

SPECIAL DIRECTIVE 20-02

TO: ALL DEPUTY DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: MAJOR CRIMES DIVISION'S COLD CASE UNIT (CCU)

DATE: MARCH 11, 2020

The Office is dedicated to protecting our community through the fair and ethical pursuit of justice and the safeguarding of crime victims' rights. To advance our commitment to crime victims, the Office re-established the Cold Case Unit (CCU) on November 14, 2019 (see GOM 19-123). The CCU will operate under the supervision of the Major Crimes Division (MCD) and will review cases in consultation with designees from other units as needed.

The purpose of this Special Directive is to establish uniform procedures for the evaluation of unsolved homicides, potential identification of responsible suspects, and possible prosecution. CCU deputies will be available to consult with law enforcement at various stages of the case investigation including, but not limited to, exploring new evidence via wiretaps or developed through advanced forensic and scientific technologies. Assistance will continue as the investigation evolves and the case is prosecuted.

This Special Directive adds a new section 3.12 to the Legal Policies Manual as follows:

3.12 COLD CASE UNIT

The Cold Case Unit (CCU) shall operate under the supervision of the Major Crimes Division (MCD) and shall review cases in consultation with designees from other units as needed. Any deviations from this protocol require approval from the Head Deputy of the MCD.

3.12.01 MISSION STATEMENT/PURPOSE

The Office is dedicated to protecting our community through the fair and ethical pursuit of justice and the safeguarding of crime victims' right. The Office's dedication to the community and victims of crime is borne out through the prosecution of those responsible for committing these crimes. Violent crimes may not be solved immediately and sometimes prove difficult to resolve. The mission of the CCU is to unite skilled deputies with law enforcement investigators to work collaboratively to identify, investigate, solve, and successfully prosecute unsolved homicides in Los Angeles County. These skilled deputies have substantial homicide trial experience and specialized training in cold case legal and forensic issues. The ultimate goal of this collaborative effort is to hold perpetrators of cold case homicides accountable and to provide

a measure of justice for families of those who have been slain. In order to optimize the use of limited resources, except in unusual situations, the CCU will only review and prosecute homicide cases.

3.12.02 COLD CASE MURDERS

The following types of homicides are defined by the CCU as cold cases and shall be *presumptively* assigned to the CCU for investigative assistance and prosecution, or for potential referral to another unit:

1. Cases which were initially investigated by a law enforcement agency, were unsolved with all known leads exhausted, and in which one (or more) of the following has/have occurred:
 - New or different witness statements have been obtained;
 - Previously unknown leads have been uncovered;
 - New scientific, forensic, or physical evidence has been developed; or
 - Five or more years after the homicide, a suspect has made incriminating statements.
2. Cases in which the victim was missing for five or more years and the disappearance remained unsolved during that period.
3. Cases over five years old that were not previously submitted for prosecution.

The following cases may be assigned to the CCU for investigative assistance and prosecution at the discretion of the Head Deputy of the MCD:

1. Cases in which the investigating agency has requested the assistance of CCU deputies.
2. Cases in which the investigating agency has requested advice or assistance on a cold case from non-CCU deputies.
3. Cases which have been previously submitted to a non-CCU division, branch, or unit for review where the case has been rejected or returned to the agency for additional follow-up investigation. Prior to declining or returning a case that qualifies as a cold case, the non-CCU reviewing deputy shall consider consulting with a CCU deputy. If no such consultation is made at the time of the declination or return, the law enforcement agency may contact the CCU directly for additional review.
4. Cases in which the victim has been missing for fewer than five years.
5. Cases more than two years old but less than five years old that were not previously submitted for filing.
6. Case investigations that are initiated with the discovery of skeletal human remains.
7. Cases originally filed and dismissed where significant new evidence has been developed.

The following cases are presumptively not cold cases and will not be handled by the CCU absent unusual circumstances:

1. Cases pending review or filed cases in which there is an outstanding arrest warrant for the suspect.
2. Cases which have been tried and resulted in a mistrial (or a motion for a new trial was granted).

3. Cases which were filed and then dismissed where no significant new evidence has been developed.

The types of cases assigned to the CCU may deviate from those defined herein in unusual circumstances and at the discretion of the Head Deputy of the MCD.

3.12.03 COLD CASE FILINGS

Prior to the filing a cold case homicide, the CCU prosecutors shall discuss the case with the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD. The discussion shall include a review of the evidence, availability of witnesses, legal issues, sentencing issues, and other pertinent information before a filing decision is made. Cold cases that are not handled by the CCU shall be referred to the appropriate branch, division, or unit for review and assignment. All Office policies concerning the filing of murder charges, including special circumstance allegations, also apply to cold case prosecutions.

3.12.04 COLD CASE DEPUTY ASSIGNMENTS

A decision shall be made at the time of filing as to whether a CCU deputy will continue to handle the case. Vertical prosecution of cold cases shall be the preferred method. However, depending on available resources, vertical prosecution may not always be possible. The first priority of the CCU shall be to retain and to prosecute cold cases that require the special expertise of CCU deputies in the areas of DNA, forensics, and complex legal issues inherent with cold cases.

3.12.05 ROLE OF THE FORENSIC SCIENCE SECTION

It is anticipated that DNA will play a major role in solving and effectively prosecuting many of the cases presented to the CCU. Thus, the Deputy-in-Charge (DIC) of the Forensic Science Section (FSS) will play a significant role in these cases. The following protocol shall be followed:

1. When a case is presented for initial evaluation, the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD, shall determine whether DNA evidence will be a significant factor in solving and/or prosecuting the case.
2. If complex DNA technology will be a significant factor in the case, the reviewing deputy shall contact and advise the DIC of the FSS.
3. In any case assigned to the CCU, a deputy may consult with the DIC of the FSS to discuss the possibility of utilizing DNA analysis, Familial Searching, or Investigative Genetic Genealogy to generate further leads.
4. If the investigating agency requests Familial Searching or Investigative Genetic Genealogy testing, the DIC of the FSS shall be consulted. No case may be submitted for Familial Searching or Investigative Genetic Genealogy testing without the approval of the DIC of the FSS.

5. The investigating agency may contact the DIC of the FSS directly about any cold case. If the DIC of the FSS is contacted directly, she/he shall decide whether the case should be referred to the CCU for further investigation or assistance.

3.12.06 LIAISON WITH LAW ENFORCEMENT

CCU deputies shall work with those agencies seeking a collaborative approach to case investigation. CCU deputies can lend insight into the development of case theories and evidence geared toward a grounded and successful courtroom presentation. District Attorney Investigators (DAIs) shall be assigned to the CCU to assist deputies when the original agency does not have sufficient resources to re-investigate the case. However, primary investigative responsibility shall remain with the original agency.

Requests by victims' next of kin made to CCU deputies to re-investigate a case or open a case as a cold case investigation should be communicated to the original investigating agency or to DAIs assigned to assist the CCU. Cold case deputies shall maintain the ability to work objectively with members of law enforcement in the investigation of these cases. However, CCU deputies shall remain cognizant of the distinction between the role of marshalling evidence as an advocate versus acting in an investigative capacity.

3.12.07 GENERAL PROCEDURES

Cases shall be presented to the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD, for initial evaluation to determine whether to file the case or whether there is the potential to solve the case. If the Head Deputy or Assistant Head Deputy of the MCD determines the case should be reviewed by another division, section, or unit, he/she shall consult with a designee from that division, section, or unit regarding whether or not the case should be referred. If the Head Deputy or Assistant Head Deputy of the MCD determines the case should be reviewed further by the CCU, he/she shall assign the case to a CCU deputy for a more detailed review. The assigned CCU deputy shall work collaboratively with detectives to make recommendations, develop investigative strategies, provide legal advice, and determine whether biological evidence suitable for testing exists.

Cases that meet the definition of a cold case in which the investigating agency is only requesting a filing determination, and is not requesting assistance or advice, need not be submitted to the CCU.

3.12.08 CCU ADMINISTRATIVE MATTERS

The MCD shall supervise CCU support staff and maintain all CCU files.

3.12.09 CONCLUSION

There is a critical need for the resolution of thousands of unsolved homicides in Los Angeles County. No killer should escape justice simply because of the passage of time. The victims and

their surviving families, as well as the general public, deserve to have these cases investigated as thoroughly as possible and prosecuted when the evidence allows.

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