

**DEPARTMENT OF JUSTICE
UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR FORENSIC SEROLOGICAL EXAMINATIONS**

I. Application

This document applies to Department of Justice examiners who are authorized to prepare reports and provide expert witness testimony regarding the forensic serological examination of evidence. This document applies to reports and to testimony based on reports that are finalized after its effective date. Section III is limited to conclusions that result from presumptive forensic serological testing for the presence of blood and semen. Section IV is limited to conclusions that result from confirmatory forensic serological tests and examinations for the presence of blood and semen. Section V is applicable to all forensic serological tests and examinations unless otherwise limited by the express terms of an individual qualification or limitation.

II. Purpose and Scope¹

The Uniform Language for Testimony and Reports is a quality assurance measure designed to standardize the expression of appropriate consensus language for use by Department examiners in their reports and testimony. This document is intended to describe and explain terminology that may be provided by Department examiners. It shall be attached to, or incorporated by reference in, laboratory reports or included in the case file.

Department examiners are expected to prepare reports and provide testimony consistent with the directives of this document. However, examiners are not required to provide a complete or verbatim recitation of the definitions or bases set forth in this document. This is supplemental information that is intended to clarify the meaning of, and foundation for, the approved conclusions.

This document should not be construed to imply that terminology, definitions, or testimony provided by Department examiners prior to its effective date that may differ from that set forth below was erroneous, incorrect, or indefensible. It should also not be construed to imply that the use of different terminology or definitions by non-Departmental forensic laboratories or individuals is erroneous, incorrect, or indefensible.

This document does not, and cannot, address every contingency that may occur. For example, an examiner may not have an opportunity to fully comply with its directives during a testimonial presentation due to circumstances beyond his or her control. In addition, this document does not prohibit the provision of conclusions in reports and testimony that fall outside of its stated scope. Finally, the substantive content of expert testimony may be subject to legal rules imposed by the court or jurisdiction in which the testimony is provided.

¹ This document is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal; nor does it place any limitation on otherwise lawful investigative or legal prerogatives of the Department of Justice.

III. Conclusions Regarding Presumptive Forensic Serological Testing for Blood or Semen

An examiner may offer any of the following conclusions after conducting presumptive forensic serological testing for blood or semen:

1. Indicated (i.e., indication)
2. Negative
3. Inconclusive

Indicated

‘Indicated’ for the presence of blood or semen when using a presumptive serological test is an examiner’s conclusion that blood or semen may be present in a tested sample.

The basis for an ‘indicated’ conclusion is the interpretation of a positive result from an appropriate presumptive serological test. A presumptive positive serological test result for blood or semen does not confirm the presence of either substance.

Negative

‘Negative’ for the presence of blood or semen when using a presumptive serological test is an examiner’s conclusion that no blood or semen was detected in a tested sample.

The basis for a ‘negative’ conclusion is the interpretation of a negative result from an appropriate presumptive serological test. Insufficient quantity and/or quality of biological material may affect the ability of a presumptive serological test to detect the presence of blood or semen in a tested sample.

Inconclusive

‘Inconclusive’ for the presence of blood or semen when using a presumptive serological test is an examiner’s conclusion that no determination can be made whether blood or semen is present in a tested sample.

The basis for an ‘inconclusive’ conclusion is that the interpretation of an appropriate presumptive serological test could not determine whether blood or semen is present in a tested sample.

IV. Conclusions Regarding Confirmatory Forensic Serological Testing or Examination for Blood or Semen²

An examiner may offer any of the following conclusions after conducting confirmatory forensic serological testing for blood:

1. Identification (i.e., identified)
2. Negative
3. Inconclusive

An examiner may offer either of the following conclusions after conducting a confirmatory forensic serological examination for semen:

1. Identification (i.e., identified)
2. Negative

Identification

‘Identification’ for the presence of blood or semen when using a confirmatory serological test or examination is an examiner’s conclusion that blood or semen was detected in a tested sample.

The basis for an examiner’s conclusion that blood was ‘identified’ in a tested sample is the interpretation of a positive result from an appropriate confirmatory blood test.

The basis for an examiner’s conclusion that semen was ‘identified’ in an examined sample is the examiner’s visual observation of one or more sperm cells in that sample.

Negative

‘Negative’ for the presence of blood or semen when using a confirmatory serological test or examination is an examiner’s conclusion that blood could not be confirmed in a tested sample or that one or more sperm cells were not observed in an examined sample.

The basis for a ‘negative’ conclusion is the interpretation of a negative result from an appropriate confirmatory serological test or examination for blood or semen. Insufficient quantity and/or quality of biological material may affect the ability to detect the presence of blood or semen in a tested or examined sample.

Inconclusive³

‘Inconclusive’ for the presence of blood when using a confirmatory serological test is an examiner’s conclusion that no determination can be made whether blood is present in a tested sample.

The basis for an ‘inconclusive’ conclusion is that the interpretation of an appropriate confirmatory serological test could not determine whether blood is present in a tested sample.

V. Qualifications and Limitations of Forensic Serological Tests and Examinations

- An examiner shall not assert that presumptive or confirmatory serological tests or examinations are infallible or have a zero error rate.

² A laboratory may elect not to perform a confirmatory serological test or examination regardless of the outcome of a presumptive test.

³ ‘Inconclusive’ is not a recognized conclusion for a confirmatory serological test for semen.

- For each item of evidence analyzed, an examiner shall include the results and the conclusions drawn from all presumptive and confirmatory serological tests and examinations in a laboratory report.
- If a presumptive serological test gives a result that is interpreted as an ‘indication,’ a ‘negative,’ or an ‘inconclusive,’ but a confirmatory serological test or examination conducted on the same sample gives a result that is interpreted as an ‘identification,’ an examiner may assert that blood or semen was ‘identified’ in the tested or examined sample.
- If a presumptive serological test gives a result that is interpreted as an ‘indication,’ but a confirmatory serological test or examination conducted on the same sample gives a result that is interpreted as an ‘inconclusive’ or a ‘negative,’ an examiner may assert that blood or semen is ‘indicated’ in the tested sample.
- An examiner may assert that presumptive serological tests may yield false positive results due to the specificity of such tests.
- An examiner may assert that confirmatory serological tests may yield false negative results due to the sensitivity of such tests.
- An examiner may assert that an insufficient quantity or quality of blood or semen can limit the ability of both presumptive and confirmatory serological tests to detect those substances.
- An examiner shall not provide a conclusion that includes a statistic or numerical degree of probability except when based on relevant and appropriate data.
- An examiner shall not cite the number of forensic serological tests or examinations performed in his or her career as a direct measure for the accuracy of a proffered conclusion. An examiner may cite the number of forensic serological tests or examinations performed in his or her career for the purpose of establishing, defending, or describing his or her qualifications or experience.
- An examiner shall not use the expressions ‘reasonable degree of scientific certainty,’ ‘reasonable scientific certainty,’ or similar assertions of reasonable certainty in either reports or testimony unless required to do so by a judge or applicable law.⁴

⁴ See Memorandum from the Attorney General to Heads of Department Components (Sept. 9. 2016), <https://www.justice.gov/opa/file/891366/download>.