

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF EL MIRAGE
AND
MARICOPA COUNTY ATTORNEY'S OFFICE

This Agreement amends Memorandum of Understanding (MOU) between the City of El Mirage and the Maricopa County Attorney's Office ("MCAO") for the testing of Sexual Assault Kits funded by a grant from the Office of the District Attorney of New York County, State of New York.

1. On October 1, 2018, MCAO received a Sexual Assault Kit Initiative ("SAKI") grant from the United States Department of Justice, Office of Justice Programs ("DOJ").
2. Section 2.4 is amended to add that MCAO shall submit reports to the DOJ as contemplated by the SAKI grant agreement.
3. The reporting requirements for DANY as outlined in Section 1.4, 1.7, 2.4, 4.1, 4.3.3 and Attachment B of the MOU and any amendments shall apply to the DOJ's SAKI grant. The reporting on SAKI and DANY shall continue through and including October 10, 2022 on the schedule outlined in the March 23, 2017 MOU.
4. Unless expressly changed by this Amendment, the terms of the MOU shall continue to govern the relationship between the parties.

This Amendment to Extend the MOU is hereby entered into effective on date of the last signature set out below and extended for a period of one year from the date of the last signature.

SIGNATURES FOR THIS AGREEMENT ARE ON THE FOLLOWING PAGE. THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

CITY OF EL MIRAGE, BY AND
THROUGH THE EL MIRAGE POLICE
DEPARTMENT (“AGENCY”)

THE MARICOPA COUNTY
ATTORNEY’S OFFICE
 (“MCAO”)

By: _____
Name: _____
Title: _____
Date: _____

Allister Adel
Maricopa County Attorney
Date: _____

MARICOPA COUNTY BOARD OF
SUPERVISORS

Signature: _____
Chairman, Maricopa County Board of
Supervisors
Date: _____

ATTEST:
Signature: _____
Clerk of the Board
Date: _____

Approved as to legal form:

Approved as to legal form:

By: _____
Legal Counsel to the Agency
Date: _____

By: _____
Legal Counsel to MCAO
Date: _____

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BY AND BETWEEN
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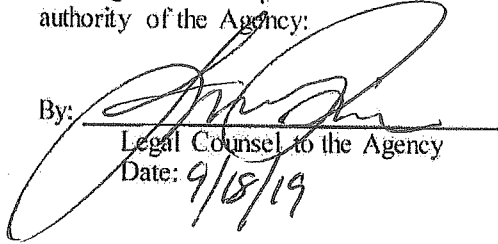
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CITY OF EL MIRAGE, BY AND THROUGH
THE EL MIRAGE POLICE DEPARTMENT
("AGENCY")

By: 
Name: ALEXIS A. HERMOSILLO
Title: MAYOR
Date: 9/18/19


Approved as to legal form and
as being within the powers and
authority of the Agency:

By: 
Legal Counsel to the Agency
Date: 9/18/19

MARICOPA COUNTY, BY AND
THROUGH THE MARICOPA
COUNTY ATTORNEY'S OFFICE
("MCAO")


Name: Allister Adel
County Attorney
Date: 10/14/19

Approved as to legal form and
as being within the powers and
authority of MCAO:


Legal Counsel to MCAO
Date: 10/12/19

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF EL MIRAGE
AND
MARICOPA COUNTY ATTORNEY'S OFFICE

This Memorandum of Understanding (MOU) is made between the City of El Mirage, Arizona, acting through the El Mirage Police Department (collectively referred to herein as the "Agency"), and Maricopa County, by and through the Maricopa County Attorney's Office ("MCAO").

WHEREAS, sexual assault and abuse have substantial and detrimental effects on the health and general welfare of the people of Maricopa County;

WHEREAS, sexual assault evidence collection kits ("SAKs") are used to collect physical evidence useful in the investigation of instances of sexual assaults and abuse;

WHEREAS, Agency has "Untested SAKs", which are defined for purposes of this MOU as a SAK that has not been analyzed by a forensic lab within 365 days of being booked into law enforcement evidence. SAKs for cases in which the identity of the offender is not an issue, the statute of limitations has expired, or the offender was convicted without DNA evidence still fall under this definition and are not excluded from this MOU. SAKs that have been tested, but have not been tested for the presence of DNA evidence, also fall under the definition of "Untested SAK" and are not excluded. Untested SAKs do not include SAKs in cases where a victim chooses not to report a crime. Such non-reported, unreported, anonymous or "Jane Doe" SAKs should not be tested under the terms of this MOU unless a victim has decided to make a police report at a later time. In addition, the term "Untested SAK" does not include cases where evidence exists that no crime was committed (e.g., the victim recants or video footage exists demonstrating there was no crime).

WHEREAS, MCAO desires to collaborate with the Agency to have Untested SAKs tested and to report the results of such testing as set out in this MOU;

WHEREAS, MCAO has applied for and been awarded a grant ("Grant") from the District Attorney of New York County, State of New York, ("DANY") under the DANY Sexual Assault Kit Backlog Reduction grant program to assist in the reduction of the number of Untested SAKs in Maricopa County;

WHEREAS, pursuant to the program described in the Grant and the grant agreement executed by MCAO and DANY ("Grant Agreement"), the Agency and MCAO desire to cooperate to submit Untested SAKs to an appropriate and accredited commercial laboratory ("Laboratory") so that evidence contained in Untested SAKs can be tested for

the presence of certain biological substances containing Deoxyribonucleic Acid (“DNA”);

WHEREAS, MCAO and the Agency intend that DNA profiles identified by the Laboratory will be submitted to the State of Arizona Department of Public Safety (the “DPS Lab”) for review and potential submission to the Federal Bureau of Investigation’s combined DNA Index System (“CODIS”), to enable the Agency to develop potential investigative leads that could result in the identification of a suspect or suspects of alleged sexual assault, abuse, or other crimes;

WHEREAS, the Agency intends to cooperate with MCAO in prosecution of the suspect or suspects identified as a result of DNA testing by the Laboratory and the further analysis by the DPS Lab of evidence contained in the Untested SAKs;

WHEREAS, pursuant to its statutory mission, MCAO intends to review charges submitted by law enforcement for potential prosecution and take appropriate action;

NOW, THEREFORE, the parties hereto agree to enter into this MOU according to the terms and conditions set forth below.

1. DUTIES OF THE AGENCY

1.1. INVENTORY, SELECTION, AND SHIPPING OF UNTESTED SAKs.

- 1.1.1. INVENTORY OF UNTESTED SAKs. The Agency will create an inventory listing, by a mutually agreed upon tracking system of reference numbers or names, the Untested SAKs that the Agency intends to submit to the Laboratory pursuant to this MOU.
- 1.1.2. SELECTION. Upon receipt of the inventory described above, MCAO will advise the Agency of the number of Untested SAKs that the Agency is authorized to deliver to the Laboratory for testing as set out in this MOU. MCAO’s duty to pay the Laboratory for testing applies only with respect to (i) the testing functions contemplated by this MOU, and (ii) the Untested SAKs approved by MCAO, in a written communication to the Agency, for shipment to the Laboratory.
- 1.1.3. FORKLIFT APPROACH. The Agency shall use a “Forklift Approach” in identifying the Untested SAK for testing under this MOU. “Forklift Approach” means the testing of all Untested SAKs irrespective of the type of kit. Under a “Forklift Approach” Untested SAKs should not be excluded from the sample of

kits to be tested for reasons including: expired statute of limitations, perceived weaknesses in the case, the nature of the victim/defendant relationship, victim cooperation at the time the crime was reported, previous adjudication of the case, or prior forensic testing.

1.1.4. RANDOM SAMPLING OF UNTESTED SAKs. If MCAO authorization for testing pursuant to this MOU applies to fewer than all the Untested SAKs listed in the inventory submitted by the Agency, the Agency will use a random method of selecting the Untested SAKs authorized by MCAO. Only Untested SAKs selected through use of such a Random Sample selection process will be eligible for testing and reporting as set out in this MOU. "Random Sample" means a process of selecting a subset of SAKs in which each kit in the subset has an equal probability of being selected for testing. For example, if the Agency is authorized by MCAO to test one-fourth of its total backlog of Untested SAKs pursuant to this MOU, the Random Sample should include every fourth Untested SAK, and the Agency is not permitted to select intentionally a specific kit for testing. However, notwithstanding the foregoing, specific Untested SAKs may be selected for testing if a statute of limitations will expire within two years; the Agency will notify MCAO of the Untested SAKs selected based on this statute of limitations provision.

1.1.5. SHIPPING. Upon receipt of authorization from MCAO and, if section 1.1.4 above applies, selection of the Untested SAKs to be submitted for testing, the Agency shall ship the Untested SAKs to the Laboratory designated by MCAO.

1.2. RECEIPT AND PROCESSING OF SAKs FOLLOWING LABORATORY TESTING.

Following the testing by the Laboratory, the SAKs shall be delivered to the DPS Lab for further testing. The DPS Lab must approve and comply with the technical specifications to be used in performing DNA analysis by the Laboratory (see the agreements set out in Attachment A for such specifications), take ownership of the data produced, perform technical review(s) of the data according to the FBI DNA Quality Assurance Standards, and shall enter all eligible profiles into CODIS.

1.3. PAYMENTS TO THIRD PARTIES.

1.3.1. PAYMENT FOR SHIPPING OF SAKs. The Agency shall be responsible for payment of all shipping expenses incurred in submitting the Untested SAKs to the Laboratory and for return of the SAKs and results from the Laboratory.

1.3.2. PAYMENT TO THE LABORATORY. MCAO has executed a separate agreement (see Attachment A) with each Laboratory that provides for payment of a fixed amount to cover certain testing functions related to the Untested SAKs. The Agency will be solely responsible for paying the Laboratory for any additional testing or processing relating to the Untested SAKs.

1.3.3. PAYMENT TO THE DPS LAB. Pursuant to an Intergovernmental Agreement between MCAO and the DPS Lab (the "MCAO/DPS IGA"), MCAO shall pay the DPS Lab a fixed amount per SAK for the services provided by the DPS Lab pursuant to the MCAO/DPS IGA and as described in this MOU. MCAO shall not have any duty to pay the DPS Lab any amount in excess of the fixed amount set forth in the MCAO/DPS IGA. The Agency agrees to pay the DPS Lab for any amounts due in excess of the amounts paid by MCAO pursuant to the MCAO/DPS IGA.

1.4. REQUIRED QUARTERLY REPORTS TO MCAO. Not later than January 10th, April 10th, July 10th, and October 10th of each year through and including October 10, 2019, the Agency shall report the information set out in Attachment B to MCAO, in a format provided by MCAO (which may include separate reporting of cumulative and interim or periodic data), regarding the SAKs tested pursuant to this MOU. The Agency will cooperate with MCAO to provide all data that may be required by DANY.

1.5. TRACKING AND SHARING INFORMATION. The Agency agrees to track and share with MCAO all information regarding the selection, submittal, and processing of SAKs contemplated by this MOU, including inventory, selection, shipping, DNA testing by the Laboratory, receipt and determination of CODIS eligibility by the DPS Lab, follow-up investigation by the Agency, and submittal to MCAO for consideration of prosecution.

1.6. TECHNICAL SPECIFICATIONS AND PRESERVING THE CHAIN OF CUSTODY.
The Agency agrees to the Technical Specifications and Chain of Custody provisions set

out in Exhibit I of the agreement between MCAO and the Laboratory (see Attachment A). The Chain of Custody protocols for handling SAKs are intended to document and preserve a record of a continuous chain of custody of the evidence contained in the SAKs; such protocols shall include submitting with the Untested SAKs to the Laboratory a manifest of the contents of the package and appropriate supporting documentation.

1.7. RECORD KEEPING AND INSPECTION. The Agency shall maintain current, complete, and accurate records and accounts of all actions, obligations, and expenditures regarding performance of this MOU. The Agency shall permit and have readily available for examination and auditing by MCAO and any of its duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this MOU. The Agency shall maintain all such reports and records until all audits and examinations are completed and resolved, or for a period of six years after termination of this MOU, whichever time period is longer.

2. DUTIES OF MCAO

2.1. RECEIPT AND REVIEW OF PROPOSED SUBMISSION OF UNTESTED SAKS.

MCAO shall receive and review the inventory submitted by the Agency, and provide written authorization regarding shipment by the Agency of a certain number, determined by MCAO, of Untested SAKs to the Laboratory.

2.2. PAYMENT TO LABORATORY. Pursuant to MCAO's agreement with the Laboratory (attached hereto as Attachment A), MCAO shall pay the Laboratory a fixed amount for services regarding the Untested SAKs processed by the Laboratory as contemplated by this MOU. MCAO shall not have any duty to pay the Laboratory any amount in excess of the fixed amount set forth in the agreement between MCAO and the Laboratory; if the Agency requests the Laboratory to perform services in addition to those covered by the agreement between MCAO and the Laboratory, the Agency shall be responsible to pay for such additional services.

2.3. PAYMENT TO THE DPS LAB FOR SERVICES AND PROCESSING. Pursuant to the MCAO/DPS IGA, MCAO shall pay the DPS Lab a fixed amount per SAK for the services provided by the DPS Lab pursuant to the MCAO/DPS IGA and as described in this MOU. MCAO shall not have any duty to pay the DPS Lab any amount in excess of the fixed amount set forth in the MCAO/DPS IGA. The Agency agrees to pay the DPS Lab for any amounts due in excess of the amounts paid by MCAO pursuant to the MCAO/DPS IGA.

2.4. REPORTING TO DANY. MCAO shall submit the reports to DANY as contemplated by the Grant Agreement.

2.5. RECORD KEEPING AND INSPECTION. MCAO shall maintain current, complete, and accurate records and accounts of all actions, obligations, and expenditures regarding performance of this MOU. MCAO shall permit and have readily available for examination and auditing by the Agency and any of its duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this MOU. The MCAO shall maintain all such reports and records until all audits and examinations are completed and resolved, or for a period of six years after termination of this MOU, whichever time period is longer.

3. MUTUAL DUTIES AND REPRESENTATIONS.

3.1. INDEMNIFICATION. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

3.2. COOPERATION. MCAO and the Agency each agree to cooperate with each other and to participate in actions contemplated by the Grant and this MOU, including but not limited to participation in any task force organized for purposes of establishing, interpreting, or enforcing protocols for elimination of a backlog of Untested SAKs.

3.3. AUTHORITY TO ENTER INTO AND PERFORM THIS MOU. MCAO and Agency each represent that (i) it has the authority to execute this MOU and perform the obligations and actions contemplated in this MOU; and (ii) it has received all required approvals and authorizations for such execution and performance, and such approvals and authorizations have not been revoked or limited in time or scope.

3.4. AGREEMENT TO USE BEST PRACTICES IN MEETING GOALS OF THE GRANT. MCAO and the Agency each agree to cooperate and use its best efforts to cause the following "best practice" procedures to be implemented: (a) all eligible DNA profiles resulting from SAK testing should be entered into CODIS within a reasonable timeframe, (b) law enforcement agencies and prosecutors should be notified of all CODIS hits that result from such testing so that investigation and where appropriate, prosecution can occur, and (c) a coordinated strategy to notify and engage victims following CODIS hits should be implemented.

4. GENERAL PROVISIONS.

4.1. TIME FOR PERFORMANCE. The submittal of Untested SAKs and the processing and submittal of entries into CODIS shall be completed on or before September 30, 2017. The reporting obligations under this MOU shall continue through and include the final quarterly reporting date of October 10, 2019.

4.2. EXTENSION. This MOU may be extended for up to three one-year increments with the written agreement of the parties. The terms and conditions of this MOU shall remain the same during any extension period.

4.3. TERMINATION.


4.3.1. Termination Without Cause. Either party may terminate this MOU on sixty (60) days' advance written notice.

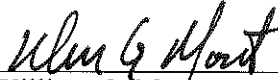
4.3.2. Termination for Cause. Either party may terminate this MOU for cause if the other party fails to perform the duties set out herein. The non-breaching party shall provide written notice of termination, which shall be effective thirty (30) days following receipt of such notice.

This MOU is hereby entered into effective on date of the last signature set out below.

CITY OF ELMIRAGE, BY AND THROUGH
THE EL MIRAGE POLICE DEPARTMENT
("AGENCY")

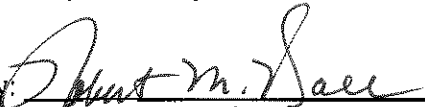
MARICOPA COUNTY, BY AND
THROUGH THE MARICOPA
COUNTY ATTORNEY'S OFFICE
("MCAO")

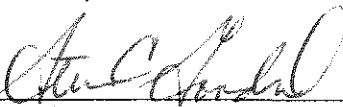
By: 
Name: Terry A. McDonald
Title: Police Chief
Date: 2-17-17


William G. Montgomery
County Attorney
Date: 3-23-17

Approved as to legal form and
as being within the powers and
authority of the Agency:

Approved as to legal form and
as being within the powers and
authority of MCAO:

By: 
Legal Counsel to the Agency
Date:


Legal Counsel to MCAO
Date: 03-21-17

**Attachment A:
Agreements between MCAO and Each Laboratory**

Attachment B

Information to be Reported Pursuant to the DANY Sexual Assault Kit Backlog Elimination Grant Program Quarterly Performance Metrics Report

Definitions

- In a “Forensic Hit” or “Case to Case Match,” the new profile matches DNA from another forensic sample.
- In an “Offender/Arrestee Hit” or “Match to a Known Offender,” the new profile matches the DNA of an offender or arrestee profile already in CODIS (i.e. the match is to a sample in the offender index).
- In a “Confirmatory Hit,” the profile matches with the previously named suspect.
- A “John Doe” warrant or indictment is intended to stop the statute of limitations for an unknown offender.

Baseline Information:

1. Agency Name
2. How many kits did Agency apply for to test under this MOU?
3. Have the kits that will be tested under this MOU been fully inventoried? (Yes/No)
 - a. If no, how is your inventory process progressing?
4. What is the Agency’s policy for notifying victims following a CODIS hit? (Please note any trends that the Agency observed in victim response and lessons learned from the Agency’s. If some victims chose not to cooperate with law enforcement following notification, please describe any reasons they gave.)

Cumulative Data to be completed by the Agency:

For all the following questions, the Agency should please report only activity that occurred during the most recent quarter:

1. The number of Untested SAKs that qualify for the Grant (this will be set out in the inventory described in the MOU).
2. The number of Untested SAKs submitted to Laboratory for testing.
3. The number of victims the Agency attempted to notify following a CODIS hit.
4. The number of victims the Agency successfully notified following a CODIS hit.

5. The number of cases the Agency re-opened (or opened for the first time) as a result of identification through CODIS (a "CODIS hit") based on a DNA profile resulting from the testing contemplated by this MOU.
6. The number of cases beyond the statute of limitations.
7. The number of arrests made as a result of a CODIS hit.

Individual CODIS Hit and Case Data to be completed by the Agency:

For the following questions, new information should be provided, and information provided on past reports should be updated by the Agency on each quarterly report:

1. Case # (CODIS ID)
2. Hit Type (Offender, Forensic, Confirmatory)
3. Top Charge Associated with Kit
4. Suspect Age at Crime
5. Victim Age at Crime
6. Total # of Associated Cases in CODIS
7. # of Associated Sexual Assault cases in CODIS
8. List all states where defendant profile is associated with a crime in CODIS
9. Why wasn't the kit previously tested? (Lack of resources, Case determined to be unfounded by law enforcement, Law enforcement cited non-credible victim, Law enforcement cited uncooperative victim, DNA testing was not available at time of crime, Evidence was not considered probative, Other)
10. If "Other" (ref. 9), please describe
11. Describe investigative activities undertaken following DNA testing (i.e. police file sought, case re-opened, etc.)
12. Agency DR number
13. Evidence Item Number
14. Name of Lab evidence was sent to, under MOU

15. Date evidence was sent to Lab

16. Suspect/Defendant name and:

- a. Gender
- b. Ethnicity
- c. Age at time of arrest

17. Victim Name and:

- a. Gender

Testing Data (to be completed by the DPS Lab):

1. Number of kits submitted for testing
2. Number of kits that did not generate any or sufficient DNA for upload
3. Number of kits that produced a CODIS eligible profile
4. Date of receipt of kit from Agency (for each individual kit)
5. The number of SAKs that produced a CODIS eligible profile.
6. The number of DNA profiles entered into CODIS.
7. The number of hits in CODIS.
8. The number of "Forensic" or "Case to "Case" matches.
9. The number of "Offender/Arrestee hits" or "Matches to Known Offenders".
10. The number of "Confirmatory Hits".
11. The number of CODIS hits that match to a profile associated with another sexual assault case.
12. List each associated case in CODIS by top charge

Programmatic Information to be completed by the Agency:

1. How has your jurisdiction coordinated with the other agencies within your multi-disciplinary strategy this quarter? (Please include the number of stakeholder meetings held and the agencies that participated. Include examples of successful coordination among agencies in your jurisdiction as a result of this project, as well as any challenges that you have faced.)

2. Are all kits associated with a reported crime now submitted to the lab? Are all such kits tested as they come in? If not, what is the practice?
3. Would your jurisdiction potentially benefit by and utilize training and technical assistance in any of the following areas if it were available? Check all that apply.
 - a. CODIS functionality
 - b. The forklift approach
 - c. Best practices training for law enforcement
 - d. Best practices training for hospital staff
 - e. Best practices training for victim services staff
 - f. Best practice training for prosecutors
 - g. Interagency coordination
 - h. Identifying additional funding sources
 - i. Organizational consulting or assistance with process efficiency
 - j. Other _____

Prosecution-related Data (to be completed by MCAO):

1. Number of felony prosecutions commenced
 - a. Number of prosecutions commenced with homicide as the top charge
 - b. Number of prosecutions commenced with felony sexual assault as the top charge
 - c. Number of prosecutions commenced with felony burglary as the top charge
 - d. Number of prosecutions commenced with felony robbery as the top charge
 - e. Number of prosecutions commenced with another felony as the top charge
2. Number of misdemeanor prosecutions commenced
3. Number of "John Doe" warrants or indictments obtained
4. Number of cases that resulted in a felony conviction
5. Number of cases that resulted in a misdemeanor conviction
6. Number of cases that resulted in a sexual assault conviction
7. Number of cases that resulted in an acquittal (on all charges)
8. Number of cases that resulted in a dismissal (on all charges)
9. Number of cases in which the CODIS hit identified a different assailant than the one originally named or prosecuted
10. Number of exonerations

(Individual case data:)

11. Did the case associated with this kit result in prosecution following DNA testing? (Yes, No)
12. If yes (ref. 11), what was the Top Charge and Charge Category (F/M) at commencement?
13. What was the disposition of this case? (Guilty plea, Guilty at trial, Not guilty at trial, Court dismissal, Hung jury, Mistrial, Other)
14. If "Other" (ref. 13), please describe.
15. Top Plea/Conviction Charge
16. Was notification of victim attempted? (Yes, No)
17. Was the victim successfully notified? (Yes, No)
18. Did the victim cooperate with the investigation? (Yes, No)
19. Defendant sentence? (Jail, Prison, Community supervision, Split sentence, None, Other)
20. Was case outside of the Statute of Limitations? (Yes, No)
21. Did the hit result in an exoneration? (Yes, No)
22. Aside from prosecution, how was hit info used? (Parole/probation notification, Sex Offender Registry information, Civil commitment, Used as evidence in another case, Other)
23. If "Other" (ref. 22), please describe.
24. Stranger Assault (Yes, No)
25. Acquaintance Assault (Yes, No)
26. Intimate Partner Violence (Yes, No)
27. Campus Assault (Yes, No)
28. Gang Assault (Yes, No)
29. List all states where convicted of a crime

30. Total # of Out of State Sexual Assault Convictions

31. List All Past Convictions