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The Honorable Linda Lofthus, Presiding Judge
San Joaquin County Superior Court
180 East Weber Avenue, Suite 1306J
Stockton, California 95202

The San Joaquin County District Attorney's Office is in receipt of the San Joaquin County 2018-2019 Grand Jury final report entitled Cold Cases in San Joaquin County: On the Back Burner.

I.

Responses to Findings

We offer the following in response to the Findings set forth in **F1.0, F2.0, F2.1, F3.2, F4.0, F4.2, F4.3, F5.0, F6.0, F6.1, F6.2, F6.3, F6.4, F6.5, F7.0, F7.1, F7.2, F7.3, F7.4, and F8.0**, in compliance with the provisions of Penal Code sections 933 and 933.05.

F1.0 – There is inconsistency and confusion regarding what defines a “cold case” amongst the law enforcement agencies in San Joaquin County.

We agree with the Finding. Through the coordination of a joint effort amongst all countywide law enforcement agencies and the establishment of a Cold Case Task Force in the future, a working definition of the term “cold case” will be set forth in any Task Force protocol, procedure and memorandums of understanding.

F2.0 – There are more than 500 cold case homicides in San Joaquin County, including 12 homicide victims whose remains have never been positively identified. The exact number of cold case homicides is unknown due to the lack of a consistent written definition for “cold case” and the lack of a digitized tracking system.

We agree with the second portion of this Finding. We agree the exact number of cold case homicides is unknown at this time. The development of a consistent written definition of a “cold case” and a tracking system will be priorities for the future Cold Case Task Force.

F2.1 – The lack of accurate numbers in counting and tracking cold cases in San Joaquin County is a contributing factor to the overall lack of priority for staffing, funding, and investigating cold cases.

We disagree with this Finding. The District Attorney's Office has historically allocated positions focused on cold case investigations since 2016 from existing resources. As referenced within section 4.0 of the Grand Jury report, the District Attorney's Office sought funding for additional staff dedicated to cold case

investigation and prosecution in the Department's Fiscal Year 2018-2019 budget request. There were no funds approved for our request by the Board of Supervisors. The District Attorney's Office again sought funding during the Fiscal Year 2019-2020 budget request. The District Attorney's Office was successful in receiving funding for a Deputy District Attorney position to assist with the coordination of efforts in cold case investigations and prosecutions through the establishment of a Cold Case Task Force during the current 2019-2020 fiscal year. The lack of accurate numbers in counting overall cold cases does not mean there was a historical lack of priority in investigating cases or in seeking funding of staff positions dedicated to review and investigate cold cases.

F3.2 – Due to current inconsistencies in both defining and counting cold cases involving missing persons with suspicious circumstances, and sexual assaults, there is insufficient information to clearly determine the extent to which the number of those unsolved cases may be increasing.

We agree with this Finding. Without a unified definition, and without a collective database, there is no current mechanism to analyze cold case data to determine whether the number of unsolved cases is increasing or not.

F4.0 – There is insufficient staffing for cold case investigations in San Joaquin County, primarily within the San Joaquin County Sheriff's Department, the Stockton Police Department, and the San Joaquin County District Attorney's Office.

We agree with this Finding as it relates to this Department. We do not address the staffing levels of other law enforcement agencies in this response. As referenced above, the District Attorney Office sought and received funding for a Deputy District Attorney for the current 2019-2020 budget year. This Department did not receive any additional investigator positions for the current 2019-2020 budget year. However, we anticipate the renewed and collective focus on cold case investigations and prosecutions will lessen the overall number of cold cases countywide.

F4.2 – Law enforcement agencies in San Joaquin County continue to be challenged in hiring and retaining enough qualified officers to fill budgeted positions. This has been a contributing factor to insufficient staffing of cold case investigations.

We partially disagree with this Finding as it relates to this Department. We do not speak in this response to the hiring challenges facing other law enforcement agencies in San Joaquin County. Our Department will continue to seek and retain qualified candidates to fill budgeted positions as needed. As we have done in the past, the Department will continue to allocate existing resources to dedicate positions within our Bureau of Investigations for cold case investigations as well as fill the recently allocated Deputy District Attorney position in our Fiscal Year 2019-2020 budget. This position will allow for overall coordination with our countywide law enforcement agencies and the establishment of the Cold Case Task Force.

F4.3 – Providing experienced staffing for cold case investigations may require transferring staff from other assignments, hiring additional qualified retirees, or seeking qualified volunteers.

We agree with this Finding. We will explore all staffing opportunities to continue the dedication of Department resources to the investigation and prosecution of cold cases. We will seek additional funding opportunities, such as grants, and/or future budget requests, after an assessment of overall cold case numbers by the Cold Case Task Force.

F5.0 – There is insufficient funding for cold case investigations in San Joaquin County, primarily for the San Joaquin County Sheriff’s Department, the Stockton Police Department, and the San Joaquin County District Attorney’s Office. The lack of sufficient funding is due primarily to financial limitations and lack of priority.

We partially disagree with this Finding. We agree there is a lack of funding for this Department to staff cold case investigators and prosecutors at the level needed to address the backlogged cases. This is what drove our previous budget requests for increased staffing in this area. We disagree there has been a lack of priority by the Department in allocating resources to address cold cases. While there is and has been a priority to address cold cases, the Department has not received sufficient funding to investigate the cold cases along with the full range of the Department’s priorities. The Department continues to dialogue with detectives/investigators from all county law enforcement agencies on any cases they want to roundtable regarding consideration of all viable investigative methods and/or whether the agency is ready present the case for potential charges.

F6.0 – There is a need for additional training specific to cold case investigations for the law enforcement agencies in San Joaquin County.

We agree with this Finding. Additional training on the latest technology and methods can always enhance the investigative efforts of those working on cold cases as well as those attorneys assigned to prosecute any cases developed from those investigations.

F6.1 – The lack of organized computer databases for cold cases is impeding the effective evaluation and investigation of cold cases in San Joaquin County.

We agree with this Finding in its general sense. Without a collective database and a coordinated effort amongst law enforcement agencies, an effective evaluation of the status and overall number of San Joaquin County cold cases is difficult to determine. This would be an established priority of the future Cold Case Task Force to quantify the number of cases and develop an organized collective database to track the cases.

F6.2 – The methods for prioritization of cold case investigations in San Joaquin County are often ineffective, with insufficient emphasis placed on available evidence.

We partially disagree with this Finding. A collective assessment by the future Cold Case Task Force acting with a countywide definition of cold cases and a coordinated method on which cases to pursue will become the best practice for prioritizing cases moving forward.

F6.3 – The exact number of cold case homicides in San Joaquin County that have testable DNA evidence is unknown due to the lack of effective tracking and evaluation methods.

We partially disagree with this Finding. As mentioned above, we currently do not have a collective database. The future Cold Case Task Force will prioritize the number of cold case homicides with testable DNA evidence and seek expedited testing when appropriate, as well as pursue whether there are any new methods of technology to test evidence. While the exact number of cold case homicides is unknown at this time, it does not mean there have been ineffective evaluation methods utilized historically in cold case homicides. The formation of the Cold Case Task Force in the future will address these concerns.

F6.4 – There are limitations on the amount of physical evidence that the State of California Department of Justice crime laboratories will process for cold case investigations due to staffing and prioritization.

We agree with this Finding. The members of the future Cold Case Task Force can explore all options to test all available evidence and utilize outside laboratories where needed and appropriate.

F6.5 – Cold case homicides involving street gangs often present greater challenges due to the lack of testable DNS evidence and the lack of available or willing witnesses.

We agree with this Finding. With the formation of the Cold Case Task Force in the future, it will be a priority to pursue all options to test evidence and explore all available investigative strategies to develop these cases.

F7.0 – The elevation of cold case investigations as a priority is vital to the future success in investigating and solving cold cases in San Joaquin County.

We agree with this Finding. As a collective Cold Case Task Force, it will be best to work together with the global prioritization of cases countywide and amongst law enforcement agencies.

F7.1 – The utilization of innovative technology and emerging techniques is an essential element to the future success of investigating and solving cold cases in San Joaquin County.

We agree with this Finding. The use of innovative technology, emerging techniques, and current best practices will be a priority and focus of the future Cold Case Task Force. The District Attorney's Office will continue to utilize the Department of Justice laboratory and outside laboratories to test evidence in cold cases. We will continue to explore all available methods and techniques in the future in our collaboration with countywide law enforcement agencies to investigate cold cases. We will also consult with other jurisdictions to ensure the continued utilization of innovative technology and emerging techniques.

F7.2 – The level of collaboration between law enforcement agencies and the District Attorney's Office is a critical component to success in solving and prosecuting cold cases.

We agree with this Finding. As memorialized above, the collaboration of all countywide law enforcement agencies is key to successfully investigating, solving and prosecuting cold cases.

F7.3 – There is minimal contact between the District Attorney's Office and cold case investigative staff in San Joaquin County due to lack of staffing and priority.

We partially agree with this Finding. There are law enforcement agencies that do not have dedicated cold case investigative staff for a variety of reasons. While there may be a lack of staffing, it does not mean there is a corresponding lack of priority. As a collective Cold Case Task Force, there will be a collaborative effort to prioritize cases with realistic leads or other information to focus all available resources and testing possibilities in these prioritized cases.

F7.4 – There is universal support amongst law enforcement agencies in San Joaquin County for the District Attorney's Office to form a Cold Case Task Force to support cold case investigation and prosecution.

We agree with this Finding. The District Attorney's Office will form the Cold Case Task Force and seek participation from countywide law enforcement agencies, Department of Justice, victim advocacy groups,

and others to support efforts to investigate and prosecute cold cases. The District Attorney's Office will gather information from our counterparts in other jurisdictions who have been successful in establishing cold case task forces, protocols and procedures for cold case investigations and prosecutions in forming a Cold Case Task Force in San Joaquin County.

F8.0 – There is no consistent procedure or practice for law enforcement agencies in San Joaquin County to maintain periodic contact with the family members of cold case victims.

We agree with this Finding. The Victim Witness Program of the District Attorney's Office currently maintains contact with victims of crime and their families, including those associated with cold case investigations. This Department will continue to utilize its Victim Witness (advocacy) Program and coordinate with representatives of outside victim advocacy groups to assist the future Cold Case Task Force with the development of a unified procedure/practice for maintaining periodic contact with family members of cold case victims amongst law enforcement agencies.

II.

Responses to Recommendations

We offer the following in response to the Recommendations set forth in **R1, R2, R4, R6, R7, R8, R9, and R10**, in compliance with provisions of Penal Code sections 933 and 933.05.

R1 – Each law enforcement agency in San Joaquin County develop a plan to define, prioritize, and digitally track cold case investigations no later than December 31, 2019. Prioritization will emphasize available physical evidence and utilize emerging DNA testing techniques.

The San Joaquin County District Attorney's Office will implement this Recommendation in the future through the formation of the Cold Case Task Force. Through collaboration with countywide law enforcement agencies, the District Attorney's Office will develop a plan to define, prioritize and digitally track cold cases no later than the requested deadline of December 31, 2019.

R2 – Each law enforcement agency in San Joaquin County expand their definition of "cold case" to include missing persons with suspicious circumstances, and sexual assault (forcible rape and attempted rape), in addition to homicide no later than December 31, 2019.

This recommendation requires further analysis to determine the full scope and number of cases within each agency and the overall impact to investigative resources in expanding the "cold case" definition to include missing persons with suspicious circumstances and sexual assault cases in addition to the number of homicide cases. The members of the future Cold Case Task Force can assess their collective ability to prioritize cold case investigations given the overall number of cases within consideration of inclusion of the additional categories.

As additional information, the California State Legislature passed Assembly Bill 701, effective January 1, 2017, codifying Penal Code section 263.1 declaring all forms of nonconsensual sexual assault as rape for purposes of the gravity of the offense and the support of the survivors. The legal definition of rape is set forth within Penal Code section 261. There are expansive sections of the Penal Code defining acts involving sexual assault. Therefore, the application of this expanded cold case definition to include the number of unsolved sexual assault cases may be too industrious and require a limitation of which cases should realistically be included for "cold case" investigation.

R4 – The San Joaquin County District Attorney utilize budget options and staffing reassignments as necessary to provide the equivalent of at least two full-time District Attorney Investigators dedicated solely to cold case investigations no later than December 31, 2019.

The District Attorney will implement this Recommendation both in the future and by continuing to allocate and prioritize existing resources to investigate cold cases.

As mentioned in section 4.0 of the Grand Jury report, the San Joaquin County District Attorney's Office requested funding in its Fiscal Year 2018-2019 budget request for funding of positions dedicated to cold investigation and prosecution. This budget request did not receive funding, although other positions did receive funding. The San Joaquin County District Attorney's Office did again renew its request for funding of positions dedicated to cold case investigation and prosecution for Fiscal Year 2019-2020. The San Joaquin County Board of Supervisors did approve funding for one Deputy District Attorney for Fiscal Year 2019-2020. The Office did not receive funding for additional investigator positions. The Department is prepared to continue to dedicate investigative resources to work cold cases in coordination with the members of the future Cold Case Task Force. The Department recently dedicated a full time investigator to cold case investigations.

R6 - The San Joaquin County District Attorney's Office develop a plan for a Cold Case Task Force to facilitate collaboration in investigating and prosecuting cold cases for all law enforcement agencies in San Joaquin County no later than December 31, 2019.

The District Attorney's Office will implement the Recommendation in the future through the development of a plan for a Cold Case Task Force no later than December 31, 2019.

R7 – The San Joaquin County District Attorney's Office establish a Cold Case Task Force for all law enforcement agencies in San Joaquin County no later than March 31, 2020.

The District Attorney's Office will implement this Recommendation in the future through the establishment of a Cold Case Task Force for all countywide law enforcement agencies no later than March 31, 2020.

R8 – Each law enforcement agency in San Joaquin County sign a Partnership and Cooperation Agreement with the newly formed Cold Case Task Force no later than March 31, 2020.

The District Attorney's Office will implement this Recommendation in the future through the formation of the Cold Case Task Force and develop Partnership and Cooperation Agreements (typically referred to as a Memorandum of Understanding) with those agencies who are willing and able to participate as members of the Task Force no later than March 31, 2020.

R9 – The newly formed Cold Case Task Force partner with the regional CA-DOJ crime laboratories to facilitate the timely and necessary testing of all DNA evidence for cold case investigations no later than March 31, 2020.

The District Attorney's will implement this Recommendation in the future by seeking the participation of the California Department of Justice crime laboratory as a member of the future Cold Case Task Force. Should this State agency choose to participate on the Task Force, this Department will coordinate with this state agency as a member of the future Cold Case Task Force to develop procedures to facilitate the timely testing of evidence.

R10 – Each law enforcement agency in San Joaquin County develop a procedure and practice for maintaining periodic contact with family members of cold case victims no later than March 31, 2020.

The District Attorney's Office will implement this Recommendation in the future through the development of a practice and procedure for maintaining periodic contact with family members of cold case victims in conjunction with the members of the future Cold Case Task Force no later than March 31, 2020. The District Attorney's Office will utilize staff members of the District Attorney's Victim Witness Division and representatives from victim advocacy groups within the community to maintain a system for periodic victim family contacts.

Should you have any questions, or need any additional information to further explain or expand upon any of the above responses, please contact me at (209) 468-2400.

Sincerely,

T. Verber Salazar K.R.

TORI VERBER SALAZAR
San Joaquin County District Attorney

cc: Ms. Trista Martinez, Staff Secretary to the Grand Jury, grandjury@sjcourts.org
Ms. Rachel DeBord, Clerk of the Board, San Joaquin County Board of Supervisors