

RESOURCE FOR PROSECUTORS

**Model Internal Policy
For Prosecutors' Handling of CODIS
Hits**

Putting CODIS hits to use to **hold offenders accountable, provide justice to victims, and correct wrongful convictions**

Preface

This model policy serves to ensure that valuable DNA evidence generated by the Combined DNA Index System (“CODIS”) program is used to its full potential to solve crimes and identify wrongful convictions.

CODIS is an extremely powerful crime-solving tool. In unsolved cases, it can help identify the perpetrators of violent crimes or tie seemingly unconnected crimes together. CODIS hits that emerge *post-conviction* can also be material, potentially revealing wrongful convictions.

Yet CODIS hits frequently arise years after the original crime occurred, and as a result are vulnerable to being overlooked by law enforcement. Most law enforcement agencies have no procedure for handling incoming CODIS hits, and when a case has been marked as closed or gone unsolved for a long time, there may be no investigator currently assigned allowing hits to be ignored as no one thinks it is their responsibility to investigate it. As jurisdictions make progress in testing backlogged sexual assault kits, this risk is especially great since — as profiles from these kits are submitted to CODIS — a large number of hits are likely to be generated in older cases.

District attorney’s offices can play an important role in addressing this issue. By adopting a policy guaranteeing that all incoming CODIS hits are properly reviewed, classified, and referred to the appropriate actors, prosecutors can at last ensure that the vital information contained in CODIS hits is fully utilized to hold offenders accountable, provide justice to victims, and exonerate the innocent. This policy provides a model for doing just that.

If you have questions on our model policy or are seeking guidance on how to implement it, please contact Hayden Davis at hdavis@accuratejustice.org. We would also be happy to work with you to create a custom policy tailored to your agency’s existing workflows and needs.

Key Elements

This model policy ensures that all CODIS hits received within your jurisdiction will be systematically reviewed, investigated, and acted upon to ensure they are used to their full potential to solve crimes, secure convictions, and correct wrongful convictions. Specifically, the policy:

- Assigns an individual to review and triage all incoming CODIS hits, eliminating “orphaned” hits by making clear who has responsibility over a hit at all stages
- Refers hits in unsolved cases to law enforcement for investigation, with appropriate follow-up mechanisms
- Flags hits in pending-prosecution cases to ensure hits that could help secure a conviction always reach the lead prosecutor
- Identifies any hits that are potentially exculpatory and guarantees they are investigated and that the convicted person and counsel are notified
- Provides timely and compassionate notification to victims — a strong preference of victims’ advocates
- Includes clear timeframes and reporting mechanisms to ensure that no hits have been missed

Note: In many jurisdictions around the country, CODIS hits are provided to the law enforcement agency that submitted the DNA profile involved, but *not* the jurisdictional prosecutor. If your agency currently does not receive notification of new CODIS hits, the first step is to contact the crime laboratory (normally housed within the state police) to request that your agency receive copies of CODIS hit reports sent to law enforcement agencies in your jurisdiction. In our experience, crime labs are more than happy to accommodate this request, and often already have processes for doing so.

Model Policy

I. INTAKE AND INITIAL REVIEW OF CODIS HITS

Each month, [Assigned Individual] shall review the summary of all CODIS hits received by the Office within the preceding month.

For each CODIS hit, [Assigned Individual] shall, within 30 days:

- Mark the case in which the CODIS hit relates as open; and
- Determine whether a conviction was secured in the case to which the hit relates.

II. INVESTIGATION OF HITS IN CASES WITHOUT A CONVICTION

If a CODIS hit is received in a case for which no conviction has been secured, [Assigned Individual] shall open an investigation to determine:

1. Whether the hit can help identify the perpetrator(s) in the case; and
2. Whether the hit can help identify the perpetrator(s) in any other criminal cases.

Any CODIS hit in a case for which no conviction has been secured shall be considered **Potentially Useful** and [Assigned Individual] shall notify the lead prosecutor assigned to the case, or, if no one is assigned to the case, refer the CODIS hit to [Senior Official] so that a lead prosecutor may be assigned.

Where a Defendant Has Been Charged: If the CODIS hit relates to a case in which a person has been charged but no conviction has yet been secured, [Lead Prosecutor] shall:

1. Review the hit to determine whether it can aid in securing a conviction against the defendant or whether it tends to negate the guilt of the defendant; and
2. Where appropriate, disclose the CODIS hit to the defendant.

Where No Charges Have Been Brought: If the CODIS hit relates to a case in which no person has been charged, [Lead Prosecutor] shall:

1. Notify the law enforcement agency with jurisdiction over the case that a CODIS hit has been received in a case for which no charges have been brought;
2. Request that the law enforcement agency conduct an investigation to determine whether the hit can help identify the perpetrator(s) in the case; and
3. Request that the law enforcement agency provide an update to [Lead Prosecutor] within a specific time period.

III. INVESTIGATION OF HITS IN CASES WITH A CONVICTION

If a CODIS hit is received in a case for which at least one person has been convicted, [Assigned Individual] shall, within 30 days, determine whether the hit involves the offender profile of the person convicted.

Conviction Confirmatory Hits: If the hit is a match between a forensic profile and the offender profile of the person convicted in the case, the hit shall be considered Conviction Confirmatory and the case may be marked as closed with no further action required.

Potentially Exculpatory Hits: If the hit:

1. Involves the offender profile of a person other than the person convicted;
2. Involves the offender profile of one person convicted, but where more than one person was convicted in the case; or
3. Is a “case-to-case” hit that involves no offender profile at all,

The hit shall be considered Potentially Exculpatory, and [Assigned Individual] shall promptly notify the [A specified senior official within the office, unless your office has a conviction integrity unit, in which case the director of that unit should receive the notification].

IV. ACTION ON POTENTIALLY EXCULPATORY HITS

Upon receiving notification of a Potentially Exculpatory CODIS hit, the [Senior Official or Director of the Conviction Integrity Unit, if applicable] shall, within 30 days:

1. Initiate an investigation to determine whether the hit calls the integrity of the conviction into question;
2. Notify the convicted person(s) of the hit, providing them a copy of the report, a brief description of the hit, and notifying them that the Office is reviewing the hit;
3. Notify an innocence organization that operates within the jurisdiction of the hit; and
4. In coordination with the lead prosecutor on the original conviction, notify any victims in the case that a CODIS hit has been that does not match the person(s) convicted in the case and ask their preference as to under what circumstances they would like to receive further updates about the hit and the investigation, *unless* the victim has previously expressed a preference not to receive such updates.

If your agency has a conviction integrity unit, direct notification of an innocence organization is less necessary, so long as the CIU is able to operate with sufficient independence from other prosecutors to conduct a neutral and innocence-focused review of the hit’s exculpatory value.

V. REPORTING

[Assigned Individual] shall maintain a list of all CODIS hits received by the Office, providing for each one information on:

1. The status of the CODIS hit (Potentially Useful; Conviction Confirmatory; or Potentially Exculpatory); and
2. Any individual within the office the hit was referred to for investigation.

On or before February 28th of each year, the Office shall make publicly available a report detailing:

1. The total number of CODIS hits received by the agency in the preceding calendar year;
2. The total number of CODIS hits categorized as Potentially Useful, Conviction Confirmatory, and Potentially Exculpatory, respectively; and
3. The total number of CODIS hits that have not been reviewed in accordance with this policy.