



Office of the Inspector General
U.S. Department of Justice



Audit of Compliance with Standards Governing Combined DNA Index System Activities at the Pinellas County Forensic Laboratory Largo, Florida

**AUDIT OF COMPLIANCE WITH STANDARDS GOVERNING
COMBINED DNA INDEX SYSTEM ACTIVITIES AT THE
PINELLAS COUNTY FORENSIC LABORATORY
LARGO, FLORIDA**

EXECUTIVE SUMMARY

The Department of Justice Office of the Inspector General (OIG), Audit Division, has completed an audit of compliance with standards governing Combined DNA Index System (CODIS) activities at the Pinellas County Forensic Laboratory (Laboratory).

The Federal Bureau of Investigation's (FBI) CODIS program combines forensic science and computer technology to provide an investigative tool to federal, state, and local crime laboratories in the United States, as well as those from select international law enforcement agencies. The CODIS program allows these crime laboratories to compare and match DNA profiles electronically to assist law enforcement agencies in solving crimes and identifying missing or unidentified persons.¹ The FBI's CODIS Unit manages CODIS, as well as develops, supports, and provides the program to crime laboratories to foster the exchange and comparison of forensic DNA evidence.

The FBI implemented CODIS as a distributed database with hierarchical levels that enables federal, state, and local crime laboratories to compare DNA profiles electronically. The hierarchy consists of three distinct levels that flow upward from the local level to the state level and then, if allowable, the national level. The National DNA Index System (NDIS), the highest level in the hierarchy, contains DNA profiles uploaded by law enforcement agencies across the United States and is managed by the FBI. NDIS enables the laboratories participating in the CODIS program to electronically compare DNA profiles on a national level. The State DNA Index System (SDIS) is used at the state level to serve as a state's DNA database and contains DNA profiles from local laboratories and state offenders. The Local DNA Index System (LDIS) is used by local laboratories.

Our audit generally covered the period from February 2012 through February 2017. The objectives of our audit were to determine if: (1) the Pinellas County Forensic Laboratory was in compliance with select NDIS Operational Procedures; (2) the Laboratory was in compliance with certain Quality Assurance Standards (QAS) issued by the FBI; and (3) the Laboratory's forensic DNA profiles in CODIS databases were complete, accurate, and allowable for inclusion in NDIS.

¹ DNA, or deoxyribonucleic acid, is genetic material found in almost all living cells that contains encoded information necessary for building and maintaining life. Approximately 99.9 percent of human DNA is the same for all people. The differences found in the remaining 0.1 percent allow scientists to develop a unique set of DNA identification characteristics (a DNA profile) for an individual by analyzing a specimen containing DNA.

We determined that the Laboratory was in compliance with the NDIS participation requirements regarding training for personnel, physically and electronically securing the CODIS server, and reporting external audits to the FBI. We also found that the Laboratory complied with the Forensic Quality Assurance Standards we reviewed. Specifically, the Laboratory underwent the necessary Quality Assurance reviews, adhered to laboratory security standards, including the protection of evidence integrity, and followed requirements with regard to the separation of known and unknown profiles, as well as the retention of samples and extracts after analysis.

However, through the course of our review of 100 forensic profiles, we identified 5 unallowable profiles, 4 of which were uploaded despite a lack of sufficient information in the forensic case file to support NDIS eligibility. We have significant concerns with the Laboratory's practices related to profile eligibility determinations because they do not follow NDIS procedures and could result in the upload of ineligible profiles. In addition, the Laboratory did not always timely notify investigators of NDIS match confirmations.

We made two recommendations to address the Laboratory's compliance with standards governing CODIS activities, which is discussed in detail in the report. Our audit objectives, scope, and methodology are detailed in Appendix 1 of the report and the audit criteria are detailed in Appendix 2. In addition, we discussed the results of our audit with Laboratory officials and have included their comments in the report, as applicable.

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OIG Audit Objectives

Our audit covered the period from February 2012 to February 2017. The objectives of our audit were to determine if: (1) the Pinellas County Forensic Laboratory was in compliance with select National DNA Index System (NDIS) Operational Procedures; (2) the Laboratory was in compliance with certain Quality Assurance Standards (QAS) issued by the FBI; and (3) the Laboratory's forensic DNA profiles in CODIS databases were complete, accurate, and allowable for inclusion in NDIS. Appendix 1 contains a detailed description of our audit objectives, scope, and methodology. Appendix 2 contains the criteria used to conduct the audit.

Legal Foundation for CODIS

The FBI's CODIS program began as a pilot project in 1990. The DNA Identification Act of 1994 (Act) authorized the FBI to establish a national index of DNA profiles for law enforcement purposes. The Act, along with subsequent amendments, has been codified in a federal statute (Statute) providing the legal authority to establish and maintain NDIS.²

¹ DNA, or deoxyribonucleic acid is genetic material found in almost all living cells that contains encoded information necessary for building and maintaining life. Approximately 99.9 percent of human DNA is the same for all people. The differences found in the remaining 0.1 percent allow scientists to develop a unique set of DNA identification characteristics (a DNA profile) for an individual by analyzing a specimen containing DNA.

² 42 U.S.C.A. § 14132 (2006).

Allowable DNA Profiles

The Statute authorizes NDIS to contain the DNA identification records of persons convicted of crimes, persons charged in an indictment or information with a crime, and other persons whose DNA samples are collected under applicable legal authorities. Samples voluntarily submitted solely for elimination purposes are not authorized for inclusion in NDIS. The Statute also authorizes NDIS to include analysis of DNA samples recovered from crime scenes or from unidentified human remains, as well as those voluntarily contributed from relatives of missing persons.

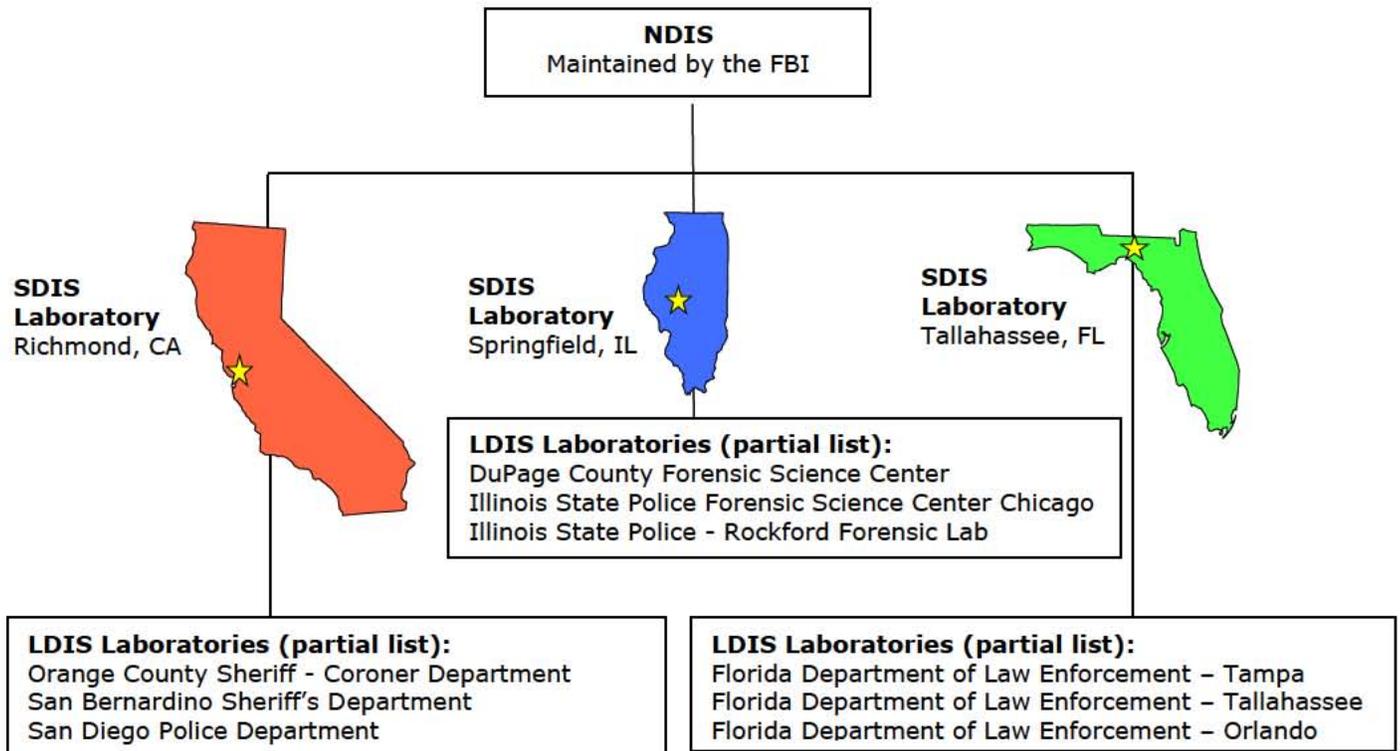
Allowable Disclosure of DNA Profiles

The Statute requires that NDIS only include DNA information that is based on analyses performed by or on behalf of a criminal justice agency—or the U.S. Department of Defense—in accordance with QAS issued by the FBI. The DNA information in the index is authorized to be disclosed only: (1) to criminal justice agencies for law enforcement identification purposes; (2) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules; (3) for criminal defense purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which the defendant is charged; or (4) if personally identifiable information (PII) is removed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

CODIS Architecture

The FBI implemented CODIS as a distributed database with hierarchical levels that enables federal, state, and local crime laboratories to compare DNA profiles electronically. CODIS consists of a hierarchy of three distinct levels: (1) NDIS, managed by the FBI as the nation's DNA database containing DNA profiles uploaded by participating states; (2) the State DNA Index System (SDIS), which serves as a state's DNA database containing DNA profiles from local laboratories within the state and state offenders; and (3) the Local DNA Index System (LDIS), used by local laboratories. DNA profiles originate at the local level and then flow upward to the state and, if allowable, national level. For example, the local laboratory in the Florida Department of Law Enforcement in Orlando, Florida, sends its profiles to the state laboratory in Tallahassee, Florida, which then uploads the profiles to NDIS. Each state participating in CODIS has one designated SDIS laboratory. The SDIS laboratory maintains its own database and is responsible for overseeing NDIS issues for all CODIS-participating laboratories within the state. The graphic below illustrates how the system hierarchy works.

Example of System Hierarchy within CODIS



National DNA Index System

NDIS, the highest level in the CODIS hierarchy, enables laboratories participating in the CODIS program to electronically compare DNA profiles on a national level. NDIS does not contain names or other PII about the profiles. Therefore, matches are resolved through a system of laboratory-to-laboratory contacts. NDIS contains the following searchable indices.

- The Convicted Offender Index contains profiles generated from persons convicted of qualifying offenses.³
- The Arrestee Index is comprised of profiles developed from persons who have been arrested, indicted, or charged in an information with a crime.
- The Legal Index consists of profiles that are produced from DNA samples collected from persons under other applicable legal authorities.⁴

³ The phrase "qualifying offenses" refers to state or federal crimes that require a person to provide a DNA sample in accordance with applicable laws.

⁴ An example of a Legal Index profile would be one from a person found not guilty by reason of insanity who is required by the relevant state law to provide a DNA sample.

- The Detainee Index contains profiles from non-U.S. persons detained under the authority of the United States and required by law to provide a DNA sample for analysis and entry into NDIS.
- Multi-allelic Offender Index consists of profiles from offenders (arrestees, convicted offenders, detainees, or legal index specimens) having three or more alleles at two or more loci.
- The Forensic Index profiles originate from a single source (or a fully deduced profile originating from a mixture) Forensic Sample (biological sample found at the scene of a crime) attributable to the putative perpetrator.
- The Forensic Mixture Index profiles originate from forensic samples that contain DNA contributed from more than one source attributable to a putative perpetrator(s).
- The Forensic Partial Index profiles that originate from a single source (or a fully deduced profile originating from a mixture) Forensic Sample attributable to the putative perpetrator with either locus or allelic dropout at any of the 13 Original CODIS core loci.
- The Missing Person Index contains known DNA records of missing persons and deduced missing persons.
- The Unidentified Human (Remains) Index holds profiles from unidentified living individuals and the remains of unidentified deceased individuals.⁵
- The Relatives of Missing Person Index is comprised of DNA profiles generated from the biological relatives of individuals reported missing.
- Pedigree Tree Index consists of DNA records of biological relatives and spouses of missing persons that are associated with a pedigree tree.

The main functions of CODIS are to: (1) generate investigative leads that may help in solving crimes and (2) identify missing and unidentified persons.

The forensic indices generate investigative leads in CODIS that may help solve crimes. Investigative leads may be generated through matches between the forensic indices and other indices in the system, including the Convicted Offender, Arrestee, and Legal Indices. These matches may provide investigators with the identity of suspected perpetrators. CODIS also links crime scenes through matches between profiles in the forensic indices, potentially identifying serial offenders.

In addition to generating investigative leads, CODIS furthers the objectives of the FBI's National Missing Person DNA Database program through its ability to identify missing and unidentified individuals. For instance, those persons may be identified through matches between the profiles in the Missing Person Index and the Unidentified Human (Remains) Index. In addition, the profiles within the Missing

⁵ An example of an Unidentified Human (Remains) Index profile from a living person is a profile from a child or other individual, who cannot or refuses to identify themselves.

Person and Unidentified Human (Remains) Indices may be searched against the Forensic, Convicted Offender, Arrestee, Detainee, and Legal Indices to provide investigators with leads in solving missing and unidentified person cases.

State and Local DNA Index Systems

The FBI provides CODIS software free of charge to any state or local law enforcement laboratory performing DNA analysis. Laboratories are able to use the CODIS software to upload profiles to NDIS. However, before a laboratory is allowed to participate at the national level and upload DNA profiles to NDIS, a Memorandum of Understanding (MOU) must be signed between the FBI and the laboratory. The MOU defines the responsibilities of each party, includes a sublicense for the use of CODIS software, and delineates the standards laboratories must meet in order to utilize NDIS.

States are authorized to upload DNA profiles to NDIS based on local, state, and federal laws, as well as NDIS regulations. However, states or localities may maintain NDIS-restricted profiles in SDIS or LDIS. For instance, a local law may allow for the collection and maintenance of a victim profile at LDIS but NDIS regulations do not authorize the upload of that profile to the national level.

CODIS becomes more useful as the quantity of DNA profiles in the system increases because the potential for additional leads rises. However, the utility of CODIS relies upon the completeness, accuracy, and quality of profiles that laboratories upload to the system. Incomplete CODIS profiles are those for which the required number of core loci were not tested or do not contain all of the DNA information that resulted from a DNA analysis and may not be searched at NDIS.⁶ The probability of a false match among DNA profiles is reduced as the completeness of a profile increases. Inaccurate profiles, which contain incorrect DNA information, may generate false positive leads, false negative comparisons, or lead to the identification of an incorrect sample. Further, laws and regulations exclude certain types of profiles from being uploaded to CODIS to prevent violations to an individual's privacy and foster the public's confidence in CODIS. Therefore, it is the responsibility of the Laboratory to ensure that it is adhering to the NDIS Operational Procedures and the profiles uploaded to CODIS are complete, accurate, and allowable for inclusion in NDIS.

Laboratory Information

Pinellas County has approximately one million people. The Pinellas County Forensic Laboratory participates in the CODIS program as an LDIS laboratory serving more than 20 agencies and organizations. The Laboratory opened in 1973 and began using DNA to process criminal cases in 2010. It performs analysis on forensic samples only and has not outsourced the analysis of samples. The Laboratory began uploading profiles to SDIS in June of 2010. The American Society

⁶ A "locus" is a specific location of a gene on a chromosome. The plural form of locus is loci.

of Crime Laboratory Directors/Laboratory Accreditation Board most recently accredited the Laboratory in January 2014 for a period of 5 years.

Compliance with Select NDIS Operational Procedures

The NDIS Operational Procedures Manual, which includes the NDIS Laboratories Participation Requirements, establishes the responsibilities and obligations of laboratories that participate in the CODIS program at the national level. The NDIS Operational Procedures Manual provides detailed instructions for laboratories to follow when performing certain procedures pertinent to NDIS. The NDIS operational procedures we reviewed are listed in Appendix 2 of this report.

We found that the Laboratory complied with the NDIS operational procedures we reviewed specific to proper safeguards to protect the security of the CODIS terminal, required CODIS user information being provided to the FBI, the completion of required training by Laboratory CODIS users, NDIS forensic candidate matches, and access to the NDIS Procedures Manual by CODIS users. However, we determined that the Laboratory was not always timely in its notification to investigators of confirmed matches. These results are described in more detail below.

NDIS Match Resolution

From November 2010 to October 2016, the Laboratory had 70 NDIS matches. We selected a judgmental sample of eight NDIS matches, which included forensic-to-forensic, forensic-to-arrestee, and forensic-to-offender matches, and reviewed available documentation to determine if the Laboratory confirmed the matches in a timely manner. Casework laboratories are equally responsible for the review and evaluation of a forensic match and coordinating the match follow-up. But when a casework laboratory uploads a forensic profile that returns a match to a convicted offender, it is the primary responsibility of the casework laboratory to review and evaluate the match and contact the other laboratory to coordinate match follow-up. For both types of matches, the responding laboratory should make a good faith effort to respond to the initiating casework laboratory within 30 business days of receipt of the request. We found that the Laboratory confirmed all eight of the matches within 30 business days with the other casework laboratory.

The OIG has an established 2-week standard to assess a laboratory's timely notification to investigators. The rationale behind this timeframe is to mitigate the potential safety risk of a suspected perpetrator committing additional, and possibly more egregious, crimes. For three of the matches reviewed, the Laboratory took between 22 and 25 days to notify investigators that a match had been identified and confirmed. Specifically, our review of the Laboratory's match reports found that investigators were informed of forensic-to-forensic match DC0000440223, identified in January 2016, 22 business days after the confirmation; forensic-to-forensic match DC0000438835, identified in December 2015, was communicated to investigators 23 business days after the confirmation; and investigators were informed of forensic-to-offender match DC0000409383, identified in January 2015,

25 business days after the confirmation. We noted that these matches occurred at a time of year when several holidays are observed and many Laboratory staff were on leave. In addition, because the suspected perpetrator identified in match DC0000409383 was already incarcerated, the risk that this individual would commit another crime was mitigated.

In speaking with one of the Laboratory's two CODIS Administrators about the extended time period it took Laboratory personnel to inform investigators of these matches, we were told that the Laboratory has an internal control process in place for the review of matches, which typically takes longer than 2 weeks. However, the Lab Director said that the Laboratory is implementing a new software update that should help speed up the review process. The Director expected the Laboratory to begin using the software in 2018. Based on this explanation and the circumstances surrounding the three matches we discuss above, we determined that a recommendation regarding the timely notification to investigators was unnecessary.

The Laboratory complied with the other NDIS operational procedures we reviewed, as described below.

- We interviewed the CODIS Administrators and conducted a walk-through tour of the Laboratory. We verified that the CODIS terminal is physically safeguarded from unauthorized use, and that access to CODIS is limited to approved personnel.
- We interviewed the CODIS Administrators and reviewed documents and determined that the Laboratory provided appropriate personnel with copies of the NDIS procedures manual. We also interviewed two CODIS users and determined that both understood NDIS procedures and could access the procedures on the FBI's Criminal Justice Information System Wide Area Network.
- For each CODIS user, the Laboratory is required to send security information to the FBI. We verified that the Laboratory submitted the required information to the FBI and that all Laboratory CODIS users have completed the required 2017 DNA Records Acceptable at NDIS training.
- We verified that the Laboratory timely submitted the results of its most recent external audit to the FBI.

Compliance with Certain Quality Assurance Standards

During our audit, we reviewed certain Forensic QAS issued by the FBI.⁷ These standards describe the quality assurance requirements that the Laboratory must follow to ensure the quality and integrity of the data it produces. We also assessed the two most recent QAS reviews that the laboratory underwent.⁸

The Laboratory complied with the Forensic QAS we tested. Specifically, the Laboratory complied with standards for QAS reviews, laboratory security, protection of the integrity of evidence, separation of known and unknown samples, and the retention of samples and extracts after analysis. These results are described in more detail below.

- The Laboratory underwent a QAS review during each of the last 2 calendar years as required by the QAS for laboratory reviews. The Laboratory underwent a QAS review by internal reviewers in November 2016 and by external reviewers in November 2015.
- We reviewed the most recent QAS review reports provided by a CODIS Administrator and determined that the FBI's QAS review document was used to conduct the most recent external and internal reviews. The FBI confirmed that the QAS reviewers for both reviews had successfully completed the FBI QAS review training course. There were no findings in the most recent external or internal review reports. The Laboratory forwarded the most recent external QAS review report to the FBI within 30 days of completion. The QAS reviewer who conducted the most recent external QAS review certified that she was free from conflict of interest.
- We interviewed a CODIS Administrator and toured the Laboratory building and, determined that it:
 - had adequate physical access controls in place;
 - had adequate procedures in place to ensure the integrity of physical evidence;
 - had adequate policies and practices regarding the separation of known and unknown samples during the analysis process; and
 - was in compliance with forensic standards governing the retention of samples and extracts after analysis.

⁷ Forensic Quality Assurance Standards refer to the Quality Assurance Standards for Forensic DNA Testing Laboratories, effective September 1, 2011. The QAS we reviewed are listed in Appendix 2.

⁸ The QAS require that laboratories undergo annual audits. Every other year, the QAS requires that the audit be performed by an audit team of qualified auditor(s), from an external agency. These audits are not required by the QAS to be performed in accordance with the *Government Auditing Standards* (GAS) and are not performed by the Department of Justice Office of the Inspector General. Therefore, we will refer to the QAS audits as reviews (either an internal laboratory review or an external laboratory review, as applicable) to avoid confusion with our audits that are conducted in accordance with GAS.

- We interviewed the Laboratory Director and determined that:
 - the Laboratory does not outsource the analysis of DNA samples; and
 - except for the CODIS Administrators, all the Laboratory staff are contract employees. The contract staff work solely on forensic services for Pinellas County.

Suitability of Forensic DNA Profiles in CODIS Databases

The FBI's NDIS Operational Procedures Manual establishes the DNA data acceptance standards by which laboratories must abide. The FBI also developed a flowchart as guidance for the laboratories for determining what is allowable in the forensic index at NDIS. Laboratories are prohibited from uploading forensic profiles to NDIS that clearly match the DNA profile of the victim or another known person who is not a suspect. A profile at NDIS that matches a suspect may be allowable if the contributor is unknown at the time of collection. However, NDIS guidelines prohibit profiles that match a suspect if that profile could reasonably have been expected to be on an item at the crime scene or part of the crime scene independent of the crime. For instance, a profile from an item, such as a shirt, seized from the suspect's person or that was in the possession of the suspect when collected is generally not a forensic unknown. As a result, the item would not be allowable for upload to NDIS. The NDIS procedures we reviewed are listed in Appendix 2 of this report.

Law enforcement staff submit requests to the Laboratory to perform forensic DNA testing of evidence to aid in crime investigations. The law enforcement officer completes a form requesting forensic services and includes facts surrounding the case. From the request submission, the Laboratory creates a forensic case file to document testing results and determine NDIS eligibility.

To assess the suitability of forensic DNA profiles uploaded by the Laboratory to NDIS, we selected a sample of 100 profiles from the 1,553 forensic profiles the Laboratory uploaded to NDIS between February 2012 and February 2017 to determine whether each profile was complete, accurate, and allowable for inclusion in NDIS. To test the completeness and accuracy of each profile, we established standards that require a profile include all the loci for which the analyst obtained results, and that the values at each locus match those identified during analysis.⁹

Of the 100 forensic profiles sampled, we found 5 unallowable profiles, 4 of which were found to be unallowable due to a lack of sufficient support for the sample eligibility. The remaining profiles sampled were complete, accurate, and allowable for inclusion in NDIS, however we took exception to the Laboratory's practice for documenting the eligibility of NDIS profiles. The specific exceptions are explained in more detail below.

⁹ Our standards are described in more detail in Appendix 2 of this report.

Profile Attribution to Perpetrator

Sample Item CA-02 was taken from a white t-shirt thought to have been left behind by the suspect charged with fleeing and eluding. According to the forensic case file, the officer identified the Hispanic male suspect wearing a white t-shirt, the suspect then fled the scene and left the t-shirt behind which was located by a tracking police dog. The profile from the t-shirt that was uploaded to NDIS is that of a female, according to the forensic case file. We discussed this profile with one of the CODIS Administrators who then contacted the detective in charge of the investigation to obtain more case information. The detective said that four males were pulled over for a traffic stop and then fled. The CODIS Administrator told us that the detective may have been mistaken and that the suspect could have been female. The CODIS Administrator believed that the profile was allowable because the t-shirt was located by the police dog and considered crime scene evidence. Information contained in the forensic case file confirmed that the detective believed the crime was committed by a male. Therefore, the female profile developed from the t-shirt was not allowable for NDIS because it was not attributable to the suspect. Consequently, we believe the uploaded profile is not allowable because it is not attributable to the putative perpetrator as required by the NDIS Procedures. We recommend that the FBI work with the Laboratory to determine the eligibility of the questionable profile identified, CA-02, and remove from NDIS, if ineligible.

Lack of Sufficient Case File Information

During our profile review, we identified four other profiles that had been uploaded to NDIS despite a lack of sufficient information in the forensic case file to link the evidence to the crime scene and support NDIS eligibility. When we discussed this matter with one of the Laboratory's CODIS Administrators, he told us that the Laboratory's policy is to upload profiles even if eligibility cannot be determined with the information documented in the case file, so long as the analyst attempts to gather more information. He further said that if the Laboratory subsequently receives additional information that supports ineligibility of the profile, the Laboratory removes the profile from NDIS.

We disagree with this practice, as it is contrary to FBI NDIS eligibility standards, which state that there shall be documentation that a crime has been committed. The standards also require the forensic profile to originate from and/or be associated with a crime scene in order to be eligible for NDIS, the source of which is attributable to a putative perpetrator. In addition, the NDIS procedures specifically note that the scene of the crime or the item's use in the commission of the crime are important factors to consider in determining a DNA record's eligibility for upload to NDIS. Further, the CODIS Administrator Handbook states that it is important for the Laboratory to document its reasoning for determining NDIS eligibility. For each of the profiles we discuss below, the Laboratory lacked sufficient documentation to support its NDIS eligibility determination and did not adhere to the eligibility criteria set forth by the FBI. Therefore, the profiles should not have been uploaded to NDIS. We recommend that the FBI work with the Laboratory to make a final determination on the eligibility of the profiles we

identified as unallowable and remove those profiles from NDIS that are determined to be ineligible.

OIG Sample Item CA-35

Sample Item CA-35 was taken from a swab of a hat obtained in an armed robbery case. The forensic case file did not provide documentation linking the hat to the crime scene. According to the laboratory analyst's notes, the analyst called and left a message with the detective to ask for more information about the hat. There was no response from the detective nor follow-up by the analyst documented in the forensic case file. Because the Laboratory was unable to link the hat to the crime scene, the laboratory lacked sufficient information to determine NDIS eligibility, and therefore profile was not allowable for upload to NDIS.

OIG Sample Item CA-47

Sample Item CA-47 was taken from a swab of a white washcloth obtained in a sexual battery case. The location of the crime scene was not detailed in the forensic case file. We could not determine how the washcloth was associated with the crime scene or whether the profile was developed from biological material found at the crime scene. The forensic case file documentation indicated that the analyst contacted the lead case detective to obtain more information about the washcloth. According to the detective, a police dog found the washcloth while tracking the suspect. One of the CODIS Administrators told us that all dog-tracked evidence is considered crime scene evidence. The FBI's NDIS Custodian, who is responsible for ensuring that laboratories comply with NDIS Operational Procedures, told us that it is important to document the link of an item of evidence found by a dog to the crime scene. In this case, no such documentation was available in the forensic case file. Consequently, the laboratory lacked sufficient information and documentation reflecting its NDIS eligibility determination and therefore the profile was unallowable for upload to NDIS.

OIG Sample Item CA-64

Sample Item CA-64 was taken from a black t-shirt obtained in a commercial property burglary case. The forensic case file states "K-9 tracked a shirt left behind by a suspect related to two burglaries." However, the case file did not contain documentation linking the shirt to the crime. Therefore, the Laboratory lacked sufficient information to determine NDIS eligibility and the profile was not allowable for upload to NDIS.

OIG Sample Item CA-70

Sample Item CA-70 was taken from a swab of the victim's body in a robbery case. The forensic case file defines the offense as a robbery, but no further documentation in the forensic case file supported this characterization. Rather, the case details appeared to pertain to a sexual assault. One of the CODIS Administrators told us the case was both a robbery and sexual assault offense. The

forensic case file referred only to the robbery, and no documentation existed in the forensic case file regarding the sexual assault and the relevance of the victim swab to the crime. Consequently, we determined that the case file lacked sufficient information to determine NDIS eligibility. As a result, the profile was not allowable for upload to NDIS.

The Laboratory is required to maintain sufficient documentation to support the eligibility of profiles uploaded to NDIS, and not all crime scene evidence is allowable for upload. The NDIS Custodian told us that having documentation in the case file to identify that the profile is not only linked to the crime, but that it is also an unknown sample goes to the core of eligibility. Without appropriate documentation demonstrating eligibility for uploading, ineligible profiles may be uploaded. For sample item CA-35, CA-47, CA-64, and CA-70, the Laboratory did not adhere to the NDIS Procedures, Eligibility of DNA Records for Forensic Indexes at NDIS nor did it have sufficient documentation in its forensic case files to support NDIS eligibility. Consequently, we recommend that FBI work with the Laboratory to determine the eligibility of the questionable profiles identified, CA-35, CA-47, CA-64, and CA-70, and remove those profiles that are ineligible. In addition, we recommend that the Laboratory follows NDIS Operational Procedures and maintains sufficient documentation of case details so that it can adequately support NDIS profile eligibility.

Conclusion

We found that the Laboratory was in compliance with select NDIS participation requirements we tested related to the security of the CODIS terminal, CODIS user information provided to the FBI, required training and access to the NDIS Procedures for CODIS users, and NDIS forensic candidate matches. In addition, the Laboratory has an internal control process in place for notifying investigators when a match occurs. However, our testing identified instances where the Laboratory took longer than 2 weeks to notify investigators. We believe this delay can increase the risk of a suspected perpetrator committing additional, and possibly more egregious, crimes. We identified mitigating factors related to these instances that negated the need for a corrective action recommendation.

We also determined that the Laboratory complied with FBI issued forensic quality assurance standards we reviewed including laboratory security, the protection of evidence integrity, and the retention of samples and extracts after analysis. Our review of a sample of forensic profiles, however, revealed that the Laboratory has implemented a practice involving the upload of profiles that is contrary to the NDIS procedures. As a standard practice, the Laboratory will upload profiles for which it lacks adequate evidence to support its eligibility. As a result, the risk of uploading ineligible profiles into NDIS is substantially increased.

Recommendations

We recommend that the FBI:

1. Work with the Laboratory to make a final determination on the eligibility of the questionable profiles identified, CA-02, CA-35, CA-47, CA-64, and CA-70, and remove those profiles that are ineligible.
2. Ensure that the Laboratory follows NDIS Operational Procedures and maintains sufficient documentation of case details so that it can adequately support NDIS profile eligibility.

OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit generally covered the period from February 2012 through February 2017. The objectives of the audit were to determine if the: (1) Laboratory was in compliance with select National DNA Index System (NDIS) Operational Procedures; (2) Laboratory was in compliance with certain Quality Assurance Standards (QAS) issued by the FBI; and (3) Laboratory’s forensic DNA profiles in CODIS databases were complete, accurate, and allowable for inclusion in NDIS. To accomplish the objectives of the audit, we performed the following tests.

- we examined internal and external Laboratory QAS review reports and supporting documentation for corrective action taken, if any, to determine whether: (a) the Laboratory complied with the QAS, (b) repeat findings were identified, and (c) recommendations were adequately resolved.

In accordance with the QAS, a laboratory shall establish, follow, and maintain a documented quality system with procedures that address, at a minimum, a laboratory’s quality assurance program, organization and management, personnel, facilities, evidence and sample control validation, analytical procedures, calibration and maintenance of equipment, proficiency testing, corrective action, review, documentation and reports, safety, audits, and outsourcing. The QAS require that internal and external reviews be performed by personnel who have successfully completed the FBI’s training course for conducting such reviews. We obtained evidence concerning: (1) the qualifications of the internal and external reviewers, and (2) the independence of the external reviewers.

- We interviewed Laboratory officials to identify management controls, Laboratory operational policies and procedures, Laboratory certifications or accreditations, and analytical information related to DNA profiles.
- We toured the Laboratory to observe facility security measures as well as the procedures and controls related to the receipt, processing, analyzing, and storage of forensic evidence and convicted offender DNA samples.
- We reviewed the Laboratory’s written policies and procedures related to conducting internal reviews, resolving review findings, expunging DNA profiles from NDIS, and resolving matches among DNA profiles in NDIS.
- We reviewed supporting documentation for 8 of 70 NDIS matches to determine whether they were resolved in a timely manner. The Laboratory provided the

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universe of NDIS matches as of February 2017. We judgmentally selected the sample to include both case-to-case and case-to-offender matches. This non-statistical sample does not allow projection of the test results to all matches.

- We reviewed the case files for selected forensic DNA profiles to determine if the profiles were developed in accordance with the Forensic QAS and were complete, accurate, and allowable for inclusion in NDIS.

We obtained an electronic file identifying the specimen identification numbers of 1,553 searchable forensic profiles the Laboratory had uploaded to NDIS between February 2012 and February 2017. We limited our review to a sample of 100 profiles. This sample size was determined judgmentally because preliminary audit work determined that risk was not unacceptably high.

- Using the judgmentally-determined sample size, we employed a stratified sample design to randomly select a representative sample of profiles in our universe. However, because the sample size was judgmentally determined, the results obtained from testing this limited sample of profiles may not be projected to the universe of profiles from which the sample was selected.

The objectives of our audit concerned the Laboratory's compliance with required standards and the related internal controls. Accordingly, we did not attach a separate statement on compliance with laws and regulations or a statement on internal controls to this report. See Appendix 2 for detailed information on our audit criteria.

AUDIT CRITERIA

In conducting our audit, we considered the NDIS Operational Procedures, QAS, and guidance issued by the FBI regarding forensic profile allowability in NDIS. However, we did not test for compliance with elements that were not applicable to the Laboratory. In addition, we established standards to test the completeness and accuracy of DNA profiles as well as the timely notification of DNA profile matches to law enforcement agencies.

NDIS Operational Procedures

The NDIS Operational Procedures, which include the NDIS Participation Requirements, establish the responsibilities of the FBI and the NDIS participating laboratories. We focused our audit on NDIS Security Requirements and the following sections of the NDIS Operational Procedures:

- NDIS Laboratories Procedures
- Quality Assurance Standards Audit Procedure
- NDIS Confirmation and Hit Dispositioning Procedure
- NDIS DNA Records Procedure
- DNA Data Acceptance Standards
- NDIS Searches Procedure
- NDIS Security Requirements Procedure

Quality Assurance Standards

The FBI issued two sets of QAS: (1) QAS for Forensic DNA Testing Laboratories, effective September 1, 2011, (Forensic QAS); and (2) QAS for DNA Databasing Laboratories, effective September 1, 2011 (Offender QAS). The Forensic QAS and the Offender QAS describe the quality assurance requirements that the Laboratory should follow to ensure the quality and integrity of the data it produces.

For our audit, we reviewed the Laboratory's most recent annual external review and performed audit work to verify that the Laboratory was in compliance with the QAS listed below because those standards have a substantial effect on the integrity of the DNA profiles uploaded to NDIS.

- Facilities (Forensic QAS and Offender QAS 6.1): The laboratory shall have a facility that is designed to ensure the integrity of the analyses and the evidence.
- Evidence Control (Forensic QAS 7.1): The laboratory shall have and follow a documented evidence control system to ensure the integrity of physical evidence. Where possible, the laboratory shall retain or return a portion of the evidence sample or extract.

- Sample Control (Offender QAS 7.1): The laboratory shall have and follow a documented sample inventory control system to ensure the integrity of the database and known samples.
- Analytical Procedures (Forensic QAS and Offender QAS 9.5): The laboratory shall monitor the analytical procedures using [appropriate] controls and standards.
- Review (Forensic QAS 12.1): The laboratory shall conduct administrative and technical reviews of all case files and reports to ensure conclusions and supporting data are reasonable and within the constraints of scientific knowledge.

(Offender QAS Standard 12.1): The laboratory shall have and follow written procedures for reviewing DNA records and DNA database information, including the resolution of database matches.

- [Reviews] (Forensic QAS and Offender QAS 15.1 and 15.2): The laboratory shall be audited annually in accordance with [the QAS]. The annual audits shall occur every calendar year and shall be at least 6 months and no more than 18 months apart.

At least once every 2 years, an external audit shall be conducted by an audit team comprised of qualified auditors from a second agency(ies) and having at least one team member who is or has been previously qualified in the laboratory's current DNA technologies and platform.

- Outsourcing (Forensic QAS and Offender QAS Standard 17.1): A vendor laboratory performing forensic and database DNA analysis shall comply with these Standards and the accreditation requirements of federal law.
- Forensic QAS 17.4: An NDIS participating laboratory shall have and follow a procedure to verify the integrity of the DNA data received through the performance of the technical review of DNA data from a vendor laboratory.
- Offender QAS Standard 17.4: An NDIS participating laboratory shall have, follow and document appropriate quality assurance procedures to verify the integrity of the data received from the vendor laboratory including, but not limited to, the following: Random reanalysis of database, known or casework reference samples; Inclusion of QC samples; Performance of an on-site visit by an NDIS participating laboratory or multi-laboratory system outsourcing DNA sample(s) to a vendor laboratory or accepting ownership of DNA data from a vendor laboratory.

Office of the Inspector General Standards

We established standards to test the completeness and accuracy of DNA profiles as well as the timely notification of law enforcement agencies when DNA profile matches occur in NDIS. Our standards are listed below.

- Completeness of DNA Profiles: A profile must include each value returned at each locus for which the analyst obtained results. Our rationale for this standard is that the probability of a false match among DNA profiles is

reduced as the number of loci included in a profile increases. A false match would require the unnecessary use of laboratory resources to refute the match.

- **Accuracy of DNA Profiles:** The values at each locus of a profile must match those identified during analysis. Our rationale for this standard is that inaccurate profiles may: (1) preclude DNA profiles from being matched and, therefore, the potential to link convicted offenders to a crime or to link previously unrelated crimes to each other may be lost; or (2) result in a false match that would require the unnecessary use of laboratory resources to refute the match.
- **Timely Notification of Law Enforcement Agencies When DNA Profile Matches Occur in NDIS:** Laboratories should notify law enforcement personnel of NDIS matches within 2 weeks of the match confirmation date, unless there are extenuating circumstances. Our rationale for this standard is that untimely notification of law enforcement personnel may result in the suspected perpetrator committing additional, and possibly more egregious, crimes if the individual is not deceased or already incarcerated for the commission of other crimes.

**PINELLAS COUNTY FORENSIC LABORATORY
RESPONSE TO THE DRAFT AUDIT REPORT**



Pinellas County Forensic Laboratory

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2016 CODIS Audit
Laboratory Response to OIG Draft Audit Report

The Pinellas County Forensic Laboratory would like to thank the OIG auditors for their professionalism in the audit of PCFL's CODIS activities. As with all internal and external audits, we view these as opportunities for improvements to laboratory operations and will use them as such. This document reflects our response to the concerns and recommendations documented in the draft audit report.

- OIG expressed concern regarding “timely” notification of a few of the CODIS hits in that they exceeded 14 days, but were within 30 days. PCFL uses the recommendations provided by NDIS that laboratories make a good faith effort to disposition matches within 30 days (section 6.6 of NDIS Operational Procedures Manual; there is no requirement/recommendation for a timeline to issue a report to an LEA). According to the draft audit report, “The OIG has an established 2-week standard to assess a laboratory’s timely notification to investigators”; while most of our notifications are, in fact, within 14 days, there are outliers. However, all of those outliers are within 30 days. We will continue to strive to release hit information within 14 days of receipt, but we plan to maintain our policies in accordance with the NDIS recommendations. We are concerned that the OIG has created an unpublished standard that is not recognized or articulated in the NDIS documents. This appears to be an issue that needs to be resolved between the FBI and OIG and properly communicated to NDIS participating laboratories. That being said, PCFL is transitioning to a modern LIMS system which will allow us to increase the efficiency of the report generation, review, and release processes. The current “go-live” target for this system is January, 2018.
- In their audit the OIG expressed concern regarding the eligibility of 5 of the reviewed profiles – upon reflection, we agree with their interpretation of three; have deferred one to the FBI for additional guidance; and, respectfully, disagree with one. Details of each as follows:
 - CA-02: The specific case information is provided in the audit report. In summary, a witness (police officer) indicated that four males fled from a vehicle stop. A shirt attributed by the officer to one of the suspects was located; however, a female profile was developed. We have deferred the determination of eligibility of this case to the FBI for further guidance with a fundamental question: should the laboratory assume biological gender based upon observed gender?



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- CA-35: The specific case information is provided in the audit report. In summary, a hat was analyzed and the profile developed was uploaded to CODIS. The suspect standard was also submitted with the item. The case file does not include the found location of the hat or how it was attributed to the scene. We agree with the OIG that the documentation in the file is not sufficient. In this case, the suspect standard (which matches the profile from the hat); could have/should have been uploaded. We will remove the forensic profile associated with the hat and replace it with the suspect standard into the Legal Specimen category of CODIS.
- CA-47 and CA-64: The case details are provided in the audit report. In both cases items of evidence were located by the case officer by use of K9 tracking directly from the scene to the item. It was the laboratory's understanding that this was sufficient information to attribute the items to the case/suspect. Upon clarification from the FBI, we have established that an additional link is necessary. Both profiles will be removed from CODIS and analyst retraining the eligibility of items procured through K9 searches will be provided immediately.
- CA-70: The case details are provide in the audit report. In this case the laboratory disagrees with the OIG on the suitability of the profile for CODIS and the one the determination that the case file lacks sufficient documentation to establish suitability. While the "offense" in this case is listed as a robbery, the case scenario clearly describes an assault (see attached). We contend that the profile developed from the breast swabs of the victim are CODIS eligible.

As a result of this audit the laboratory will make changes to ensure that:

- profiles uploaded to CODIS have comprehensive detail documented in the case file attributing the profile developed to the crime and perpetrator
- eligibility requirements associated with evidence obtained from canine searches is clearly understood.

The laboratory's corrective action procedure has been initiated and the OIG and FBI will receive the completed CAR (Corrective Action Report), when available.

The above issues notwithstanding, I would like to commend the laboratory staff on the overall positive aspects of this audit. And again, we thank OIG for their comprehensive efforts to ensure the integrity of CODIS.

Respectfully,



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Reta Newman
Director
Pinellas County Forensic Laboratory

**FEDERAL BUREAU OF INVESTIGATION
RESPONSE TO THE DRAFT AUDIT REPORT¹¹**



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D.C. 20535-0001

July 24, 2017

Ferris Polk, Regional Audit Manager
Atlanta Regional Audit Office
Office of the Inspector General
75 Ted Turner Drive Southwest, Suite 1130
Atlanta, GA 30303

Dear Mr. Polk:

Your memorandum, to Acting Director McCabe, forwarding the draft audit report for the Pinellas County Forensic Laboratory, Largo, Florida ("Laboratory"), has been referred to me for response.

Your draft audit report contained two recommendations relating to the Laboratory's compliance with the FBI's Memorandum of Understanding and *Quality Assurance Standards for Forensic DNA Testing Laboratories*.

With respect to recommendation one relating to NDIS eligibility of five questioned profiles, it has been determined by the Laboratory and the FBI CODIS Unit that profile CA-70 is allowable and profiles CA-47 and CA-64 are not. The Laboratory and the FBI CODIS Unit will make a final determination regarding the eligibility of profiles CA-02 and CA-35 soon. The Laboratory has now received and incorporated in its case file, sufficient documentation to support the eligibility of profile CA-70. A copy of that documentation is attached for your review. The two ineligible profiles have been deleted. The Specimen Delete Reports for profiles CA-47 and CA-64 are also attached for your review.

With respect to recommendation two relating to the maintenance of sufficient documentation of case details to support profile eligibility, the Laboratory is in the process of providing guidance to its analysts regarding the requirements for maintaining complete and appropriate case file documentation to support eligibility decisions. The CODIS Unit will monitor the Laboratory's progress in completing this task.

Thank you for sharing the draft audit report with us. If you have any questions, please feel free to contact me at (703) 632-8315.

Sincerely,

Richard E. Wilson
CODIS Unit Chief
Laboratory Division

¹¹ Attachments referenced in this response are not included in this final report.

APPENDIX 5

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to the Pinellas County Forensic Laboratory (Laboratory), and the Federal Bureau of Investigation (FBI). We incorporated the Laboratory's response in Appendix 3, and the FBI's response in Appendix 4 of this final report. In response to our draft audit report, the FBI concurred with our recommendations, and as a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

In its response, the Laboratory expressed concern that the OIG has created an unpublished 2-week standard to assess a laboratory's timely notification of NDIS matches to investigators. The Laboratory added that this standard is not recognized or articulated in the NDIS documents. The Laboratory stated that this appears to be an issue that needs to be resolved between the FBI and OIG and properly communicated to NDIS participating laboratories. Although not an NDIS requirement, it is important that laboratories notify investigators of matches as soon as possible. As noted on page 6 of this report, the OIG uses a 2-week standard to assess a laboratory's timely notification of NDIS matches to investigators. The rationale behind this timeframe is to mitigate the potential safety risk of a suspected perpetrator committing additional, and possibly more egregious, crimes. The FBI is familiar with our longstanding use of this standard. In this report, we note that, for three of the matches reviewed, the Laboratory took between 22 and 25 days to notify investigators that a match had been identified and confirmed. Use of the 2-week standard led us to explore the reasons for the delays. Based on explanations provided by laboratory officials and the circumstances surrounding the three matches, we determined that no recommendation was necessary.

Recommendations for the FBI:

- 1. Work with the Laboratory to make a final determination on the eligibility of the questionable profiles identified, CA-02, CA-35, CA-47, CA-64, and CA-70, and remove those profiles that are ineligible.**

Resolved. The FBI concurred with our recommendation and stated that it has determined that profile CA-70 is allowable while profiles CA-47 and CA-64 are not. The FBI provided documentation that the Laboratory received and incorporated in its case file to support the eligibility of profile CA-70. The FBI also provided documentation to support that the Laboratory removed profiles CA-47 and CA-64 from NDIS. We did not include in this report the documentation the FBI provided with its response. The FBI also stated that the Laboratory and the FBI CODIS Unit will make a final determination regarding the eligibility of profiles CA-02 and CA-35 soon.

The Laboratory did not explicitly state that it concurred or did not concur with the recommendation but demonstrated that it is working with the FBI to make final determinations on the eligibility of profiles. The Laboratory stated that it has deferred the eligibility for profile CA-02 to the FBI for further guidance.

The Laboratory agreed that profiles CA-35, CA-47, and CA-64 were unallowable and the FBI provided documentation that the Laboratory removed profiles CA-47 and CA-64 from NDIS. In addition, the Laboratory stated that immediate retraining will be provided to analysts on the eligibility of items procured through K9 searches. For profile CA-35, the Laboratory agreed that the information in the case file was insufficient and that it will remove the profile from the Forensic Index. The Laboratory further stated that the suspect standard, which matched the CA-35 profile, could have or should have been uploaded and that it will place the suspect standard in the Legal Specimen category of CODIS.¹²

The Laboratory did not agree that profile CA-70 lacked sufficient documentation for uploads into CODIS. The Laboratory stated that while the "offense" in this case is listed as a robbery, the case scenario clearly describes an assault, and that the profile developed is CODIS eligible. The Laboratory provided documentation of the case information in its response. We did not include in this report the documentation the Laboratory provided with its response.

Based on the FBI and Laboratory responses, we determined that profiles CA-47, CA-64, and CA-70 were appropriately addressed. This recommendation can be closed when we receive documentation showing that the Laboratory removed profile CA-35 and the Laboratory and the FBI have made a final determination of the eligibility of profile CA-02.

2. Ensure that the Laboratory follows NDIS Operational Procedures and maintains sufficient documentation of case details so that it can adequately support NDIS profile eligibility.

Resolved. The FBI concurred with our recommendation. The FBI stated that the Laboratory is in the process of providing guidance to its analysts regarding the requirements for maintaining complete and appropriate case file documentation to support eligibility decisions. The FBI also stated that the FBI CODIS Unit will monitor the Laboratory's progress in completing this task.

The Laboratory concurred with our recommendation. The Laboratory stated that it will make changes to ensure that: (1) profiles uploaded to CODIS have comprehensive detail documented in the case file attributing the profile developed to the crime and perpetrator, and (2) eligibility requirements

¹² The OIG did not review the suitability of uploading the suspect standard into the Legal Index as part of this audit.

associated with evidence obtained from canine searches is clearly understood. The Laboratory also stated that its corrective action procedure has been initiated and the OIG and FBI will receive the completed Corrective Action Report, when available.

This recommendation can be closed when we receive a copy of the guidance that the Laboratory provided to its analysts regarding the requirements for maintaining complete and appropriate case file documentation to support eligibility decisions.

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