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**LAW LIBRARY  
ARIZONA ATTORNEY GENERAL**

August 27, 1985

Sharon Turgeon  
Director of the Department of Library  
Archives and Public Records  
Third Floor, Capitol Building  
1700 West Washington  
Phoenix, Arizona 85007

Re: I85-101 (R85-091)

Dear Ms. Turgeon:

You have asked whether client records created by the Maricopa County Public Defender's office are owned by the state, pursuant to A.R.S. §§ 41-1350 and 41-1347, or are owned by the individual client of that office.

The legislature has defined records as follows:

In this chapter, unless the context otherwise requires, "records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, including microphotographic film prints or copies of such items reproduced pursuant to § 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government, or because of the informational and historical value of data contained therein.

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Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications or documents intended for sale or distribution to interested persons, are not included within the definition of "records" as used in this chapter.

A.R.S. § 41-1350. The files of the Public Defender's Office would be "papers, . . . or other documentary materials, . . . made or received by [a] governmental agency in pursuance of law . . ." and would, therefore, be included in the definition of records set out in A.R.S. § 41-1350.

A.R.S. § 41-1347 also provides:

A. All records made or received by public officials of this state in the course of their public duties are the property of the state. Except as provided in this article, the director of the department of library, archives and public records and every other custodian of public records shall carefully protect and preserve the records from deterioration, mutilation, loss or destruction and, when advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purpose of permanent records shall be of durable quality.

B. Records shall not be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the department that the record has no further administrative, legal, fiscal, research or historical value. The original of any record reproduced pursuant to the provisions of § 41-1348 may be determined by the department to have no further administrative, legal, fiscal, research or historical value.

(Emphasis added.)

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Furthermore, Ariz.Rev.Stat. Ann. § 39-121.01(B) provides the following:

All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by funds from the state or any political subdivision thereof.

(Emphasis added.) The term "officer" includes a person appointed to an appointive office. A.R.S. § 39-131.01(A)(1).

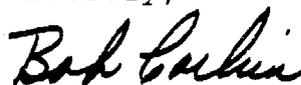
The statutes authorizing the establishment of county public defenders provides that the position of public defender is an appointive office. Thus, the public defender would be a public official pursuant to A.R.S. § 41-1347, and records made or received by him would be property of the state. A.R.S. § 41-1347.

There is nothing in the public defender enabling statutes, A.R.S. § 11-581 et seq., that creates an exception to the requirements for public defenders regarding their records, nor are there any Arizona cases discussing this issue. A Maryland court, however, has addressed a similar issue, and has determined that a public defender's client does not have a property right to a transcript of his trial kept in the public defender's file. In Levene v. Antone, 301 Md. 610, 484 A.2d 259 (1984), the plaintiffs, former clients of the public defender, argued first that as clients, they were principals with a property right in the transcripts and that the public defender had possession of the transcript only as agents of the clients. They argued alternatively, that because of the state-mandated representation created by statute, this resulted in a state-created entitlement to the transcript. The court rejected both theories stating that the Maryland public defender statute created no property right of the client, and that the transcripts were acquired not simply as agents of the client, but in the discharge of the public defender's statutory responsibilities, which could continue beyond representation of the indigent client.

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We find nothing in Arizona's public defender statutes that would dictate a different conclusion pertaining to the client's file. We therefore conclude that a public defender's client's file is the property of the state and is not owned by the client.

Sincerely,



BOB CORBIN  
Attorney General

RKC:DMR:clp