

File No. 220242

Committee Item No. 1

Board Item No. 17

# COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee

Date April 11, 2022

Board of Supervisors Meeting

Date 4/19/2022

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**OTHER** (Use back side if additional space is needed)

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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**  
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; to require the Controller to submit an audit**  
15 **report regarding Non-CODIS DNA Databases; and to require posting on the Police**  
16 **Department website and other City websites a description of how the Department**  
17 **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

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

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

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

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

22 *“CODIS Database” means a DNA Database that is subject to the rules and standards that*  
23 *apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS*  
24 *Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an*  
25 *acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to*

1 enable law enforcement to store and search DNA Profiles obtained from forensic evidence and  
2 attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the  
3 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local  
4 DNA Databases operated by local law enforcement crime laboratories.

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

10  
11 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**  
12 **PROFILES.**

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

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

22  
23 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

24 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No. 220242,  
25 establishing this Chapter 96G, the Police Department shall purge from all Non-CODIS DNA

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

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

6 **ASSURANCE PURPOSES.**

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

12  
13 **SEC. 96G.5. CONTROLLER’S AUDIT.** To the extent permitted by state and federal  
14 law, within three months of the effective date of the ordinance in Board File No. 220242  
15 establishing this Chapter 96G, the Controller shall audit all Non-CODIS DNA Databases  
16 maintained by the Police Department and report to the Board of Supervisors on any use of  
17 Evidentiary DNA Profiles for law enforcement investigative purposes since the creation of the  
18 Non-CODIS DNA Database. This one-time audit shall include a list of all Victim DNA Profiles  
19 that were collected and stored in the SFPD Non-CODIS DNA Database. The audit shall also  
20 include a list of Victim DNA Profiles stored in the SFPD Non-CODIS DNA Database that were  
21 used in criminal cases and the outcomes of those cases.

22  
23 **SEC. 96G.6. NOTICE TO PUBLIC.**

24 Within two months of the effective date of the ordinance in Board File No. 220242  
25 establishing this Chapter 96G, the Police Department (“SFPD”) shall prepare and publish on

1 SFPD’s website a one-time public notice detailing how SFPD handles and stores a Victim’s  
2 DNA Profile (“SFPD Notice”). Such notice shall be posted for 30 days and shall include  
3 information regarding SFPD’s practices and safeguards designed to ensure that SFPD will not  
4 store Victim DNA Profiles in Non-CODIS DNA Databases and that SFPD has purged Victim  
5 Profiles previously stored in SFPD’s Non-CODIS DNA Databases. The Department of Police  
6 Accountability (“DPA”), Department of Public Health, and the Office of Sexual Harassment  
7 and Assault Response and Prevention, shall post the SFPD Notice on their respective  
8 websites for 30 days.

9  
10 **SEC. 96G.75. UNDERTAKING FOR THE GENERAL WELFARE.**

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

15  
16 **SEC. 96G.86. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

19  
20 **SEC. 96G.97. SEVERABILITY.**

21 *If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any*  
22 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*  
23 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*  
24 *portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have*  
25 *passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not*

1 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or  
2 application thereof would be subsequently declared invalid or unconstitutional.

3  
4 Section 2. Effective Date. This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor’s veto of the ordinance.

8  
9 APPROVED AS TO FORM:  
10 DAVID CHIU, City Attorney

11 By: /S/ Lauren Curry, for  
12 SARAH CROWLEY  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

(Revised 4/11/2022)

[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; 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 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.

This ordinance would require the Controller, within three months of the effective date of the ordinance, 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 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 DNA Profiles that were collected and stored in the Police Department's Non-CODIS DNA Database and a list of all such Victim DNA Profiles that were used in criminal cases, and 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's DNA Profile, including the Department's practices and safeguards to ensure that the Department will not store Victim 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.*

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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

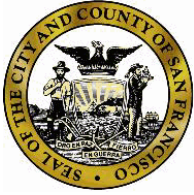
The Board of Supervisors' Rules Committee received the following proposed legislation:

**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](mailto: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]

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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**  
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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*  
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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*  
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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.

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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  
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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  
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](#)

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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](mailto:nikita.saini@sfgov.org)  
<https://sfbos.org/supervisor-ronen-district-9>

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**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.

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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  
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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.

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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.

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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.

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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.

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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.

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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.

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APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

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

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