



Model Bill

# No Evidence Ignored Act

Guaranteeing proper review of forensic database evidence to solve violent crimes and correct wrongful convictions



# Introduction

Police forensic databases are extremely powerful crime-solving tools, but they are not being used to their full potential. Inadequate review procedures mean forensic evidence that could identify the perpetrators of violent crimes and even reveal wrongful convictions is at risk of falling through the cracks. The No Evidence Ignored Act ensures that this crucial forensic evidence is properly reviewed, disclosed, and acted upon statewide.

## What are Police Forensic Databases?

When forensic evidence like DNA, ballistics, or fingerprints are obtained from a crime scene, they are submitted to large law enforcement databases. Likewise, when a person is convicted of a felony, certain forensic evidence (like DNA) is also taken and submitted to these databases. Programs like the Combined DNA Index System (CODIS) scan through all of these profiles and flag any that match.

With many millions of profiles, these databases can identify the perpetrators of violent crimes or tie seemingly unconnected crimes together. When a crime lab learns of a match — often referred to as a “hit” — it notifies the law enforcement agency that originally submitted the profile involved, leaving it entirely up to them how to proceed.

## The Problem

Unfortunately, this reliance on already-busy local law enforcement agencies to act with no oversight, formal procedures, or centralized review, puts crucial evidence generated by forensic databases at risk of being ignored.

**1. Forensic hits in unsolved cold cases are being overlooked.** When a hit returns in a case that has long been unsolved, the original investigating officer may have changed roles or left the agency. This can allow powerful forensic evidence identifying the perpetrator to be missed simply because no one thinks it is their job to investigate it.

**2. Exculpatory forensic hits are not being acted upon or disclosed.** Where an innocent person was wrongfully convicted, the risk is even higher as these cases are already marked as closed. This means exculpatory DNA evidence can be available to police and prosecutors but never acted upon or disclosed, leaving an innocent person in prison with no way of knowing about the evidence that could exonerate them, all while the true offender avoids accountability

## **This Issue is Not a Hypothetical**

There are numerous *confirmed* cases where this occurred across the country. In fact, the data indicates that guaranteeing proper review of this evidence nationwide would free 20–25 innocent people each year, help solve hundreds of cold cases, all while using minimal resources.

As states make progress in testing long-backlogged sexual assault kits, the need for action to address this problem is more urgent than ever. As these kits are finally submitted to DNA databases like CODIS, many are generating hits identifying the perpetrators in cold cases. After so many resources have gone into addressing the backlog – and after victims have had to wait so long – it is vital that the crime-solving information that emerges gets put to use.

## **The Solution: The No Evidence Ignored Act**

The No Evidence Ignored Act would solve this problem guaranteeing that no victim will go without justice – and no innocent person will remain in prison – while forensic evidence identifying the true perpetrator sits on the desks of police and prosecutors.

The bill formalizes a uniform process for reviewing and investigating incoming forensic database hits, eliminating ambiguity about which agencies (or officials within them) are responsible for acting on hits, even when they occur years after the original crime.

The bill also lays out specific investigative steps that must be taken in response to specific types of forensic hits. Hits in unsolved cases, for instance, must be investigated to determine if they can identify the perpetrator of the crime or reveal a serial offender operating across jurisdictions. Likewise, potentially exculpatory hits must be disclosed to the convicted person and counsel. The bill also includes public reporting provisions so that compliance can be monitored and the law's effectiveness continually assessed.

Adopting the No Evidence Ignored Act will make your state the national model in the use of forensic database evidence, and will improve public safety, provide justice to victims, and free the innocent.

*If you are interested in introducing the No Evidence Ignored Act in your state, or to request an editable-text version of the bill, please contact Hayden Davis at [hdavis@accuratejustice.org](mailto:hdavis@accuratejustice.org).*

## Summary of Provisions

In brief, the No Evidence Ignored Act guarantees that forensic database evidence is fully reviewed, investigated, and, where appropriate, disclosed, in order to make sure this powerful scientific evidence is used to its full potential to solve crimes and correct wrongful convictions. Specifically, the bill:

- **Requires state crime laboratories to copy the jurisdictional prosecutor on forensic database hit reports sent to law enforcement.** This is a practice already followed by many crime labs and gives prosecutors visibility into incoming hits, removing informational silos and allowing for better oversight.
- **Ensures all incoming forensic database hits are reviewed and classified,** guaranteeing that hits will never be missed, even when they arise years after the original crime.
- **Provides for full investigation of forensic hits in unsolved cases** to determine if the hit can identify a new suspect in the case, reveal a suspect in other cases, or help secure a conviction against the perpetrator.
- **Guarantees disclosure of potentially exculpatory hits** to the convicted person and their counsel, as well as a proper investigation by the prosecutor's office to determine if the hit reveals the convicted person's innocence.
- **Provides for timely and compassionate notification to victims,** making sure victims are never left in the dark when new evidence emerges in their case. This is routinely cited as a priority by victims' organizations.
- **Includes robust reporting requirements** to monitor compliance and assess the effectiveness of the law. The annual nature of these reporting requirements ensure they do not overly burden agencies.
- **Avoids imposing new requirements on local law enforcement agencies,** ensuring they will not be burdened by the law.

# Model Bill Text

## **Section 1. Short title.**

This chapter shall be known and may be cited as the “No Evidence Ignored Act.”

## **Section 2. Purpose.**

The purpose of this Act is to advance public safety and promote accuracy in the criminal justice system by ensuring that evidence generated by police forensic databases is properly reviewed, disclosed, and acted upon. Forensic database evidence plays an increasingly important role in solving violent crime. It can identify the perpetrator in unsolved and cold cases, and can even expose wrongful convictions. It is crucial that this evidence be used to its full potential. This Act serves to ensure that victims will never go without justice, and an innocent person will never remain in prison, when forensic evidence that could identify the true perpetrator is available to police and prosecutors.

## **Section 3. Definitions.**

As used in this chapter, the following terms have the following meanings:

- (a) “Conviction-confirmatory” means that the crime-scene profile involved in the forensic database hit matched to the profile of the person already convicted of a crime in relation to the case.
- (b) “Crime-scene profile” means a profile contained in a forensic database that was collected from a crime scene, as opposed to being collected from a suspect or criminal offender.
- (c) “Forensic database” means any government-maintained digitized repository that includes profiles collected from crime scenes for the purpose of identification, investigation, or prosecution, and that periodically indexes such profiles to identify potential matches, including the Combined DNA Index System.

- (d) “Hit” means a match between two or more profiles in a forensic database, including a match between two crime-scene profiles.
- (e) “Innocence organization” means an organization that operates, though need not be based in, this State, and that provides pro bono legal services to people challenging their criminal convictions on grounds of actual innocence.
- (f) “Offender profile” means a profile contained in a forensic database that was collected from a known individual or specimen, rather than from a crime scene.
- (g) “Potentially exculpatory” means that the crime-scene profile involved in the forensic database hit matched to a profile other than that of the person convicted of a crime in relation to the case, such as to the profile of a different known individual or to a crime-scene profile.
- (h) “Profile” means a specific, unique identifier of an individual or object, such as a DNA sequence, fingerprint, or spent bullet or cartridge casing.
- (i) “Prosecutorial agency” means the office of the Attorney General or a district attorney of this State.

**Section 4. Notice of Forensic Database Hits to Prosecutors.**

- (a) The [State crime lab], upon receiving or identifying a forensic database hit involving a crime-scene profile submitted by a state or local agency of this State, shall transmit a report of the hit to:

In most states, the forensic databases that are the target of this law — like CODIS — are handled by the state crime lab. But in some states local police departments receive CODIS hits directly from the FBI. In these states, Sections 4 and 6 should be updated to reflect this.

- (1) The submitting law enforcement agency;
- (2) The prosecutorial agency with jurisdiction over the case.

(b) Each month, the [State crime lab] shall transmit to each prosecutorial agency a list of all forensic database hits transmitted to that agency under subsection (a) of this section during the preceding calendar month.

### **Section 5. Guaranteed Review of Forensic Database Hits.**

(a) Upon receiving a copy of a forensic database hit under Section 4 of this chapter, a prosecutorial agency shall, within 30 days, open an investigation to determine whether the hit relates to a criminal case for which at least one person has been convicted.

(b) If a hit relates to a criminal case for which no person has been convicted, the prosecutorial agency shall:

(1) Immediately locate and notify any victims in the case that a forensic database hit has been received and ask their preference as to whether, how, and how often they would like to receive further updates about the hit and their case, and connect them with a trained victim advocate if one is available;

(2) Conduct an investigation, or request that a law enforcement agency conduct an investigation, to determine:

(i) Whether the hit can help identify and prosecute the perpetrator(s) in the case; and

(ii) Whether the hit can help identify and prosecute the perpetrator(s) in any other criminal cases.

(c) If a hit relates to a criminal case for which at least one person has been convicted, the prosecutorial agency shall review the hit to determine whether the hit is conviction-confirmatory or potentially exculpatory as to each convicted person in the case.

(d) If a hit is potentially exculpatory, the prosecutorial agency shall, within 30 days of determining that the hit was potentially exculpatory:

- (1) Initiate an investigation to determine whether the hit calls the integrity of the conviction into question;
  - (2) Notify the convicted person of the hit, providing them a copy of the report and that they may wish to obtain counsel to determine the exculpatory value of the hit;
  - (3) Locate and notify any victims in the case that a forensic database hit has been received that does not match at least one of the persons convicted in their case and ask their preference as to whether, how, and how often they would like to receive further updates about the hit and the investigation, and connect them with a trained victim advocate if one is available; and
  - (4) Notify an innocence organization or, if no such organization exists, the convicted person's last known defense counsel of record of the hit, including in such notification the criminal case to which it relates.
- (e) If a hit is conviction-confirmatory, the prosecutorial agency shall notify the [State crime lab] that the hit was conviction-confirmatory.
- (f) A prosecutorial agency shall not be required to notify a victim under subsections (b) or (d) of this section if that victim has previously expressed a preference not to receive such updates.
- (g) Upon completion of all actions required under this section, an investigation opened under subsection (a) of this section may be closed.

### **Section 6. Public Reporting.**

- (a) On or before February 28th of each year, the [State crime lab] shall compile the number of forensic database hits transmitted to each prosecutorial agency during the preceding calendar year, broken down by each forensic database.
- (b) On or before February 28th of each year, each prosecutorial agency shall provide to the [State crime lab], for each forensic database:
  - (1) The total number of hits received in the preceding calendar year;

- (2) The total number of investigations opened pursuant to Section 5 of this chapter during the preceding calendar year;
  - (3) The total number of hits received for which an investigation required under Section 5 of this chapter had not yet been opened at the end of the preceding calendar year;
  - (4) The total number of investigations conducted under Section 5 of this chapter that were closed during the preceding calendar year, including the number of closed investigations that involved, respectively:
    - (i) A case in which no person had been convicted of a crime;
    - (ii) A potentially exculpatory hit; and
    - (iii) A conviction-confirmatory hit; and
  - (5) The total number of hits determined to be potentially exculpatory under subsection (c) of Section 5 of this chapter in the preceding calendar year; and
  - (6) The total number of cases in which charges were brought in the preceding calendar year involving a hit investigated under subsection (b) of Section 5 of this chapter.
- (c) The [State crime lab] shall make all reports compiled or received under this section publicly available.
- (d) The reporting obligations provided in this section shall only apply to hits received after [implementation date].

### **Section 7. Compliance with Federal Rules.**

- (a) No provision of this law shall be enforced if such provision would, at the time of enforcement:
- (1) Violate any federal law or regulation; or
  - (2) Inhibit or substantially interfere with a [state] prosecutorial or law enforcement agency's ability to access a forensic database system.