



COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORENSIC SCIENCE

OFFICE OF THE DIRECTOR
A Nationally Accredited Laboratory
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DFS POLICY NOTICE

To: All Agencies Served by DFS
From: Linda C. Jackson, Director
Date: August 1, 2024 
RE: **Utilization of Private Laboratories for DNA Cases**

For some cases, Virginia law enforcement agencies may want to utilize a private laboratory for DNA analysis of evidence. This most often occurs when law enforcement wishes to utilize emerging technology that is not yet offered by the Virginia Department of Forensic Science (DFS). To ensure that the law enforcement agency (LEA) is appropriately informed regarding potential pitfalls in the use of a private laboratory, DFS provides the following caveats below. LEAs seeking to contract with a private laboratory should discuss potential issues with the vendor laboratory before testing is initiated.

- (1) DFS can identify potential private laboratories that may conduct the testing sought by the law enforcement agency, but it will not recommend one vendor over another. Agencies should conduct the appropriate research with fellow LEAs to determine which vendors have provided the best services to others in other cases/investigations.
- (2) Prior to initiating any testing by a vendor, LEAs should discuss the sought after testing with the Forensic Biology Program Manager, the Assistant Forensic Biology Program Manager, or one of the Forensic Biology Section Supervisors from DFS. DFS staff can confirm that the appropriate Memorandum of Understanding (MOU) is in place if needed prior to the contracting for services by the LEA with the selected vendor.
- (3) **The MOU must be in place with the selected vendor BEFORE ANY TESTING IS CONDUCTED to ensure that any DNA profiles developed during the analysis can be uploaded and searched in the Combined DNA Index System (CODIS) by DFS.** This requires that the vendor agree to (a) comply with the accreditation requirements under federal law, (b) comply with the Quality Assurance Standards for Forensic DNA Testing Laboratories, (c) submit to on-site visits either by the DFS Technical Leader or their designee or submit to an on-site visit by a designated FBI employee, and (d) cooperate with DFS on any technical review or verification process DFS may require for DNA data developed.

- (4) DFS may refuse to upload and search a DNA profile that (a) was obtained by testing by a vendor who did not have a pre-existing MOU with DFS, (b) was obtained by a vendor that would not qualify under the terms and conditions outlined in #3 above, and (c) has been uploaded into a vendor-owned or other third-party owned DNA database in violation of National DNA Index System (NDIS) Operational Procedures. **LEAs must ensure that the vendor agrees to meet these criteria prior to initiating any testing of evidence.**
- (5) Even after completion of the analysis with the appropriate MOU in place, DFS has the exclusive right to make the final determination regarding the CODIS eligibility of a developed profile.
- (6) Prior to contracting for services, LEAs should discuss with the vendor the costs associated with potential testimony that might be required should the DNA analysis become part of a subsequent criminal proceeding. DFS staff cannot testify to the DNA analyses performed by vendor laboratories, only to the review of the data and searching of any DNA profiles submitted to DFS under the MOU.
- (7) **Some vendors provide types of DNA analyses that cannot currently be uploaded and searched in CODIS (e.g., phenotyping, ancestry testing, low copy number (LCN), YSTR testing).** LEAs should be clear on any potential limitations that may exist for a vendor prior to contracting for and initiating any testing.
- (8) **WHEN UPLOADING AND SEARCHING DNA PROFILES, DFS MUST COMPLY WITH NDIS OPERATIONAL PROCEDURES. FAILURE TO DO SO COULD RESULT IN DFS LOSING ACCESS TO CODIS UNDER ITS MOU WITH THE FBI.**
- (9) LEAs interested in the use of **Forensic Investigative Genetic Genealogy (FIGG)** are advised that the DNA data developed using ancestry testing is not suitable for searching in CODIS. Although DFS does not conduct the ancestry DNA testing needed for FIGG, DFS will offer support to LEAs interested in contracting with a private laboratory for FIGG purposes by:
 - reviewing case files previously tested by DFS to aid in the determination as to which samples may most likely yield a useable result, and
 - providing quantitation and other technical information regarding the DNA extracts created during the previous testing either through a LEA contact or directly to the contracted private laboratory upon request.

DFS is supportive of law enforcement agencies and attorneys seeking and utilizing DNA testing from private laboratories to enhance their investigations/cases; however, the Department wants to ensure the information generated by such testing will be able to be used as expected.

For questions, please contact Forensic Biology Program Manager Brad Jenkins (Brad.Jenkins@dfs.virginia.gov), Assistant Forensic Biology Program Manager Elizabeth Ballard (Elizabeth.Ballard@dfs.virginia.gov), or the Forensic Biology Supervisor at the DFS regional laboratory that provides services to your agency:

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