



*American Academy of Forensic Sciences
American Society of Crime Laboratory Directors
International Association for Identification
International Association of Forensic Nurses
National Association of Medical Examiners
Society of Forensic Toxicologists/
American Board of Forensic Toxicology*

CFSO Position Statement on HR 320: Rapid DNA Act of 2015

The Consortium of Forensic Organizations (CFSO) is the leading advocate for the major national professional forensic science organizations, which combined represent over 15,000 forensic science practitioners. The membership includes the American Academy of Forensic Sciences (AAFS), the American Board of Forensic Toxicology (ABFT), the American Society of Crime Laboratory Directors (ASCLD), the International Association of Forensic Nurses (IAFN), the International Association for Identification (IAI), the National Association of Medical Examiners (NAME), and the Society of Forensic Toxicologists (SOFT).

The Consortium of Forensic Science Organization opposes the H.R. 320-Rapid DNA Act of 2015 as currently written for the following reasons:

- 1) **Backlog Reduction:** In the introductory section, the bill notes that the integration of Rapid DNA instruments will “reduce the current DNA analysis backlog.” The Rapid DNA Instrument cannot currently be used on rape kit evidence besides the reference samples, as the instrument itself cannot separate out male and female DNA from swabs found in the rape kit. In addition, the instrument cannot currently be used for any sample containing a mixture of two or more individuals such as those collected at crime scenes or on touch DNA evidence (firearms, knives, doorknobs, etc.). The primary purpose of this technology is to reduce the “time” of analysis for only the sample types (presumed single source) suitable for analysis on the Rapid DNA instrument. There will be minimal impact on the backlog due to this limitation.
- 2) **Booking Station Oversight:** The deployment of Rapid DNA instruments to local jurisdiction’s booking stations will likely necessitate some type of close supervision and/or support to ensure that the instruments are used to analyze only those sample types that have been validated. The responsibility for this obligation could default to that jurisdiction’s local accredited crime laboratory. Both a policy and implementation mechanism needs to be developed for the Rapid DNA interface to ensure that all Rapid DNA testing is done according to any future, developed accreditation guidelines.
- 3) **Definition “Reference DNA sample”:** This term is defined in the proposed legislation as applicable to any individual on which a DNA analysis can be carried out. The drafters may wish to consider qualifying this definition in order to distinguish it from the definition of “DNA sample” in 42 U.S.C. Sections 14135a and 14135b by substituting the following language:

The term “Rapid DNA reference sample” means a buccal swab sample of an individual on which a DNA analysis can be carried out and uploaded to the national identification index pursuant to section 14132(a)(1) and (4) of this title.

- 4) **Definition “DNA Analysis”:** This definition is similar to the definitions contained in 42 U.S.C Sections 14135a and 14135b, but the drafters may wish to consider changing the ‘from’ to “in” in order to be consistent with these existing sections.

- 5) **Definition “Sample-To-Answer”:** This term is not synonymous with the type of Rapid DNA analysis that is used in the forensic science industry and is more closely associated and identified with the genetic testing community. In addition, this term is used by one of the manufacturers of the Rapid DNA Instrument and is not appropriate for legislation, since this could be misconstrued as an endorsement for a particular manufacturer. Hence, the definition of “sample-to-answer” should be altered to another term, such as “Rapid DNA instrument.” If this term is changed, a change would also be needed to the definition of “operators” and in Sections 3, 4 and 5 of the proposed bill. Whichever “alternate term” is adopted, it will require a more detailed definition that defines the anticipated end product, a CODIS Core STR profile, as well as the necessary sample preparation and analysis steps (extraction, amplification, separation, detection and allele calling). Such a definition would be consistent with the information provided on Rapid DNA available at the FBI’s web site (<http://www.fbi.gov/about-us/lab/biometric-analysis/codis/rapid-dna-analysis>)

- 6) **Definition “Qualified Agencies”:** The Federal Bureau of Investigation has invested a significant amount of effort and resource to implement this technology in the booking station and other law enforcement agency environments. Infrastructure, technology, and policy are still being actively developed that are critical for implementation. It is extremely important for the success of the program that the infrastructure necessary to support this technology be properly developed, tested, and validated **before** legislation is adopted. Until these critical steps have been completely addressed, our organizations do not recommend any legislative changes.

- 7) **Definition “Operators”:** It is extremely important that the term “trained” be defined in the legislation. Although it is implied that little training is required for the operation of the “Rapid DNA Instrument,” that is not an accurate assessment. The people impacted by this technology are non-technical, law enforcement personnel with little to no scientific background. Proper training for operators is critical for the standardized use of this technology. While these law enforcement operators likely do not need to be fully trained DNA examiners, they will need

- some type of standardized training and the FBI needs to have time to develop an appropriate training program. Without adequate oversight, validation, and training of these operators, improper use on limited or incorrect sample types could jeopardize casework samples.
- 8) **Federal DNA Advisory Board:** The Federal DNA Advisory Board's five year statutory term expired in 2000. The bill references a Board that is no longer in existence.
 - 9) **Blind Proficiency Testing:** Blind proficiency testing has proven to be an elusive goal for the majority of the forensic community. While the community has proactively investigated the feasibility of a "blind" proficiency program, there have been barriers that have prevented its implementation. For instance, in order for a proficiency test to be blind, the test must be submitted to the laboratory system (or the law enforcement agency) without the operator and/or submitter realizing that it is a test. This one obstacle (of many) cannot be overcome without a significant investment of resources. Indeed, research from the National Institute of Justice (NIJ) concluded that blind proficiency testing is not feasible.
 - 10) **Section 14132(B)(2):** This particular section is referenced in *Section 4 Qualifying Agencies* of the bill and appears to only address the upload of individuals charged or convicted of qualifying offenses and excludes arrestee sample uploads. In addition, the section is too broad and should be only limited to Rapid DNA instruments that are approved by the National DNA Index System (NDIS).
 - 11) **Section 14135b:** This section referenced in *Section 5 District of Columbia DNA Analysis* fails to mention the Federal and military collection programs and does not provide similar authorization for these two programs as currently enacted and described in Section 14135a.
 - 12) **Probative Value:** Any results from such instrumentation in a field setting should be reproduced in an accredited forensic science laboratory and performed by certified forensic scientists if introduction into court as probative evidence is contemplated.

CFSO looks forward to working with the author of the bill, the federal agencies responsible for developing and implementing the technology, and the vendors of the technology. Rapid DNA is an exciting advancement for forensic science and law enforcement; however, it must be appropriately implemented. CFSO appreciates the author's effort to improve law enforcement and the forensic community and is available for continued dialogue.