


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p>Subject: Clarification Regarding California's Local Law Enforcement Use of DNA Databases</p>	<p>No. 2022-DLE-03</p>	<p>Contact for information: Bureau of Forensic Services (916) 210-7460</p>
	<p>Date: March 1, 2022</p>	

TO: All California Law Enforcement Agencies

The California Department of Justice, Division of Law Enforcement is issuing this Information Bulletin to clarify some of the issues surrounding DNA databases and their current use by California's local law enforcement.

The Combined DNA Index System (CODIS) is the Federal Bureau of Investigation (FBI) program to store and search DNA profiles obtained from forensic evidence and attributable to putative perpetrators. CODIS is comprised of the national database operated by the FBI, state databases (e.g., the CAL-DNA Data Bank), and local databases operated by local law enforcement crime laboratories. Local crime laboratories upload DNA profiles from forensic evidence for searching against offender DNA profiles in the state and national databases. All known offender profiles in California's state CODIS database are collected pursuant to state law and processed and uploaded to CODIS by the California Department of Justice.

The use of CODIS is strictly controlled and crime laboratories must maintain accreditation as well as compliance with the FBI Quality Assurance Standards (QAS) to participate in CODIS. The state CODIS laboratory administers CODIS for the local crime laboratories and is responsible for ensuring statewide compliance with state and federal CODIS requirements. The state CODIS laboratory does not administer or regulate non-CODIS databases used by local law enforcement.

DNA laboratories are designed to minimize the potential for contamination, but occasionally foreign DNA that was not part of the original evidence sample may be detected during DNA analysis. Unintentional DNA contamination will often originate from laboratory or law enforcement personnel who had incidental contact with the evidence or from other case samples processed concurrently during routine laboratory workflow. Because DNA instrumentation is extremely sensitive, an incredibly small amount of contaminating DNA may be detected in an evidence sample. Consequently, to detect DNA contamination that may have occurred in evidence samples many crime laboratories have created internal quality control (QC), or elimination, databases that exist outside of CODIS.

When an evidence sample yields the DNA profile of an unknown individual, the crime laboratory may search the unknown DNA against their internal QC database in an effort to detect potential contamination by ensuring that the DNA is not from a known individual in the QC database. This is a quality control measure to prevent the upload and search of DNA samples that are not eligible for CODIS. After it is demonstrated that the unknown DNA profile was not attributable to contamination, a CODIS-eligible DNA profile may be uploaded and searched against the state and national CODIS databases.

Internal QC databases maintained by California's local law enforcement should only contain DNA profiles from plausible sources of potential contamination, such as laboratory staff and crime scene investigators. To the extent that QC databases contain DNA profiles derived from any other source, law enforcement personnel should ensure that the inclusion of those DNA profiles is reasonable and the individual remains an ongoing source of potential contamination.

A DNA reference sample is obtained directly from a known individual (e.g., a victim, a suspect). DNA reference samples obtained from victims should only be used for comparison to forensic evidence in a specific case or for evaluation of potential contamination in a workflow in which the case was actively being processed. Reference samples from victims are not eligible for upload to any of the criminal indices in CODIS, and beyond evaluation of the specific case or batch of cases should not be retained in any law enforcement QC database.

The California Department of Justice crime laboratories use internal QC databases that do not contain reference samples from victims. Additionally, the state CODIS database does not contain victim reference samples in any of the criminal indices.

The California Department of Justice has not found inclusion of victim reference samples in a QC database necessary for detecting contamination events. Doing so, moreover, elevates the risk of violating the Fourth Amendment to the United States Constitution if those victim reference samples are utilized for any purpose that exceeds the scope of consent¹.

Should you have any questions, please contact Bureau of Forensic Services Assistant Director Nikki Duda at (916) 210-7460.

¹ See *People v. Bravo* (1987) 43 Cal.3d 600, 605 ["A search conducted pursuant to a valid consent does not violate the Fourth Amendment unless the search exceeds the scope of the consent"]