strategic Plan—**Priority 1--Serve the State**

Goal 1—Deliver high quality, timely, and efficient legal services

This request supports the AGO Strategic Plan by ensuring adequate funding to provide high-quality, timely, and efficient legal services to the Department of Labor & Industries in the both litigation of these cases and the advice necessary to promulgate new rules required by the new laws

Goal 1- Deliver high quality, timely, and efficient legal services

Objective 1-1-3 Promote cross-divisional consistency and collaboration

Goal 2 -Improve internal efficiency and effectiveness through the use of technology solutions and data.

Objective 1-2-3 - Share resources across the agency.

This request would enable to us to share FTE resources as well as services with other divisions, like the Regional Services Division, who also represent the Department in this work. The need for support for this program is likely to shift geographically over time and this would allow us to reallocate resources to flow to where the work is happening, which will reduce travel costs and increase subject matter expertise across divisions.

Priority 2 – Protect the People

Goal 1 Defend Civil Rights and Stand Up For Vulnerable Washingtonians

Objective-2-1-5 Protect Washington Workers

This request would improve cooperation and communication with state agencies tasked with investigation and enforcement of workplace violations and with external stakeholders. The AGO would be in a better position to advise the Department of Labor & Industries on several initiatives specifically designed to enhance or protect workers' rights. It would also increase the AGO's ability to provide effective representation in litigation when the Department seeks to enforce those rights on behalf of workers.

Objective 2-1-66 Assist and partner with client agencies to further their mission.

The work done in Employment Standards under this request directly assists the Department in achieving the results described above. Employment Standards is also a key program for coordinating actions between agencies and across divisions at the AGO. Their investigations often generate leads as to other potential violations of workers' rights for the AGO Worker Protection Workgroup and, by extension, other client agencies.

AGO Activity—

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0010 Legal Services to State Agencies	405	23,000	626,000	869,000	869,000
TOTAL		23,000	626,000	869,000	869,000

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0

Performance outcomes:

Incremental adjustments are indeterminate.

Other Collateral Connections

Intergovernmental:

L&I supports this funding package and intends to submit a parallel package. It is not expected that other government entities, including other Washington state agencies, will take a position on this package.

Client	Fund	FY2020	FY2021	FY2022	FY2023
L&I		23,000	626,000	869,000	869,000
TOTAL		23,000	626,000	869,000	869,000

Stakeholder response:

There is no known opposition to this request at this time.

Legal or administrative mandates:

N/A

Changes from current law:

N/A

State workforce impacts:

N/A

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No



2020 Supplemental Budget Decision Package

Agency: 100 - Office of Attorney General
Decision Package Code-Title: 14 - Discovery and Litigation Tools
Budget Session: 2020 Supp
Budget Level: Policy Level
Contact Info: Edd Giger
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Agency Recommendation Summary

The current electronic discovery (eDiscovery) software tools used by the Attorney General's Office (AGO) are insufficient for the size and complexity of many current and future cases. Legal divisions need tools that provide processing and review options in order to ensure maximum efficiency and to increase cost-effectiveness. A dedicated Assistant Attorney General (AAG) and Litigation Support Manager (LSM) are needed to serve as the AGO discovery lead for legal and discovery processing (non-technical) questions, to create and deliver eDiscovery risk management training for client agencies. These positions will also routinely review and update eDiscovery policies and best practices.

Fiscal Summary

Dollars in Thousands

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001 - 1	\$1,507	\$1,520	\$1,520	\$1,520
Total Expenditures	\$1,507	\$1,520	\$1,520	\$1,520
Biennial Totals		\$3,027		\$3,040
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	3.8	3.8	3.8	3.8
Average Annual		3.8		3.8
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. A	\$352	\$363	\$363	\$363
Obj. B	\$116	\$119	\$119	\$119
Obj. E	\$1,030	\$1,033	\$1,033	\$1,033
Obj. G	\$3	\$3	\$3	\$3
Obj. J	\$6	\$2	\$2	\$2

Package Description

As the largest law firm in the state responsible for representing the interests of client agencies, the AGO defends all cases and claims brought against the state agencies, boards, commissions, state officials and employees. To maximize the limited resources of both client agencies and the AGO, use of highly effective eDiscovery tools are needed to properly process the volumes of data from client agencies that may be responsive in litigation.

The AGO's current eDiscovery tools are insufficient for the size and complexity of many current cases. Recent trending indicates size and complexity will only increase for future cases. Litigation has become increasingly document intensive and most documents are now electronic (e-mail, etc.). AGO divisions with legal service funding need tools that are more user friendly, allow for quicker processing of eDiscovery, allow several reviewers to access data simultaneously to perform document reviews before a tight deadline and are available in the cloud. Additional functionality that the AGO seeks is de-duplication, native Excel sheet redaction, predictive coding, data visualization, document translation, audio transcription, and collaboration with entities outside our office.

A group of paralegals and attorneys experienced in eDiscovery conducted an agency-wide needs assessment and surveyed available software solutions. This group unanimously recommends a cloud-based software platform called Everlaw. Everlaw offers all the features detailed above and has easy-to-use features including easy uploading of raw data by any trained legal staff, built-in case analytics and de-duplication, along with vendor support and training during their supported hours. Since this is a cloud-based solution, new industry-standard features will continue to be added so the AGO can maintain a competitive edge with opposing law firms' technology tools and budgets.

Everlaw is an industry-standard tool and used by many state Attorneys' General Offices and large private large firms. Large multi-state cases have used Everlaw to successfully litigate cases. Cases with large amounts of complex documents, email, and Excel sheets. The National Association of Attorneys General endorses Everlaw.

We anticipate procurement of Everlaw through a master purchase contract managed by the Washington State Department of Enterprise Services.

A dedicated AAG and LSM are also needed to serve as the AGO discovery lead for legal and discovery processing (non-technical) questions, to create and deliver eDiscovery risk management training for client agencies and to routinely review and update eDiscovery policies and best practices in conjunction with the AGO Discovery Committee. The risk management training for client agencies will provide agencies the knowledge to provide discovery responses and documents in the format and completeness necessary for the modern requirements of eDiscovery. This training may reduce liability associated with incomplete, inaccurate or overly broad document collection. It may also prevent some documents from being reviewed/coded differently than similar documents in the productions. In addition, better review tools will help reduce the time to review the increasing amount of documents.

Due to the need to securely "meet and confer" remotely, required by state and federal court rules, with client agency staff and opposing counsel, all AGO staff, require secure conferencing tools. These secure conferencing tools will allow both verbal, video and desktop-sharing capabilities. Use of secure-verified conferencing tools

will allow real-time conferencing with AGO attorneys and staff, clients and experts, and will reduce the need to travel for in-person meetings. These tools will allow more efficient attorney-client and work-product communication while maintaining confidentiality.

An IT Litigation Technology Specialist (IT-LTS) FTE is needed to deliver the additional technical support for the two business positions above, assist in Everlaw system administration and administer the secure “meet and confer” conferencing service described above. A portion of this IT FTE will be serving as one of the subject matter experts in supporting the legal and discovery best practices in Everlaw and updating eDiscovery risk management best practices information for agencies training.

Assumptions and Calculations

Expansion or alteration of a current program or service:

No change or expansion of a current program or service. There will be some minor changes to internal IT processes, but no change to AGO programs or services.

Detailed assumptions and calculations:

The cost of Everlaw is calculated by the amount of data that is hosted by Everlaw on its site on a monthly basis. We used industry-standard analysis of our current data and surveyed the Legal Services Revolving Account (LSRA) divisions to determine we should start with 10 TB active data. We estimate this cost at \$860,000 annually.

Combined salary and benefit costs for the AAG, LA, IT-LTS and LSM is \$468,000 for FY2020 and \$482,000 for FY2021 for a biennial total of \$950,000. On-going costs would be \$964,000 per biennium.

For secure conferencing tools, Zoom is recommended based on industry-standard tools and secure communications. Assuming a license for approximately 600 attorneys and 300 paralegals and staff (although there are 1,450 staff) who will need a secure conferencing tool; the approximate cost will be \$116,100 per year.

Type	Qty	Cost	Total
User Zoom License	900	~\$99.00	\$89,100.00
User Audio Zoom License	900	~\$30.00	\$27,000.00
		Total	~\$116,100.00

Workforce Assumptions:

FTE		FY2020	FY2021	FY2022	FY2023	Ongoing ? Y / N
AAG	FTE	1.0	1.0	1.0	1.0	Y
	Object A & B	145,000	149,000	149,000	149,000	
LA	FTE	0.5	0.5	0.5	0.5	Y
	Object A & B	44,000	45,000	45,000	45,000	
MA5	FTE	0.3	0.3	0.3	0.3	Y
	Object A & B	29,000	30,000	30,000	30,000	
LSM	FTE	1.0	1.0	1.0	1.0	Y
	Object A & B	120,000	123,000	123,000	123,000	
IT Data Mgmt - Journey (IT LTS)	FTE	1.0	1.0	1.0	1.0	Y
	Object A & B	131,000	134,000	134,000	134,000	
TOTAL FTE		3.8	3.8	3.8	3.8	
TOTAL A & B		469,000	481,000	481,000	481,000	

Agency administration support FTEs are included in the tables using a Management Analyst 5 as a representative classification.

Strategic and Performance Outcomes

Strategic framework:

Results Washington: Efficient, Effective and Accountable Government

AGO Strategic Plan: 1-2-2 Adjust existing software and processes to improve effectiveness and efficiency.

Implement collaborative, cloud-based litigation software platforms such as Everlaw to support and scale to clients' expanding discovery needs. Explore options to upgrade and improve systems such as the current matter management system, CCTNs, scheduling requests, and Office 365.

AGO Activity:

Activity	Fund	FY2020	FY2021	FY2022	FY2023
0001 - Administration	001	1,507	1,520	1,520	1,520
TOTAL		1,507	1,520	1,520	1,520

Performance Measure Detail

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002534 - Direct Restitution Provided to Consumers through Litigation and Complaint Resolution	\$	0	0	0	0
000011 - Antitrust Restitution to the Citizens of the State	\$	0	0	0	0

Performance Measure	Unit	Incremental Change FY1	Incremental Change FY2	Incremental Change FY3	Incremental Change FY4
002877 - Antitrust Restitution to the Citizens of the State	#	0	0	0	0
000018 - Average Number of Days to Complete an Ethics Investigation	#	0	0	0	0
002531 - Consumer Utility Rate Savings	\$	0	0	0	0
002535 - Total Successful Commitments	#	0	0	0	0
002537 - Percentage of Tort Claims that Result in Zero Payout	%	0	0	0	0
002539 - Cases Open at End of Fiscal Year	#	0	0	0	0
002536 - Criminal Cases Closed	#	0	0	0	0
002538 - Recoveries to the Medicaid System	\$	0	0	0	0

Performance outcomes:

Incremental changes to these performance measures are indeterminate.

Other Collateral Connections

Intergovernmental:

No impacts to tribal, regional, county or city governments or any political subdivision of the state. No opposition is expected. No direct impact to other state agencies.

Stakeholder response:

There is no known opposition to this request at this time. No impact to non-governmental stakeholders.

Legal or administrative mandates:

N/A

Changes from current law:

This request is not in response to any changes in current law.

State workforce impacts:

There is no expected impacts to existing collective bargaining agreements, compensation or benefits.

State facilities impacts:

N/A

Puget Sound recovery:

N/A

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

Yes

2020 Suppl-COM-Electronic Discovery and Litigation Tools-IT Addendum.docx

2019-21 IT Decision Package Fiscal Detail Worksheet

* Agency priority request for IT DPs is included in the budget submittal recsum.

Decision Package Information

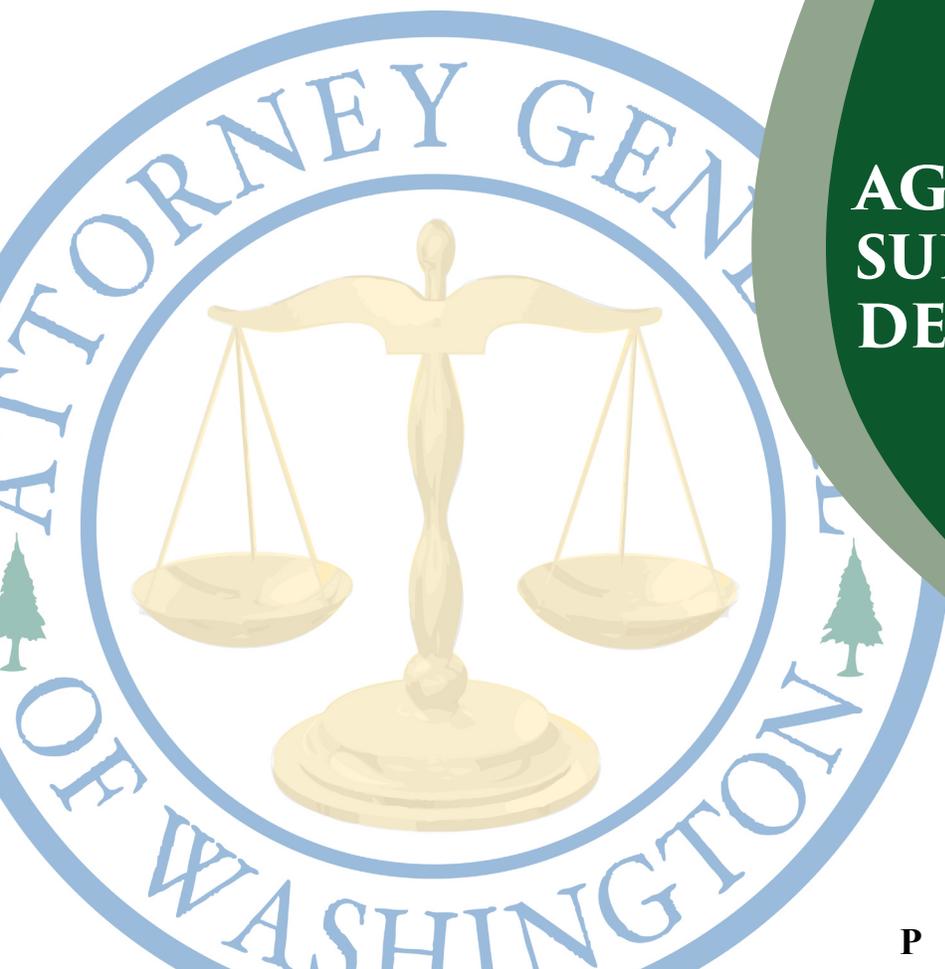
Expected Fiscal Year to Complete:

Use this sheet to provide budget detail for the entire lifecycle of your project since inception.

Anticipated Project Budget	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
State Employee Staffing Costs		65421								
Non-State Employee Staffing Costs										
Contracted Professional Services										
Software Licenses and Subscriptions										
Hardware and Equipment										
Service Level Agreements										
Other										
	-	65,421	-	-	-	-	-	-	-	-
Fund Sources										
001-1: General Fund State		65,421								
08A-1: Education Legacy Trust Account										
17F-1: Washington Opportunity Pathways										
001-2: General Fund Federal										
001-C: General Fund Medicaid										
415-1: Personnel Services Account										
xxx-x: Fund Source XXX										
xxx-x: Fund Source XXX										
TOTAL	-	65,421	-	-	-	-	-	-	-	-

TAB D

**AGENCY
SUPPORTING
DETAILS**



Summarized Revenue by Account and Source

Agency: 100 Office of Attorney General

Session: 2020 Supp

Version: 2020 - 2020 Supplemental Budget Request

Program: Agency Level - All Programs at the Program Level

Supporting Text Included

Dollars in Thousands

	Maintenance Level		Policy Level		Annual Totals		Biennial Total
	FY2020	FY2021	FY2020	FY2021	FY2020	FY2021	
001 - General Fund							
0316 - Dept of Justice - F							
16 - Federal Funding Adjustment	0	200	0	0			
Total - 0316 - Dept of Justice - F	0	200	0	0		200	200
0393 - Health & Human Svc - F							
16 - Federal Funding Adjustment	0	525	0	0			
Total - 0393 - Health & Human Svc - F	0	525	0	0		525	525
001 - General Fund - Federal		725				725	725
Total - 001 - General Fund		725				725	725
405 - Legal Serv Rev Acct							
0420 - Charges for Services - S							
01 - Child Permanency and Child Welfare	0	0	0	3,817			
04 - Pressure Vapor Limits Legal Defense	601	609	0	0			
05 - USDOE Hanford Litigation	851	859	0	0			
06 - SEIU 775 v. DSHS Litigation	0	219	0	0			
07 - Wolf v. SBCTC/State of Washington	784	779	0	0			
09 - Eastern State Hospital Legal Svcs	0	0	113	115			
10 - L&I Employment Standards	0	0	23	626			
11 - UW Legal Services	0	611	0	0			
12 - Corrections Legal Services	0	474	0	0			
13 - WDFW Legal Support	0	249	0	0			
15 - AGO Technical Corrections	979	1,405	0	0			
Total - 0420 - Charges for Services - S	3,215	5,205	136	4,558	3,351	9,763	13,114
405 - Legal Serv Rev Acct - State	3,215	5,205	136	4,558	3,351	9,763	13,114

Summarized Revenue by Account and Source

Agency: 100 Office of Attorney General

Session: 2020 Supp

Version: 2020 - 2020 Supplemental Budget Request

Program: Agency Level - All Programs at the Program Level

Supporting Text Included

Dollars in Thousands

	Maintenance Level		Policy Level		Annual Totals		Biennial Total
	FY2020	FY2021	FY2020	FY2021	FY2020	FY2021	
Total - 405 - Legal Serv Rev Acct	3,215	5,205	136	4,558	3,351	9,763	13,114
Agency: 100 ATG - State	3,215	5,205	136	4,558	3,351	9,763	13,114
Agency: 100 ATG - Federal		725				725	725
Total - Agency: 100 ATG	3,215	5,930	136	4,558	3,351	10,488	13,839
- unknown source title - Z							

01 - Child Permanency and Child Welfare

Facing unsustainable caseloads far surpassing the American Bar Association's (ABA) recommendation, the Attorney General's Office (AGO) requests permanent funding to promote child safety and timely permanency for foster children. Legal resources must keep pace with increases in the number of child welfare cases and their greater complexity. Assistant Attorneys General (AAG) and support staff levels should not exceed the ABA's recommendation of maximum average attorney caseloads of 60 cases. This package seeks increased staffing to improve outcomes for foster children by reducing delays resulting from continuances and extensions, adequately preparing cases, and providing DCYF exceptional legal advice.

04 - Pressure Vapor Limits Legal Defense

North Dakota and Montana filed a petition with the Pipeline and Hazardous Materials Safety Administration (PHMSA) seeking a preemption declaration for Engrossed Substitute Senate Bill (ESSB) 5579, which contains vapor pressure limits for in-state receipt of crude oil by rail. North Dakota also intends to file a federal lawsuit challenging the law on Commerce Clause grounds. The Attorney General's Office (AGO) requests funding to defend the bill in both forums. The Department of Ecology (Ecology) is charged with implementing vapor pressure limits, the AGO will bill Ecology for the costs of defense. Ecology will submit a parallel decision package.

05 - USDOE Hanford Litigation

The Attorney General's Office (AGO) requests funding to compel the U.S. Department of Energy (USDOE) to meet its Hanford cleanup deadlines that USDOE has failed to meet. Specifically, the USDOE has failed to meet the federal consent decree from the Washington v. Perry litigation requiring Hanford cleanup deadlines. Additionally, the Washington State Department of Ecology (Ecology) Director may issue a determination requiring USDOE to design new storage tanks as a contingency measure. If so, USDOE will likely appeal the Director's determination. Legal service needs in both situations would entail substantial staff resources and a need to hire specialized experts.

06 - SEIU 775 v. DSHS Litigation

Summarized Revenue by Account and Source**Agency: 100 Office of Attorney General****Session: 2020 Supp****Version: 2020 - 2020 Supplemental Budget Request****Program: Agency Level - All Programs at the Program Level***Supporting Text Included**Dollars in Thousands*

The Service Employees International Union (SEIU) 775 has sued the Department of Social & Health Services (DSHS) alleging that DSHS has underpaid Individual Providers (IP) since March of 2014. The SEIU litigation relies on various theories including the contractual duty of good faith and fair dealing and the minimum wage act. The case is complex in that it may involve over one-hundred thousand individual client-provider pairs. The trial is scheduled for May 24, 2021 and discovery is ongoing.

07 - Wolf v. SBCTC/State of Washington

This request is to support the defense of a lawsuit initially filed as a class action against the State Board for Community and Technical Colleges (SBCTC) and Washington State concerning retirement benefits pursuant to the SBCTC Supplemental Retirement Benefit Plan. The putative class representative is a retired part-time faculty member. The plaintiff claims that the eligibility threshold for accessing supplemental retirement benefits violates his statutory and contractual rights. The plaintiff seeks monetary remedies in the form of access to, and adjustments to existing supplemental benefit payouts. This request provides staff and funding to defend Washington State in this litigation.

09 - Eastern State Hospital Legal Svcs

There has been a dramatic 139% increase in felony commitment petitions at Eastern State Hospital that has led to significant growth in the litigation workload. In addition to these petitions, the AGO Spokane Division handles the regular civil commitment dockets and show cause hearings due to lack of bed capacity. The statutory and court-ordered deadlines create very short time-frames in which to prepare for felony commitment trials and other hearings. Adding paralegal support, which does not exist now, is crucial to effective preparation and legal representation in civil commitment hearings and enables an attorney to efficiently handle more cases.

10 - L&I Employment Standards

The Office of the Attorney General (AGO) Labor and Industries Division (LNI) division requests funding for increased legal services to the Department of Labor and Industries (L&I). Recent litigation brought before the U.S. Supreme Court resulted in workers losing access to certain private remedies against employers for labor violations. Legislation passed in the 2019 session increased L&I's powers and responsibilities in pursuing enforcement actions to protect worker rights. To maximize the effectiveness of L&I and AGO initiatives in this area, the LNI division will need additional personnel.

11 - UW Legal Services

In order to meet the expanding and complex legal needs of the University of Washington (UW) and to help minimize legal risks for the UW and the state, the Office of the Attorney General (AGO) requests additional resources. The UW operates three campuses and an immense, expanding medical enterprise. The additional AGO staff is needed to provide consistent and comprehensive legal advice and representation in a wide variety of complicated legal issues related to the UW's broad array of operations and activities. The UW supports this request.

12 - Corrections Legal Services

Summarized Revenue by Account and Source**Agency: 100 Office of Attorney General****Session: 2020 Supp****Version: 2020 - 2020 Supplemental Budget Request****Program: Agency Level - All Programs at the Program Level***Supporting Text Included**Dollars in Thousands*

This request addresses staffing needs for the Attorney General's Office (AGO), Corrections Division (COR). The Department of Correction's (DOC) legal services needs are increasing, particularly in the areas of sentencing law and health care. Additionally, advocacy groups are focusing on DOC health care and prison conditions, leading to more complex and discovery intensive civil rights litigation. One additional Assistant Attorney General (AAG) is needed to ensure sustainable caseloads and allow attorneys sufficient time for critical legal advice. Two additional paralegals will help manage the rising volume of discovery and ensure attorneys do not spend significant time doing paralegal work.

13 - WDFW Legal Support

The Attorney General's Office (AGO) provides legal support to the Department of Fish and Wildlife (WDFW) and the State with respect to complex fisheries regulation issues, including tribal fishing issues arising under U.S. v Washington and U.S. v. Oregon. Fisheries regulation has become increasingly complex. Recent legislation gave WDFW civil enforcement authority to further orca recovery, which requires additional legal support. Finally, implementation of WDFW's Wolf Plan has required increased legal services.

15 - AGO Technical Corrections

The Attorney General (AGO) is requesting billing authority for five legislative bills; 5135-SSB.PL, 1579-2SHB, 1290-SHB, 5163-SSB, 1087-2SHB.PL that passed in the 2019 session. The client agencies; Department of Ecology (Ecology), Department of Fish and Wildlife (WDFW), Department of Enterprise Services (DES), and Employment Security (ESD) received funding in the 2019-21 Omnibus Budget to enact each bill. Successful implementation of these new laws signed into law by the Governor require adequate resources for legal services. The AGO is also requesting billing authority for the Paid Family Medical Leave (PFML) program within ESD that was funded in the 2019-21 Omnibus Budget.

16 - Federal Funding Adjustment

The Attorney General's Office (AGO) requests an increase to its federal authority to cover the general wage increases and premium pay awarded to state employees in the 2019-21 biennial budget for the Medicaid Fraud program. This request will maintain the program and will continue protecting the Medicaid program and Washington's most vulnerable citizens from fraud and abuse. This adjustment will also allow the AGO to continue to clear the backlog of untested kits in the Federal Sexual Assault Kit Initiative (SAKI) and to further unresolved sexual assault related investigations. There is no impact to State funds.

16 - Federal Funding Adjustment

The Attorney General's Office (AGO) requests an increase to its federal authority to cover the general wage increases and premium pay awarded to state employees in the 2019-21 biennial budget for the Medicaid Fraud program. This request will maintain the program and will continue protecting the Medicaid program and Washington's most vulnerable citizens from fraud and abuse. This adjustment will also allow the AGO to continue to clear the backlog of untested kits in the Federal Sexual Assault Kit Initiative (SAKI) and to further unresolved sexual assault related investigations. There is no impact to State funds.

Proposed Fee Changes

- Not Applicable -

Additional Federal Funding Requirement

- Not Applicable -

Additional Federal Receipts Reporting Requirements

- Not Applicable -

Non-budgeted Local Fund Summary

- Not Applicable -

Puget Sound Action Agenda

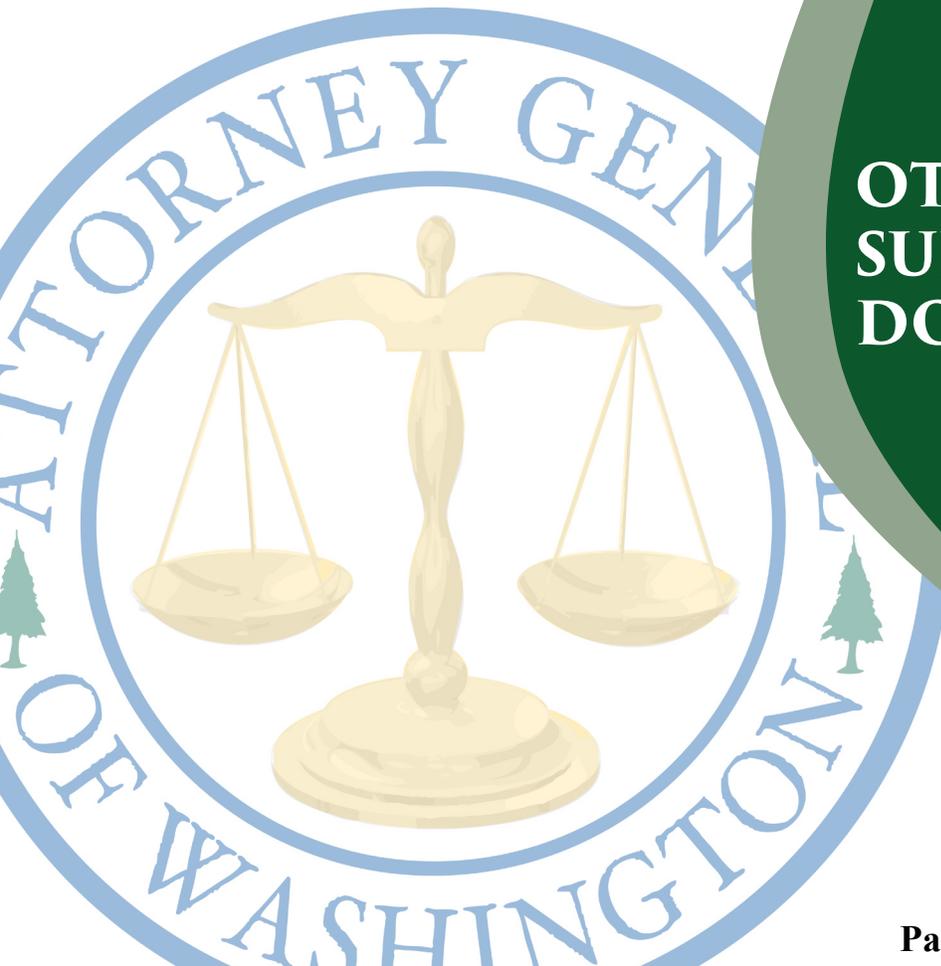
- Not Applicable -

JLARC Audit Responses

- Not Applicable -

TAB E

**OTHER
SUPPORTING
DOCUMENTS**





Agency Budget Information
2019-21 Biennium (for the 2020 Supplemental Budget)

Agency Code and Title: 100 - Office of the Attorney General
Agency Contact: Edd Giger
Contact Email: EdwardG@atg.wa.gov
Contact Phone: 360.586.2104

Expected Staffing and Expenditures - Please include/attach backup models that support the agency's request.

Activity Area	Agency In-Kind	Source of Funds	Fund	Obj of Expenditure	Expenditure and FTE assumption details: Agencies must clearly articulate the workload or policy assumptions used in calculating expenditures and FTEs proposed.	What specific outcomes does the agency expect? Describe and quantify the specific outcomes the agency expects as a result of this funding.	FY20 FTEs	FY20 Amount	FY21 FTEs	FY21 Amount
User Acceptance Test	One Washington DP	State	001-1	A, B, E, G, J	FY 2020 - 2023 -1.0 Management Analyst 5 positions Costs assume Range 61, Step L (Financial Services)	In consultation with the Subject Matter Experts for Accounts Payable, Accounts Receivable, General Ledger Accounting, Procurement, Contracts, etc. ensure the software can handle required tasks in real-world scenarios, according to specifications. Ensure software is operating properly. Ensure system's compliance with specified requirements.	1.00	\$ 130,000	1.00	\$ 133,000
Integration Test	One Washington DP	State	001-1	A, B, E, G, J	FY 2020 - 2023 - 1.0 Management Analyst 5 positions Costs assume Range 61, Step L (Financial Services)	In consultation with the Subject Matter Experts for Accounts Payable, Accounts Receivable, General Ledger Accounting, Procurement, Contracts, etc. ensure integration meets agency requirements.	1.00	\$ 130,000	1.00	\$ 133,000
OCM	One Washington DP	State	001-1	A, B, E, G, J	FY 2020 - 2023 - 1.0 Management Analyst 5 positions Costs assume Range 61, Step L (Financial Services)	In consultation with the Subject Matter Experts for Accounts Payable, Accounts Receivable, General Ledger Accounting, Procurement, Contracts, etc. ensure project communications and training are provided throughout the agency and any agency unique items are clarified.	1.00	\$ 130,000	1.00	\$ 133,000
Integration	One Washington DP	State	001-1	A, B, E, G, J	FY2020-2023: 1.0 Project IT Architecture-Expert . Cost assumed as Range 11IT, Step L (Information Services) Complete oversight and technical leader for a seamless transition to the new Enterprise Resource Planning (ERP) solution implemented by One Washington. Work with the OFM project team and AGO business stakeholders to adopt and implement new capabilities where possible, and ensure AGO mission critical applications continue to operate as expected during conversions to new enterprise data sources	<ul style="list-style-type: none"> Identify and document integration impacts and/or changes needed to interface with or replace any existing AGO application functions with capabilities provided by the new Enterprise Resource Planning (ERP) solution implemented by One Washington. Document data crosswalks identifying what data elements will be changing and what changes need to be made to existing AFRS and HRMS interfaces. Document User Acceptance Testing (UAT) requirements, records retention requirements, system architectural design including user workflows Partner with AGO business stakeholders to develop and execute an AGO Change Management Plan, Project Plan, Communication Plan and Transition to Operations Plan. Lead and/or direct all necessary software development, testing, training, and implementation tasks. 	1.00	\$ 179,000	1.00	\$ 183,000



Agency Budget Information
2019-21 Biennium (for the 2020 Supplemental Budget)

Agency Code and Title: 100 - Office of the Attorney General
 Agency Contact: Edd Giger
 Contact Email: EdwardG@atg.wa.gov
 Contact Phone: 360.586.2104

Expected Staffing and Expenditures - Please include/attach backup models that support the agency's request.

Activity Area	Agency In-Kind	Source of Funds	Fund	Obj of Expenditure	Expenditure and FTE assumption details: Agencies must clearly articulate the workload or policy assumptions used in calculating expenditures and FTEs proposed.	What specific outcomes does the agency expect? Describe and quantify the specific outcomes the agency expects as a result of this funding.	FY20 FTEs	FY20 Amount	FY21 FTEs	FY21 Amount
Integration	One Washington DP	State	001-1	A, B, E, G, J	<p>FY2020: 1.0 Project Manager, Senior Specialist. Cost assumed as Range 08IT, Step L (Information Services). partner with the ITS6 IT Architect and other stakeholders to ensure application authentication is compatible with or improved in the new Enterprise Resource Planning (ERP) solution implemented by One Washington. Ensure Role-base access to application functionality, Delegation of Authority, Matrix Management, Single Sign On (SSO) and other authentication integration is achieved.</p>	<ul style="list-style-type: none"> Convert critical AGO Application authentication functionality, while retroactively maintaining integrity of historical references. This authentication supports specific role based access which is not supported in Active Directory or HRMS. Ensure this role-based access continues to allow delegation of authority or specific actions. Ensure Matrix Management (multiple supervisors) remains supported or convert to the new model provided by One Washington's ERP solution. Ensure or improve Single Sign On (SSO) functionality to all applications used by AGO staff. Convert to or implement new Hierarchy structure(s) provide in One Washington's ERP solution to support more granular Section or Team definitions not provided with existing Organizational Unit structures. Identify and document integration impacts and/or changes needed to authenticate and securely use AGO applications when using One Washington's ERP solution. Document testing scenarios and configurations necessary to ensure OCIO Security compliance. Provide requested input for AGO Change Management Plan, Project Plan, Communication Plan and Transition to Operations Plan. 	1.00	\$ 158,000	0.00	\$ -
Integration	One Washington DP	State	001-1	A, B, E, G, J	<p>FY2020-2023: 3.0 Project Manager, Senior Specialist. Cost assumed as Range 08IT, Step L (Information Services).</p>	<p>Software Development, Documentation, Testing, Training, and Implementation.</p>	3.00	\$ 474,000	3.00	\$ 485,000
							8.00	\$ 1,201,000	7.00	\$ 1,067,000