



THE STATE
of **ALASKA**
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Department of Law

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March 5, 2013

The Honorable Charlie Huggins
President of the Senate
State Capitol, Room 111
Juneau, Alaska 99801

The Honorable Mike Chennault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801

Honorable Members of the Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: Report of the Task Force on Standards & Training of Evidence Technicians

Dear Legislators:

In 2010, when the legislature amended AS 12.36 to require the preservation of certain types of evidence in homicides, first degree sexual assault and first degree sexual abuse cases, the legislature also established a task force to address two issues related to the seizure or retention of this evidence: proper evidence procedures, and practices in cataloging and returning evidence to the proper owner. Chapter 20, SLA 2010. The task force met four times. The group attempted to identify resources from which a "best practices" model for evidence collection and retention might be created for Alaska's diverse communities. This letter constitutes the task force's report to the legislature.¹

The first charge to the task force required devising standards for the "proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions." Chapter 20, SLA 2010. When the task force first met it elected to take guidance from the National Institute of Standards and Technology (NIST) and the National Institute for Justice (NIJ). These federal agencies have

¹ The members of the task force statutorily included representatives of the Department of Law, Department of Public Safety, Public Defender Agency, Office of Public Advocacy, two municipal police departments (one not on the state's road system), Alaska Innocence Project, Alaska State Crime Lab, Alaska Native Justice Center, and three ex-officio members, including a member of the Senate and House Judiciary committees (Senator French and Representative Keller), and the Office of Victims' Rights.

collaborated since August 2010 with the same goal as the Alaska legislature, namely “to establish proper collection, storage and preservation techniques throughout the forensic science disciplines.” To date, these national working groups have not completed their task – to create a “best practices” guide. The task force also determined that there are no national standards, from other sources, for the undertaking contemplated by the legislation. Unfortunately, the work from any national group will necessarily impact Alaska and therefore the task force’s ability to complete the charge of the legislature.

Even in the absence of a national standard, the main difficulty in implementing the mandates of AS 12.36 is the massive nature of the undertaking. With dozens of police agencies and a wide variety of evidence collection, storage and handling capabilities, there is no one-size-fits-all solution to the requirements of AS 12.36. Devising standards for the proper collection, retention and cataloging of evidence, for ongoing investigations and prosecutions, will require far more resources than the task force had at its disposal. Whether the task force is reconstituted, the Department of Public Safety takes on the responsibility of establishing guidelines, or the legislature designates some other entity to complete the project, there needs to be a comprehensive undertaking to devise the standards contemplated by the legislature. One suggestion is to fund the Alaska Police Standards Council to adopt the standards and devise a training course for certified police officers and evidence custodians employed by police agencies. That training could be done via video link or through a traveling trainer, but the task force agrees that officers and evidence custodians could receive a state certification after satisfactorily completing such a course.²

There is some progress to report on the issues confronting the task force and the broader criminal justice community. Despite the absence of guidelines from the task force, on May 3, 2012, Department of Public Safety Commissioner Joseph Masters issued a directive (C-12-02) to all law enforcement within the Department of Public Safety regarding when to retain or release evidentiary items, including vehicles. The directive included a decision key and a sample motion and court order for release of evidence.

At the behest of the task force, the Department of Public Safety shared the directive and decision key with members of other law enforcement agencies. Anchorage Police Chief Mark Mew indicated his willingness to pass the protocol along to other departments via the Alaska Association of Chiefs of Police. To date, however, the Anchorage Police Department (APD) has not adopted the decision key, instead choosing to retain all evidence in the case types specified by AS 12.36. The Anchorage Police Department feels that the legislation, as written, is problematic. For the APD, the language of AS 12.36.200 is not entirely clear and needs further

² As noted previously, one standard will not fit all law enforcement agencies. There are communities in this state with only one person employed to provide police functions. Training on evidence collection standards may not be available until after the law enforcement officer has long been providing police services. Training on standards should not stand in the way of investigating cases under these circumstances.

refinement or definition. Given the perceived lack of clarity, APD has elected to retain all property seized in the referenced crimes.³

APD's evidence rooms are now contained in three warehouses and they store over 140,000 pieces of evidence in over 35,000 square feet of storage space. The Anchorage Police Department dedicates one full warehouse to the storage of the evidence targeted by the current legislation. That department indicates that the warehouse is already filled to capacity. Moreover, collection, storing and retaining the evidence remains an unfunded mandate that is burdensome to the police department. Additionally, although the statute makes provisions for returning property to the owner, those provisions are too onerous.

The Alaska State Troopers report that they maintain 30 evidence retention facilities with additional storage lots for vehicles of all types. They indicate that they have more than 150,000 items of evidence.

As a representative of the smaller police departments, task force member Nome Police Chief, John Papasodora, indicated that Nome has not adopted a procedure like that employed by the Department of Public Safety. Nome simply stores everything seized in the course of the targeted

³ An example of the problem may illustrate the perceived ambiguity in the statute. Take, as an example, a cellular phone that also contains a camera. In this day and age, many (if not most) people have a cellular style phone and many of those devices are smartphones that provide the owner the capability to pay bills, access personal data, or just go about daily tasks of life. If that owner then becomes the victim of a crime, and the police determine that the cell phone might contain information, photos, or texts that ought to be processed in the course of the investigation, the law certainly does not intend to deprive that owner of this essential piece of their life, however, the law, as written, says:

(a)(1) ...[the] law enforcement agency shall preserve all evidence that is obtained in relation to the investigation or prosecution of a [listed crime].

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity or physical character that render preservation impracticable. When preservation of evidence is impracticable, the agency shall remove and preserve...material necessary for DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

The police can make a "mirror image" of the contents of the cell phone, but the question then becomes one of how and when to return the phone to its owner. Some agencies, believing that the contents of the phone are the evidence, return the phone to its owner, after capturing the contents. Other departments take the statute more literally and believe that they must keep the victim's phone even though the evidence (the data) is not capable of being swabbed for DNA. The re-victimization of a person whose lifeline has been taken away is obvious. People need their phones – if not to conduct their personal business, then to make a telephone call. One reading of the statute would say that the "physical character" of the phone "renders preservation impracticable." However, that reading is not as clear as it ought to be in giving guidance to the police agencies about the return of such an item.

In sum, the legislature could make its intent clearer and ease the burden on law enforcement.

investigations, including couches, tables, cars and innumerable smaller items frequently seized in an abundance of caution during a criminal investigation.

The task force can additionally report, that on April 26, 2012, the Department of Law notified the Alaska Scientific Crime Detection Laboratory that the laboratory's "DNA Quality Assurance Manual" complies with the requirements of AS 12.36.200, the statute implementing the new preservation of evidence law. This means that the crime laboratory has adopted standards for the retention of forensic evidence once police agencies send the evidence into the crime laboratory. In particular, all SART (sexual assault response team) kits are retained by the laboratory in conformity with forensic community standards.

The second legislative charge for the task force asked the group to "recommend practices, protocols, models and resources for the cataloging and accessibility of preserved evidence, and return of property to owners." Chapter 20, SLA 2010. The task force identified a current challenge faced by criminal justice stakeholders as the absence of a single, common numbering protocol or system to track pieces of evidence collected by the various agencies across Alaska. A police agency in western, interior or southeastern Alaska could submit a piece of evidence to the state crime laboratory for testing and each agency would assign what they believe to be a unique evidence number. The police might, for purposes of this example, give the piece of evidence a number like 13-123 - the year designator "13," followed by a number designated sequentially when the evidence was collected that year. Once at the Crime Lab, the laboratory would, likewise, give the submitted evidence a unique case and item number, perhaps 13-456. Unfortunately, because there are multiple police agencies submitting evidence to the laboratory, there is a risk that more than one police agency will have a piece of evidence with the number 13-123.

The item at the Crime Lab is tracked by both the police agency number and the lab's case number. The risk that an item might be mis-entered or mis-identified is enhanced by the need to enter all identifying data by hand, that is, to type the agency identifiers into a computer. If the agencies used a single, common numbering protocol the risk of lost or mis-identified evidence can be reduce to near zero.⁴ While the task force is not aware of a problem created by the disparate modes of identifying and storing evidence, this is one of the ways in which protocols could be improved and efficiencies enhanced.

⁴ The disconnect between the current numbering systems becomes more apparent when the results of laboratory testing are reported to juries who decide the value of the testing when deliberating about a criminal charge. A jury must now listen to a minimum of two witnesses before it hears about testing results. They first listen to a police witness to say that the evidence was seized, given a (what should be) unique evidence number and transmitted to the state crime laboratory for testing. They then listen to a crime laboratory witness to say that the evidence item was received and given a separate evidence item number within the crime laboratory, then submitted to testing. The witnesses often track the numbering of the evidence to insure that the jury has high confidence that the item tested corresponds to the item seized. These witnesses and the numbering system are the proof of the chain of custody of the evidence item, a process to show the integrity of the evidence item from seizure to the courtroom. Finally, the Alaska Court System gives the evidence item its own exhibit number. It is tedious, but necessary testimony to insure that the integrity of the process is understood and accepted by the jury.

Over the past thirteen months, the Department of Public Safety upgraded its police records management to a system called ARMS (Alaska Records Management System). ARMS includes the capability to uniquely number and catalog evidence. The state crime lab is part of the Department of Public Safety and has plans to integrate with ARMS. Since DPS accounts for about 60% of the lab's work, according to Laboratory Director Orin Dym this integration will create efficiency and speed in the processing of DPS's evidence. The Anchorage Police Department uses a records management system called Tiburon. Both ARMS and Tiburon eliminate the risk of internal duplication of numbers, but the two police agencies are capable of generating the same number for items seized under each system. The problem is compounded if these agencies work together on the same case. If police agencies across Alaska adopt the ARMS record management system, that system eliminates the need for cross-referencing and insures that no duplication or loss occurs.

The Alaska Scientific Crime Laboratory, the Anchorage Police Department, and the Alaska State Troopers also have automated bar coding systems to track each piece of evidence. However, each of these systems comes from separate vendors with proprietary software. Absent integration with the ARMS system, a structure should be established so that any future bar coding system will be able to communicate with existing systems. The use of ARMS would eliminate the need and cost for interface technology to be developed.

An example of the efficiency created by ARMS is the ability to "populate" forms for submitting evidence to the lab. Currently, lab submissions are accomplished by officers who handwrite (or type) their requests for laboratory service. As with anything that requires hand-entries, mistakes (or shortcuts) are possible. A common record management system would eliminate transposed numbers or misidentification of the evidence. It would also speed the process, as those forms would be electronically submitted to the lab rather than the current scan, fax or mail system. Once a copy of a hand-entered request for laboratory services gets to the crime lab, the lab must, likewise, hand-enter the data into its system. The time consumed by this process would be better spent by scientists actually conducting tests on the submitted evidence.

In conclusion, the mandate of the Task Force on Standards and Training of Evidence Technicians expired on December 31, 2012. The task force identified a national source for standards regarding the proper collection, retention, and cataloging of evidence. The Task Force recommends that, once published, the Alaska forensic science community review the standards and modify them so they will work in Alaska. These standards can then be promulgated by the Alaska Police Standards Council.

The task force further recommends that Alaska develop a single, unified standard for electronically cataloging and accessing evidence. The DPS system called ARMS can provide that capability. Otherwise, law enforcement agencies can work together in establishing a single protocol for uniquely identifying evidence. Alternatively, the Alaska Scientific Crime Laboratory can take the lead on this project, since the lab sees a great deal of evidence from the widely disparate police agencies across the state. Laboratory Director Orin Dym already asks police agencies submitting evidence to the lab to place three identifiers on the evidence – agency name, case number and a unique property identifier that includes the year. That protocol, at a minimum, should become required.

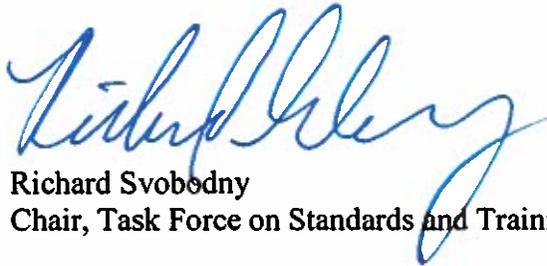
As a final note, the task force also identified a secondary financial and logistical burden that AS 12.36 has imposed on local law enforcement, private citizens, and crime victims by requiring the retention of private property. In this area a comprehensive legislative resolution is necessary. In 2012, the legislature passed Chapter 3, SLA 2012 which was intended to allow the Office of Victims' Rights the ability to file an original application in state court to resolve disputes between law enforcement wanting to preserve evidence and owners who want the evidence returned. This was clearly the intent of the legislature with the director of the Office of Victims' Rights indicating in legislative hearings that the office would be taking on this responsibility. However, the Alaska Court System, in analyzing the language of the statute, AS 12.36.070, has indicated that the law does not allow the Office of Victims' Rights to bring such an action. Either the language of AS 12.36.070 needs to be clarified or a different approach to the problem of returning evidence to its owner must be undertaken by the legislature.

On behalf of the members of the task force, thank you for the opportunity to work on this challenging and evolving area of the law.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:



Richard Svobodny
Chair, Task Force on Standards and Training of Evidence Technicians

cc: Richard Allen, Director, Office of Public Advocacy
Dennis Casanovas, Major, Alaska State Troopers
Orin Dym, Director, Alaska State Crime Laboratory
Senator Hollis French, Senate Judiciary Committee
Jason Hooley, Director, Boards and Commissions
Representative Wes Keller, House Judiciary Committee
Mark Mew, Chief, Anchorage Police Department
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