

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF CALIFORNIA
AND THE
Oakland Police Department Criminalistics Division CRIME LABORATORY

Purpose

This Memorandum of Understanding (MOU) memorializes responsibilities, obligations, and limitations accepted by the Oakland Police Department Criminalistics Division Crime Laboratory (the Participating Laboratory) as a participant in the Combined DNA Index System (CODIS) and its administration within the State of California. By signing this MOU, the Participating Laboratory understands and agrees to comply with all state and federal statutory and regulatory mandates related to CODIS participation, as well as the directives, instructions, and policies issued by the California Department of Justice in its capacity as the administrator of California's State DNA Index System (SDIS), and the SDIS Procedures Board, whether set forth in this MOU or otherwise communicated to the Participating Laboratory.

I. General Terms & Conditions

A. The California Department of Justice is responsible for the management and administration of California's SDIS. (Cal. Pen. Code, § 295(g).) A Department of Justice employee will be the Designated State Official (DSO) in charge of California's SDIS, and shall ensure that all State of California participating laboratories comply with the terms and conditions of this MOU and other SDIS policies and procedures. The DSO may delegate to the CODIS State Administrator such authority, duties and responsibilities as are deemed necessary for the operation of California's SDIS and California's participation in the National DNA Index System (NDIS).

B. The California Department of Justice shall serve as the central point of contact for access to NDIS on behalf of all local laboratories in California that participate in CODIS. All inquiries and sharing of information with NDIS shall be through SDIS and subject to the approval of the California Designated State Official and/or the CODIS State Administrator.

C. The California Department of Justice and the Participating Laboratory agree to abide by the terms and conditions specified in the following documents:

1. The NDIS Responsibilities Document
2. The NDIS Procedures
3. The NDIS Privacy Act Notice
4. The DNA and Forensic Identification Database and Data Bank Act of 1998, as amended (Cal. Pen. Code §§ 295-300.3)

5. The Federal DNA Identification Act of 1994 (42 U.S.C. § 14132)
6. All California SDIS procedures and policies issued by the California Department of Justice and/or the California SDIS Procedures Board

II. License to Use CODIS Software

- A. CODIS software is the exclusive property of the Federal Bureau of Investigation (FBI). A license for its use has been granted to CODIS participating laboratories.
- B. CODIS software may not be used in any manner not specifically authorized by the FBI.
- C. CODIS software may not be shared, given, sold, or otherwise distributed to any unauthorized person or agency without the express written permission of the FBI. Reasonable precautions and security measures shall be taken to prevent unauthorized use of or access to CODIS software.
- D. The FBI may terminate the license to use CODIS software immediately if the participating laboratory is found in violation of any of the provisions of the software license.

III. Compliance with State Law

- A. California Penal Code sections 295-300.3 authorize the existence and define the parameters of California's SDIS, including use and disclosure restrictions, and requirements for profiles eligible for upload into SDIS. All CODIS participating laboratories in California must comply with these state statutes.
 1. Except as specifically provided by law, the Participating Laboratory may not disclose, to any individual or organization, any data or information contained within SDIS without the express written permission of the California Department of Justice.
 2. To the extent that California law or SDIS Procedures contain more stringent DNA Data Bank Program use and disclosure restrictions than federal law, California law and Procedure is controlling.
- B. The Department of Justice is the exclusive arbiter of state law relating to CODIS operations. All inquiries regarding interpretation of Penal Code sections 295-300.3 should be directed to the California DSO/CODIS State Administrator.
- C. Participating laboratories may upload a forensic unknown DNA profile into SDIS only if the facts of the case suggest that the profile is attributable to a putative

perpetrator in the case, and only if the profile meets technical requirements as set forth by the California Department of Justice.

1. Only the California Department of Justice is authorized to upload offender and arrestee DNA profiles into SDIS (Cal. Pen. Code, § 297(a)(3).)

D. “Legally Obtained” and “Legally Obtained Suspect Known” Samples

1. Local laboratories may upload “legally obtained” DNA samples into SDIS pursuant to Penal Code section 295.1(c)(5) only if corresponding records are maintained by the laboratory adequately documenting the factual basis underlying procurement of each legally obtained sample.
2. The Participating Laboratory shall observe the protocol set forth by the California Department of Justice for uploading “Legally Obtained Suspect Known” profiles into SDIS. Additionally, the California DSO/CODIS State Administrator shall be notified upon withdrawal of a “Legally Obtained Suspect Known” profile for reasons set forth in Penal Code section 297(c).

IV. Compliance with Federal Law

- A. All CODIS participating laboratories in California shall comply with the provisions of 42 U.S.C. § 14132 (“The Federal DNA Identification Act of 1994”). Federal law sets forth mandates on laboratory quality assurance, accreditation and audits, and confidentiality of data.
- B. The Participating Laboratory acknowledges that participation in and searches of NDIS will be governed by the “NDIS Procedures Manual” which is incorporated into this agreement by reference.
- C. Failure to comply with applicable federal law may result in the termination of the Participating Laboratory’s access to NDIS and use of CODIS software.

V. Quality Assurance

- A. The Participating Laboratory shall maintain its accreditation by an organization approved by the NDIS Procedures Board, and continue to meet all state and federal requirements, including the FBI Quality Assurance Standards, for participating in CODIS. (Cal. Pen. Code, § 297(a)(2).)
 1. The Participating Laboratory shall submit to the California Department of Justice all reports required by its accrediting organization, FBI Quality Assurance Standards, and the NDIS Procedures, as well as all certifications of compliance issued by the accrediting body for private laboratories that process SDIS-eligible DNA samples on a contract basis.

- B. The Participating Laboratory must conduct a quality assessment and review, as required by the FBI Quality Assurance Standards, of any private laboratory it contracts with for the processing of SDIS-eligible DNA samples.
(Cal. Pen. Code, § 297(b).)
- C. Only those alleles that meet the Participating Laboratory's analytical threshold may be uploaded into SDIS. An analytical threshold defines a minimum height requirement at and above which detected peaks can be reliably distinguished from background noise.
 - 1. The California DSO/CODIS State Administrator may, at his/her discretion, request and receive electropherograms and/or other analytical data from participating laboratories related to SDIS submissions.
- D. Only profiles uploaded pursuant to controlling rules will be searched.
- E. The Participating Laboratory agrees to provide all appropriate data to the Cold Hit Outcome Project (CHOP) as set forth by that program's administrators.

VI. Obligations of the Participating Laboratory in Legal Actions

- A. The Participating Laboratory, to the extent permitted by state and/or federal law, agrees to indemnify and hold harmless the California Department of Justice, its officers and employees, from and against all claims, demands, actions, suits and proceedings brought by others arising out of the terms of this MOU.
- B. The Participating Laboratory shall notify the California DSO/CODIS State Administrator in writing within seven business days after initial notification to the Participating Laboratory of any legal action involving CODIS, NDIS, or SDIS. Examples of such legal actions which require notification include, but are not limited to, the following:
 - 1. Discovery requests for CODIS source code;
 - 2. Discovery requests for any aspect of the CODIS database design;
 - 3. Discovery requests for any DNA records maintained in SDIS or NDIS;
 - 4. Civil actions filed pursuant to 42 U.S.C. § 1983 alleging federal constitutional violations related to CODIS operations.

VII. Violation of Law and/or MOU by Participating Laboratory

- A. The California Department of Justice may suspend all or part of the rights granted to the Participating Laboratory by virtue of this MOU for a violation or a series of violations of any federal or state law or regulation related to CODIS operations
- B. The Participating Laboratory explicitly acknowledges that violation of Federal or State law or their associated regulations may give rise to the following sanctions:
 - 1. Termination of status as a Participating Laboratory and denial of access to any DNA records held by NDIS or SDIS;
 - 2. Fines;
 - 3. Criminal charges.
- C. If the Participating Laboratory has been suspended from participating in SDIS, and by virtue of that suspension, from participating in NDIS, the suspension may be lifted upon demonstration to the California Department of Justice that all violations have been corrected or eliminated. The decision to lift the suspension of a Participating Laboratory from participation in SDIS shall be at the sole discretion of the California DSO/CODIS State Administrator.

VIII. Termination of the Memorandum of Understanding

- A. Either party to this MOU may terminate it for any reason, by providing the other party with 30 days written notice of their intent to terminate.
- B. In addition to the termination provisions set forth above, upon 30 days written notice to the Participating Laboratory, the California Department of Justice may terminate this MOU and require removal of the CODIS software from the computer equipment of a Participating Laboratory and/or return of that software and any accompanying materials if notified by the FBI that funds for the continued support of CODIS and/or NDIS are not appropriated by the United States Congress.


IX. Modifications to the Memorandum of Understanding

- A. Modifications to this MOU may be made necessary by changes in policies, procedures or technology. Therefore, the Participating Laboratory agrees that this MOU may be modified as follows:
 - 1. Modifications to the text of this MOU shall only be effective if in writing and signed by all parties.

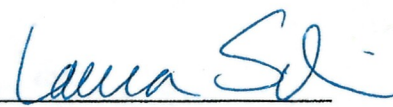
2. Modifications to any Appendices shall only be effective if in writing and provided to the Participating Laboratory.

Agreed to by representatives of the parties having the administrative and legal authority to bind the parties to the terms and conditions of this Agreement.

FOR THE STATE:

By: LINTON VON BEROLDINGEN 
(Name)
STATE CODIS ADMINISTRATOR 12/7/2017
(Title) (Date)

FOR THE PARTICIPATING LABORATORY:

By: Laura Silva 
(Name)
Laboratory CODIS Administrator 12/05/2017
(Title) (Date)