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January 30, 2018

NDAA Position Statement on Use of Rapid DNA Technology

The National District Attorneys Association (NDAA) supported passage of the Rapid DNA Act of 2017 and continues to support the scientifically responsible use of Rapid DNA technology to investigate crimes, prosecute the guilty, and exonerate the innocent.

The Rapid DNA Act of 2017 was signed into law in August 2017. The legislation was groundbreaking in that it allows law enforcement officers to use Rapid DNA instruments at booking stations and authorizes criminal justice agencies to upload arrestee DNA profiles directly into the Combined DNA Index System (CODIS). Law enforcement officers and other criminal justice agencies using Rapid DNA instruments must comply with the Rapid DNA standards and procedures issued by the Director of the Federal Bureau of Investigation (FBI).

NDAA supports the implementation of Rapid DNA instruments in booking stations utilizing single source arrestee samples; however, NDAA does not support the use of Rapid DNA technology for crime scene DNA samples unless the samples are analyzed by experienced DNA analysts using that technology working in an accredited forensic DNA laboratory. Crime scene samples can contain degraded DNA, and often contain mixtures which are very different from pristine known arrestee DNA samples. DNA analysts working in an accredited forensic laboratory are experienced in analyzing crime scene samples involving complex mixtures, low-level DNA and/or degraded DNA. Law enforcement officers at the crime scene do not have the education, training, or experience necessary to evaluate whether a crime scene sample(s) is appropriate for Rapid DNA analysis and subsequent upload to CODIS or to determine, for example, what type of DNA testing should be attempted to maximize the potential of optimal results. Because the crime scene sample is not replaceable, valuable evidence could be lost when a low-template DNA crime scene sample is analyzed by a Rapid DNA instrument in a law enforcement environment when it should have been analyzed in an accredited forensic laboratory using standard DNA testing methods.

There is currently no substitute for the DNA analyst's trained assessment and evaluation of the crime scene sample(s). Probative DNA evidence may be lost if the appropriate DNA testing methods are not utilized. Furthermore, law enforcement officers are not qualified DNA analysts, and a case could be critically compromised should a law enforcement officer be exposed to cross-examination at trial regarding scientific methods and principles with which he/she is not familiar. Equally concerning is the potential for differing results if two crime scene DNA samples are collected at the same time and one is analyzed by Rapid DNA technology and the other by an accredited crime laboratory using standard DNA testing methods. The apparent discrepancy in results from the two samples would be viewed as legally "exculpatory" even though no true discrepancy exists. Thus, the law would require a prosecutor to turn over results

that could be viewed as exculpatory even though, from the scientific viewpoint, they are not. This, in turn, could unjustifiably diminish the significance of the DNA results in a jury's eyes.

In the NDAA's view, CODIS regulations pertaining to the use of Rapid DNA technology to analyze crime scene samples should not be relaxed. Quality and privacy have been foundational requirements for the National DNA Index System (NDIS) since inception in 1998 and will continue to be maintained through the use of approved Rapid DNA instruments and compliance with FBI procedures and standards. Despite arguments to the contrary, uploading DNA profiles into CODIS using Rapid DNA technology is not analogous to uploading a fingerprint to the Automated Fingerprint Identification System (AFIS). Fingerprints reliably can be searched immediately because a fingerprint, by definition, cannot contain a mixture of more than one print. Crime scene DNA profiles uploaded to CODIS by the accredited crime laboratory can be searched only after the accredited laboratory has analyzed the profile and determined that it is a single source or identified the sample as containing a DNA mixture and resolving that mixture.

Accordingly, at this time, current Rapid DNA technology should only be used in booking stations for the single source reference samples for which the instruments were specifically designed. Therefore, the NDAA does not support law enforcement agencies' use of Rapid DNA instruments to analyze crime scene samples for upload to CODIS unless the samples are analyzed by experienced DNA analysts using that technology working in an accredited forensic DNA laboratory.