

File No. 220242

Committee Item No. 1

Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee

Date April 11, 2022

Board of Supervisors Meeting

Date 4/26/2022

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Completed by: Victor Young

Date April 7, 2022

Completed by: _____

Date _____

1 [Administrative Code - Limits on Storage and Use of DNA Profiles]

2

3 **Ordinance amending the Administrative Code to prohibit the Police Department or**

4 **other City departments from uploading or storing DNA profiles ~~known to belong to~~from**

5 **crime victims reference samples (“Victim Reference DNA Profiles”) in any City DNA**

6 **database that is not subject to the federal and state rules governing Combined DNA**

7 **Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”), and from storing**

8 **DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any**

9 **Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or**

10 **15 days after the effective date of this ordinance, the Police Department purge from**

11 **Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days**

12 **and Victim Reference DNA Profiles stored for any length of time; and to limit the Police**

13 **Department and other City departments to using Non-CODIS DNA Databases only for**

14 **quality assurance purposes, and not for any investigative purposes; to require the**

15 **Controller to submit an audit report regarding Non-CODIS DNA Databases; and to**

16 **require posting on the Police Department website and other City websites a description**

17 **of how the Department handles and stores a Victim’s DNA.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

19 **Additions to Codes** are in *single-underline italics Times New Roman font*.

20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

21 **Board amendment additions** are in double-underlined Arial font.

22 **Board amendment deletions** are in ~~strikethrough Arial font~~.

23 **Asterisks (* * * *)** indicate the omission of unchanged Code

24 subsections or parts of tables.

25 Be it ordained by the People of the City and County of San Francisco:

1 Section 1. The Administrative Code is hereby amended by adding Chapter 96G,
2 consisting of Sections 96G.1-96G.79, to read as follows:

3
4 **CHAPTER 96G:**

5 **LIMITS ON POLICE DEPARTMENT USE AND STORAGE OF DNA PROFILES**

6
7 **SEC. 96G.1. DEFINITIONS.**

8 *For purposes of this Chapter 96G, the following terms have the following meanings.*

9 **(a) Terms related to DNA Profiles.**

10 *“DNA Profile” means a digital representation of the pattern of an individual’s DNA that may*
11 *be stored in a DNA Database. DNA Profile does not include the physical tissue or other physical*
12 *human material from which the DNA that is the subject of a DNA Profile is extracted and analyzed.*

13 *“Evidentiary DNA Profile” means a DNA Profile collected or analyzed as evidence or potential*
14 *evidence of a crime, including but not limited to a DNA Profile derived from material in a rape kit*
15 *following a sexual assault.*

16 *“Reference DNA Profile” means a DNA Profile obtained from a known individual and*
17 *used for purposes of comparison with Evidentiary DNA Profiles.*

18 *“Victim” means a person harmed as a result of a crime or alleged crime.*

19 *“Victim Reference DNA Profile” means a DNA Profile known to belong to a Victim,*
20 *including but not limited to a Reference DNA Profile obtained from a reference sample*
21 *contributed by a Victim for purposes of comparison with Evidentiary DNA Profiles, and does*
22 *not include any Evidentiary DNA Profile determined to belong to a Victim.*

23 **(b) Terms related to DNA Databases.**

24 *“DNA Database” means a database used to store DNA Profiles.*

1 “CODIS Database” means a DNA Database that is subject to the rules and standards that
2 apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS
3 Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an
4 acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to
5 enable law enforcement to store and search DNA Profiles obtained from forensic evidence and
6 attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the
7 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local
8 DNA Databases operated by local law enforcement crime laboratories such as the Police
9 Department Crime Laboratory.

10 “Non-CODIS DNA Database” means a DNA Database that is accessed or maintained by the
11 Police Department or other City departments and is not a CODIS Database. Non-Codis DNA
12 Databases include but are not limited to any DNA Database used for elimination or decontamination
13 purposes (sometimes referred to as a “quality control” or “quality assurance” database), and any
14 DNA Database used for investigatory purposes that is not a CODIS Database.

15
16 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**
17 **PROFILES.**

18 (a) Except as required by state or federal law, or by accreditation standards, neither the
19 Police Department (“SFPD”) nor any other City department may upload or store a Victim Reference
20 DNA Profile in any Non-CODIS DNA Database. If a DNA Profile already stored in a Non-CODIS
21 DNA Database is determined to be a Victim Reference DNA Profile, the DNA Profile must be purged
22 from that Non-CODIS DNA Database as soon as reasonably practicable following that determination.

23 (b) Except as required by state or federal law, or by accreditation standards, neither the
24 Police Department SFPD nor any other City department may store in any Non-CODIS DNA
25 Database for longer than 60 days any Evidentiary DNA Profile. Any Evidentiary DNA Profile must be

1 purged from any Non-CODIS DNA Database in which the Evidentiary DNA Profile has been stored for
2 a period of 60 days.

3
4 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

5 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No.

6 _____ , establishing this Chapter 96G, the ~~Police Department~~SFPD shall purge from all Non-
7 CODIS DNA Databases all Evidentiary DNA Profiles that have been stored in a Non-CODIS DNA
8 Database for longer than 60 days, and all Victim Reference DNA Profiles that have been stored in a
9 Non-CODIS DNA Database for any length of time.

10
11 **SEC. 96G.4. USE OF NON-CODIS DNA DATABASES ONLY FOR QUALITY**

12 **ASSURANCE PURPOSES.**

13 The ~~Police Department~~SFPD and other City departments may access, search, or otherwise
14 use any Non-CODIS DNA Database, including any Evidentiary DNA Profiles stored in the Non-CODIS
15 DNA Database, only for the purpose of identifying and/or eliminating contamination in a sample from
16 which DNA Profiles have been or may be identified, sometimes referred to as “quality assurance” or
17 “quality control” purposes, and not for any law enforcement investigative purpose.

18
19 **SEC. 96G.5. CONTROLLER’S AUDIT.** To the extent permitted by state and federal

20 law, within three months of the effective date of the ordinance in Board File No. _____
21 establishing this Chapter 96G, the Controller shall audit all Non-CODIS DNA Databases
22 maintained by the ~~Police Department~~SFPD and report to the Board of Supervisors on any use
23 of Reference DNA Profiles and Evidentiary DNA Profiles for law enforcement investigative
24 purposes since the creation of the Non-CODIS DNA Database. This one-time audit shall
25 include a list of all Victim Reference DNA Profiles and all Evidentiary DNA Profiles determined

1 to belong to Victims that were are known to have been collected and stored in the SFPD Non-
2 CODIS DNA Database at any time. The audit shall also include a list of Victim Reference
3 DNA Profiles and Evidentiary DNA Profiles determined to belong to Victims that are known to
4 have been stored in the SFPD Non-CODIS DNA Database at any time and that were have
5 been used in criminal cases, together with and the outcomes of those cases.

6
7 **SEC. 96G.6. NOTICE TO PUBLIC.**

8 Within two months of the effective date of the ordinance in Board File No. _____
9 establishing this Chapter 96G, the Police Department (“SFPD”) shall prepare and publish on
10 SFPD’s website a one-time public notice detailing how SFPD handles and stores a Victim’s
11 DNA Profile (“SFPD Notice”). Such notice shall be posted for 30 days and shall include
12 information regarding SFPD’s practices and safeguards designed to ensure that SFPD will not
13 store Victim Reference DNA Profiles in Non-CODIS DNA Databases and that SFPD has
14 purged Victim Reference DNA Profiles previously stored in SFPD’s Non-CODIS DNA
15 Databases. The Department of Police Accountability (“DPA”), Department of Public Health,
16 and the Office of Sexual Harassment and Assault Response and Prevention, shall post the
17 SFPD Notice on their respective websites for 30 days.

18
19 **SEC. 96G.75. UNDERTAKING FOR THE GENERAL WELFARE.**

20 In enacting this Chapter 96G, the City is assuming an undertaking only to promote the general
21 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
22 which it is liable in money damages to any person who claims that such breach proximately caused
23 injury.

24
25 **SEC. 96G.86. NO CONFLICT WITH FEDERAL OR STATE LAW.**

1 Nothing in this Chapter 96G shall be interpreted or applied so as to create any requirement,
2 power, or duty in conflict with any federal or state law.

3
4 **SEC. 96G.97. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any
6 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
7 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
8 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
9 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
10 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
11 application thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 2. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DAVID CHIU, City Attorney

20 By: /s/ Sarah Crowley
21 SARAH CROWLEY
22 Deputy City Attorney

23
24
25
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REVISED LEGISLATIVE DIGEST

(4/19/2022, Amended in Board)

[Administrative Code - Limits on Storage and Use of DNA Profiles]

Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles from crime victim reference samples (“Victim Reference DNA Profiles”) in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim Reference DNA Profiles stored for any length of time; to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes; to require the Controller to submit an audit report regarding Non-CODIS DNA Databases; and to require posting on the Police Department website and other City websites a description of how the Department handles and stores a Victim’s DNA.

Existing Law

There are no local laws that currently regulate the storage or use of DNA profiles stored in a quality assurance database, or other City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”).

Amendments to Current Law

This ordinance would prohibit the Police Department or other City department from uploading or storing a reference DNA profile obtained from a crime victim for purposes of comparison with Evidentiary DNA Profiles (a “Victim Reference DNA Profile”) in any Non-CODIS DNA database, except as required by state or federal law or accreditation standards.

This ordinance would prohibit the Police Department or other City department from storing any DNA profile obtained from crime scene evidence, including but not limited to DNA profile obtained from a rape kit, (an “Evidentiary DNA Profile”) in any Non-CODIS DNA Database for longer than 60 days, and would require purging of any such profile after 60 days, except as required by state or federal law or accreditation standards.

This ordinance would require the Police Department to purge from all Non-CODIS DNA Databases all Evidentiary DNA Profiles stored for longer than 60 days, and all Victim Reference DNA Profiles stored for any length of time, by July 1, 2022, or 15 days after the effective date of the ordinance.

This ordinance would limit the Police Department and other City departments to using any Non-CODIS DNA Database only for purposes of identifying and/or eliminating contamination of DNA samples, and not for any law enforcement investigative purpose.

This ordinance would require the Controller, within three months of the effective date of the ordinance, to the extent permitted by state and federal law, to conduct a one-time audit of all Non-CODIS DNA Databases maintained by the Police Department and report to the Board of Supervisors on any use of Reference DNA Profiles and Evidentiary DNA profiles for law enforcement investigative purposes since the creation of the Non-CODIS DNA Database. The Controller's audit shall include a list of all Victim Reference DNA Profiles and Evidentiary DNA Profiles determined to belong to victims that are known to have been collected and stored in the Police Department's Non-CODIS DNA Database at any time. The audit shall also include a list of Victim Reference DNA Profiles and Evidentiary DNA Profiles determined to belong to victims that are known to have been stored in the Police Department's Non-CODIS DNA Database at any time and that have been used in criminal cases, together with the outcomes of those cases.

This ordinance would require the Police Department, within two months of the effective date of the ordinance, to prepare and publish a one-time public notice detailing how the Department handles and stores a Victim Reference DNA Profile, including the Department's practices and safeguards to ensure that the Department will not store Victim Reference DNA Profiles in Non-CODIS DNA Databases. The ordinance would require the Police Department, in addition to the Department of Police Accountability, the Department of Public Health, and the Office of Sexual Harassment and Assault Response and Prevention, to post the notice on their respective websites for 30 days.

Background Information

The 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. The use of CODIS DNA databases is strictly controlled under state and federal law, 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 and FBI do not administer or regulate non-CODIS databases used by local law enforcement.

The Police Department's crime lab, like many local crime labs, maintains a non-CODIS database of DNA profiles that the Police Department refers to as the "quality assurance" database or "QA Database." The Police Department Criminalistics Laboratory's Forensic Biology Unit Operating Procedures ("Procedures") explain that the Police Department's QA database has two components: "(a) A database of every single source and deduced evidence profile analyzed since tracking began in 2015, and (b) An elimination database of samples from lab staff members, lab visitors, workers required to enter the lab, and law enforcement elimination samples, for example, CSI team members."

The Procedures further state that "[t]he purpose of the QA Database is to identify potential contamination of evidence by staff, visitors, law enforcement personnel or other evidence samples and report it promptly to lab customers," but that "matches not due to contamination are also identified and communicated to investigators using this QA Database."

The California Department of Justice Division of Law Enforcement released a bulletin on March 1, 2022, to "to clarify some of the issues surrounding DNA databases and their current use by California's local law enforcement." The bulletin includes the following statement:

Internal QC [or quality control] 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.

....

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 original ordinance was introduced on March 8, 2022. The Rules Committee amendments, made on April 11, 2022, added the requirements that the Controller conduct a one-time audit and report to the Board regarding Non-Codis DNA Databases maintained by the Police Department, and that the Police Department post a one-time public notice detailing how the Department handles and stores a Victim's DNA Profile. The amendments introduced before the full Board of Supervisors, on April 19, 2022, narrowed the ordinance to prohibit upload or storage of Victim Reference DNA Profiles, rather than all victim DNA profiles

FILE NO. 220242

(including Evidentiary DNA Profiles belonging to victims) in non-CODIS DNA Databases, and clarified that the Controller audit should address the Police Department's use of both Reference DNA Profiles and Evidentiary DNA Profiles for law enforcement investigative purposes since the creation of the Police Department's Non-CODIS DNA Database.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Chief William Scott, Police Department
Tom Paulino, All City Departments via the Mayor's Office

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: March 14, 2022

SUBJECT: LEGISLATION INTRODUCED

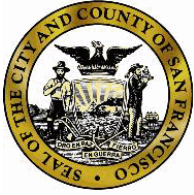
The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 220242

Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles known to belong to crime victims ("Victim DNA Profiles") in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems ("CODIS") databases ("Non-CODIS DNA Databases"), and from storing DNA profiles obtained from crime scene evidence ("Evidentiary DNA Profiles") in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this Ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA Profiles stored for any length of time; and to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Lisa Ortiz, Police Department
Lili Gamero, Police Department
Diana Oliva-Aroche, Police Department
Sgt. Stacy Youngblood, Police Department
Andres Power, Mayor's Office



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220242 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Administrative Code - Limits on Storage and Use of DNA Profiles **Date Introduced:** 03/08/2022

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles known to belong to crime victims (“Victim DNA Profiles”) in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this Ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA Profiles stored for any length of time; and to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes.

Sponsors: Ronen; Walton

History of Legislative File 220242

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	03/08/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	04/07/2022	

1 [Administrative Code - Limits on Storage and Use of DNA Profiles]

2
3 **Ordinance amending the Administrative Code to prohibit the Police Department or**
4 **other City departments from uploading or storing DNA profiles known to belong to**
5 **crime victims (“Victim DNA Profiles”) in any City DNA database that is not subject to**
6 **the federal and state rules governing Combined DNA Index Systems (“CODIS”)**
7 **databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained**
8 **from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA**
9 **Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the**
10 **effective date of this Ordinance, the Police Department purge from Non-CODIS DNA**
11 **Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA**
12 **Profiles stored for any length of time; and to limit the Police Department and other City**
13 **departments to using Non-CODIS DNA Databases only for quality assurance purposes,**
14 **and not for any investigative purposes.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
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21 subsections or parts of tables.

22 Be it ordained by the People of the City and County of San Francisco:

23 Section 1. The Administrative Code is hereby amended by adding Chapter 96G,
24 consisting of Sections 96G.1-96G.7, to read as follows:
25

1 **CHAPTER 96G:**

2 **LIMITS ON POLICE DEPARTMENT USE AND STORAGE OF DNA PROFILES**

3
4 **SEC. 96G.1. DEFINITIONS.**

5 *For purposes of this Chapter 96G, the following terms have the following meanings.*

6 **(a) Terms related to DNA Profiles.**

7 *“DNA Profile” means a digital representation of the pattern of an individual’s DNA that may*
8 *be stored in a DNA Database. DNA Profile does not include the physical tissue or other physical*
9 *human material from which the DNA that is the subject of a DNA Profile is extracted and analyzed.*

10 *“Evidentiary DNA Profile” means a DNA Profile collected or analyzed as evidence or potential*
11 *evidence of a crime, including but not limited to a DNA Profile derived from material in a rape kit*
12 *following a sexual assault.*

13 *“Victim” means a person harmed as a result of a crime or alleged crime.*

14 *“Victim DNA Profile” means a DNA Profile known to belong to a Victim, including but not*
15 *limited to a DNA Profile from a reference sample contributed by a Victim for purposes of comparison*
16 *with Evidentiary DNA Profiles, and any Evidentiary DNA Profile determined to belong to a Victim.*

17 **(b) Terms related to DNA Databases.**

18 *“DNA Database” means a database used to store DNA Profiles.*

19 *“CODIS Database” means a DNA Database that is subject to the rules and standards that*
20 *apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS*
21 *Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an*
22 *acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to*
23 *enable law enforcement to store and search DNA Profiles obtained from forensic evidence and*
24 *attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the*

1 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local
2 DNA Databases operated by local law enforcement crime laboratories.

3 “Non-CODIS DNA Database” means a DNA Database that is accessed or maintained by the
4 Police Department or other City departments and is not a CODIS Database. Non-Codis DNA
5 Databases include but are not limited to any DNA Database used for elimination or decontamination
6 purposes (sometimes referred to as a “quality control” or “quality assurance” database), and any
7 DNA Database used for investigatory purposes that is not a CODIS Database.

8
9 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**
10 **PROFILES.**

11 (a) Except as required by state or federal law, neither the Police Department nor any other
12 City department may upload or store a Victim DNA Profile in any Non-CODIS DNA Database. If a
13 DNA Profile already stored in a Non-CODIS DNA Database is determined to be a Victim DNA Profile,
14 the DNA Profile must be purged from that Non-CODIS DNA Database as soon as reasonably
15 practicable following that determination.

16 (b) Except as required by state or federal law, neither the Police Department nor any other
17 City department may store in any Non-CODIS DNA Database for longer than 60 days any Evidentiary
18 DNA Profile. Any Evidentiary DNA Profile must be purged from any Non-CODIS DNA Database in
19 which the Evidentiary DNA Profile has been stored for a period of 60 days.

20
21 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

22 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No.
23 _____ , establishing this Chapter 96G, the Police Department shall purge from all Non-CODIS
24 DNA Databases all Evidentiary DNA Profiles that have been stored in a Non-CODIS DNA Database

1 for longer than 60 days, and all Victim DNA Profiles that have been stored in a Non-CODIS DNA
2 Database for any length of time.

3
4 **SEC. 96G.4. USE OF NON-CODIS DNA DATABASES ONLY FOR QUALITY**

5 **ASSURANCE PURPOSES.**

6 The Police Department and other City departments may access, search, or otherwise use any
7 Non-CODIS DNA Database, including any Evidentiary DNA Profiles stored in the Non-CODIS DNA
8 Database, only for the purpose of identifying and/or eliminating contamination in a sample from which
9 DNA Profiles have been or may be identified, sometimes referred to as “quality assurance” or “quality
10 control” purposes, and not for any law enforcement investigative purpose.

11
12 **SEC. 96G.5. UNDERTAKING FOR THE GENERAL WELFARE.**

13 In enacting this Chapter 96G, the City is assuming an undertaking only to promote the general
14 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
15 which it is liable in money damages to any person who claims that such breach proximately caused
16 injury.

17
18 **SEC. 96G.6. NO CONFLICT WITH FEDERAL OR STATE LAW.**

19 Nothing in this Chapter 96G shall be interpreted or applied so as to create any requirement,
20 power, or duty in conflict with any federal or state law.

21
22 **SEC. 96G.7. SEVERABILITY.**

23 If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
2 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
3 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
4 application thereof would be subsequently declared invalid or unconstitutional.

5
6 Section 2. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
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9 of Supervisors overrides the Mayor’s veto of the ordinance.

10
11 APPROVED AS TO FORM:
12 DAVID CHIU, City Attorney

13 By: /S/ Sarah Crowley
14 SARAH CROWLEY
15 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Limits on Storage and Use of DNA Profiles]

Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles known to belong to crime victims (“Victim DNA Profiles”) in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this Ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA Profiles stored for any length of time; and to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes.

Existing Law

There are no local laws that currently regulate the storage or use of DNA profiles stored in a quality assurance database, or other City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”).

Amendments to Current Law

This ordinance would prohibit the Police Department or other City department from uploading or storing a DNA profile known to belong to a crime victim (“Victim DNA Profile”) in any Non-CODIS DNA database, and would require purging of any DNA profile uploaded to a Non-CODIS DNA Database and then subsequently determined to belong to a crime victim.

This ordinance would prohibit the Police Department or other City department from storing any DNA profile obtained from crime scene evidence, including but not limited to DNA profile obtained from a rape kit, (an “Evidentiary DNA Profile”) in any Non-CODIS DNA Database for longer than 60 days, and would require purging of any such profile after 60 days.

This ordinance would require the Police Department to purge from all Non-CODIS DNA Databases all Evidentiary DNA Profiles stored for longer than 60 days, and all Victim DNA Profiles stored for any length of time, by July 1, 2022, or 15 days after the effective date of the ordinance.

This ordinance would limit the Police Department and other City departments to using any Non-CODIS DNA Database only for purposes of identifying and/or eliminating contamination of DNA samples, and not for any law enforcement investigative purpose.

Background Information

The 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. The use of CODIS DNA databases is strictly controlled under state and federal law, 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 and FBI do not administer or regulate non-CODIS databases used by local law enforcement.

The Police Department's crime lab, like many local crime labs, maintains a non-CODIS database of DNA profiles that the Police Department refers to as the "quality assurance" database or "QA Database." The Police Department Criminalistics Laboratory's Forensic Biology Unit Operating Procedures ("Procedures") explain that the Police Department's QA database has two components: "(a) A database of every single source and deduced evidence profile analyzed since tracking began in 2015, and (b) An elimination database of samples from lab staff members, lab visitors, workers required to enter the lab, and law enforcement elimination samples, for example, CSI team members."

The Procedures further state that "[t]he purpose of the QA Database is to identify potential contamination of evidence by staff, visitors, law enforcement personnel or other evidence samples and report it promptly to lab customers," but that "matches not due to contamination are also identified and communicated to investigators using this QA Database."

The California Department of Justice Division of Law Enforcement released a bulletin on March 1, 2022, to "to clarify some of the issues surrounding DNA databases and their current use by California's local law enforcement." The bulletin includes the following statement:

Internal QC [or quality control] 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.

....

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.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
2. Request for next printed agenda Without Reference to Committee.
3. Request for hearing on a subject matter at Committee.
4. Request for letter beginning : "Supervisor inquiries"
5. City Attorney Request.
6. Call File No. from Committee.
7. Budget Analyst request (attached written motion).
8. Substitute Legislation File No.
9. Reactivate File No.
10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles known to belong to crime victims ("Victim DNA Profiles") in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems ("CODIS") databases ("Non-CODIS DNA Databases"), and from storing DNA profiles obtained from crime scene evidence ("Evidentiary DNA Profiles") in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA Profiles stored for any length of time; and to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes.

Signature of Sponsoring Supervisor:

From: [Saini, Nikita \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Somera, Alisa \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Ronen, Hillary](#)
Subject: FW: Ordinance and digest for introduction - Limits on Storage and Use of DNA Profiles
Date: Tuesday, March 8, 2022 2:39:42 PM
Attachments: [Ordinance_final_for_intro_3.8.22.DOCX](#)
[Digest_final_for_intro_3.8.22.DOCX](#)
[DNA leg Intro form.pdf](#)

Hello all,

Supervisor Ronen intends on introducing an ordinance today which would prohibit SFPD from storing victim DNA profiles in their DNA database. I've attached the ordinance and digest from the City Attorney as well as the introduction form. The /s/ constitutes an electronic signature from Supervisor Ronen.

Please let me know if I need to provide any additional information/documentation.

Thank you.

Best,
Nikita

Nikita Saini
Legislative Aide
Office of Supervisor Hillary Ronen
925.286.2820/ nikita.saini@sfgov.org
<https://sfbos.org/supervisor-ronen-district-9>

From: Crowley, Sarah (CAT) <Sarah.Crowley@sfcityatty.org>
Sent: Tuesday, March 08, 2022 2:14 PM
To: Ronen, Hillary <hillary.ronen@sfgov.org>; Saini, Nikita (BOS) <nikita.saini@sfgov.org>
Cc: PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; ZAREFSKY, PAUL (CAT) <Paul.Zarefsky@sfcityatty.org>; BUTA, ODAYA (CAT) <Odaya.Buta@sfcityatty.org>; CHEESEBOROUGH, PAMELA (CAT) <Pamela.Cheeseborough@sfcityatty.org>
Subject: Ordinance and digest for introduction - Limits on Storage and Use of DNA Profiles

Privileged and Confidential Communication – Do Not Disclose

Supervisor Ronen and Nikita,

I'm attaching the following ordinance and related legislative digest for introduction:

Ordinance amending the Administrative Code to prohibit the Police Department or other City departments from uploading or storing DNA profiles known to belong to crime victims ("Victim DNA Profiles") in any City DNA database that is not subject to the federal and state rules governing Combined DNA Index Systems ("CODIS") databases ("Non-CODIS DNA

Databases”), and from storing DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the effective date of this ordinance, the Police Department purge from Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA Profiles stored for any length of time; and to limit the Police Department and other City departments to using Non-CODIS DNA Databases only for quality assurance purposes, and not for any investigative purposes.

For the clerk of the board, I am confirming that my electronic signature in the attached ordinance signifies that I approve this ordinance as to form.

Please let me know if you have any questions.

Thanks,
Sarah

Sarah A. Crowley
Deputy City Attorney
Office of City Attorney Dennis Herrera
(646) 498-5521 Cell

1 [Administrative Code - Limits on Storage and Use of DNA Profiles]

2
3 **Ordinance amending the Administrative Code to prohibit the Police Department or**
4 **other City departments from uploading or storing DNA profiles known to belong to**
5 **crime victims (“Victim DNA Profiles”) in any City DNA database that is not subject to**
6 **the federal and state rules governing Combined DNA Index Systems (“CODIS”)**
7 **databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained**
8 **from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA**
9 **Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the**
10 **effective date of this Ordinance, the Police Department purge from Non-CODIS DNA**
11 **Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA**
12 **Profiles stored for any length of time; and to limit the Police Department and other City**
13 **departments to using Non-CODIS DNA Databases only for quality assurance purposes,**
14 **and not for any investigative purposes.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
18 **Board amendment additions** are in double-underlined Arial font.
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
20 **Asterisks (* * * *)** indicate the omission of unchanged Code
21 subsections or parts of tables.

22 Be it ordained by the People of the City and County of San Francisco:

23 Section 1. The Administrative Code is hereby amended by adding Chapter 96G,
24 consisting of Sections 96G.1-96G.7, to read as follows:
25

1 **CHAPTER 96G:**

2 **LIMITS ON POLICE DEPARTMENT USE AND STORAGE OF DNA PROFILES**

3
4 **SEC. 96G.1. DEFINITIONS.**

5 *For purposes of this Chapter 96G, the following terms have the following meanings.*

6 **(a) Terms related to DNA Profiles.**

7 *“DNA Profile” means a digital representation of the pattern of an individual’s DNA that may*
8 *be stored in a DNA Database. DNA Profile does not include the physical tissue or other physical*
9 *human material from which the DNA that is the subject of a DNA Profile is extracted and analyzed.*

10 *“Evidentiary DNA Profile” means a DNA Profile collected or analyzed as evidence or potential*
11 *evidence of a crime, including but not limited to a DNA Profile derived from material in a rape kit*
12 *following a sexual assault.*

13 *“Victim” means a person harmed as a result of a crime or alleged crime.*

14 *“Victim DNA Profile” means a DNA Profile known to belong to a Victim, including but not*
15 *limited to a DNA Profile from a reference sample contributed by a Victim for purposes of comparison*
16 *with Evidentiary DNA Profiles, and any Evidentiary DNA Profile determined to belong to a Victim.*

17 **(b) Terms related to DNA Databases.**

18 *“DNA Database” means a database used to store DNA Profiles.*

19 *“CODIS Database” means a DNA Database that is subject to the rules and standards that*
20 *apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS*
21 *Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an*
22 *acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to*
23 *enable law enforcement to store and search DNA Profiles obtained from forensic evidence and*
24 *attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the*

1 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local
2 DNA Databases operated by local law enforcement crime laboratories.

3 “Non-CODIS DNA Database” means a DNA Database that is accessed or maintained by the
4 Police Department or other City departments and is not a CODIS Database. Non-Codis DNA
5 Databases include but are not limited to any DNA Database used for elimination or decontamination
6 purposes (sometimes referred to as a “quality control” or “quality assurance” database), and any
7 DNA Database used for investigatory purposes that is not a CODIS Database.

8
9 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**
10 **PROFILES.**

11 (a) Except as required by state or federal law, neither the Police Department nor any other
12 City department may upload or store a Victim DNA Profile in any Non-CODIS DNA Database. If a
13 DNA Profile already stored in a Non-CODIS DNA Database is determined to be a Victim DNA Profile,
14 the DNA Profile must be purged from that Non-CODIS DNA Database as soon as reasonably
15 practicable following that determination.

16 (b) Except as required by state or federal law, neither the Police Department nor any other
17 City department may store in any Non-CODIS DNA Database for longer than 60 days any Evidentiary
18 DNA Profile. Any Evidentiary DNA Profile must be purged from any Non-CODIS DNA Database in
19 which the Evidentiary DNA Profile has been stored for a period of 60 days.

20
21 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

22 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No.
23 _____ , establishing this Chapter 96G, the Police Department shall purge from all Non-CODIS
24 DNA Databases all Evidentiary DNA Profiles that have been stored in a Non-CODIS DNA Database
25

1 for longer than 60 days, and all Victim DNA Profiles that have been stored in a Non-CODIS DNA
2 Database for any length of time.

3
4 **SEC. 96G.4. USE OF NON-CODIS DNA DATABASES ONLY FOR QUALITY**

5 **ASSURANCE PURPOSES.**

6 The Police Department and other City departments may access, search, or otherwise use any
7 Non-CODIS DNA Database, including any Evidentiary DNA Profiles stored in the Non-CODIS DNA
8 Database, only for the purpose of identifying and/or eliminating contamination in a sample from which
9 DNA Profiles have been or may be identified, sometimes referred to as “quality assurance” or “quality
10 control” purposes, and not for any law enforcement investigative purpose.

11
12 **SEC. 96G.5. UNDERTAKING FOR THE GENERAL WELFARE.**

13 In enacting this Chapter 96G, the City is assuming an undertaking only to promote the general
14 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
15 which it is liable in money damages to any person who claims that such breach proximately caused
16 injury.

17
18 **SEC. 96G.6. NO CONFLICT WITH FEDERAL OR STATE LAW.**

19 Nothing in this Chapter 96G shall be interpreted or applied so as to create any requirement,
20 power, or duty in conflict with any federal or state law.

21
22 **SEC. 96G.7. SEVERABILITY.**

23 If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
2 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
3 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
4 application thereof would be subsequently declared invalid or unconstitutional.

5
6 Section 2. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 APPROVED AS TO FORM:
12 DAVID CHIU, City Attorney

13 By: /S/ Sarah Crowley
14 SARAH CROWLEY
Deputy City Attorney

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