

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.

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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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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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