

This document provides examples of the scientifically-supported conclusions and opinions that may be contained in Department of Justice reports and testimony. These examples are not intended to be all inclusive and may be dependent upon the precedent set by the judge or locality in which a testimony is provided. Further, these examples are not intended to serve as precedent for other forensic laboratories and do not imply that statements by other forensic laboratories are incorrect, indefensible, or erroneous. 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 and litigative prerogatives of the Department.

**DEPARTMENT OF JUSTICE
PROPOSED UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR THE FORENSIC TOXICOLOGY DISCIPLINE**

Purpose and Scope

If adopted, this document will apply to Department of Justice personnel who perform forensic examinations and/or provide expert witness testimony regarding the forensic examination of toxicology evidence. This document does not imply that statements made or language used by Department personnel that differed from these proposed statements were incorrect, indefensible, or erroneous.

This document provides the acceptable range of opinions expressed in both laboratory reports and during expert witness testimony while acknowledging that this document cannot address every variable in every examination.

Statements Approved for Toxicology Testimony and/or Laboratory Reports

1. The examiner may report and/or state his/her analytical findings of the presence or absence of a drug, drug metabolite, or poison, as well as quantitative results.
2. The examiner may report and/or state the estimated measurement uncertainty associated with the quantitative findings of a drug, drug metabolite, or poison.
3. The examiner may report and/or state the pharmacokinetic and pharmacodynamic effects of drugs and poisons based on data published in peer reviewed literature or other authoritative sources.
4. The examiner may report and/or state his/her opinion as to the effects of drugs or poisons on the average human. This opinion should be based on the facts of the case, medical information about the individual that the specimens were collected from (e.g., weight, height, disease state, age), current published studies, and/or the examiner's training in the fields of pharmacology, physiology, pathology, clinical chemistry, and/or toxicology.

5. The examiner may report and/or state the limitations of his/her examinations and opinion.
6. The examiner may report and/or state that a reported blood concentration is within the therapeutic range, toxic range, or consistent with reported fatal concentrations, provided the statement is based on data published in peer reviewed literature or other authoritative sources.
7. The examiner may report and/or state that a drug or poison found in a hair specimen is consistent with exposure (either ingestion or environmental) to the drug or poison.
8. The examiner may report and/or state the results of segmental analyses of hair samples and interpret those findings based on an average growth rate of 1 cm/month provided he/she acknowledges variation in inter-individual growth rates and assumes proper specimen collection.
9. The examiner may report and/or state an extrapolated ethanol concentration in a blood sample collected from a living person.
10. The examiner may report and/or state that hair findings indicate the ingestion of a drug or poison if validated wash procedures have been performed that can differentiate between exposure and ingestion and/or if a metabolite that is uniquely associated with ingestion has been identified in the sample.

Statements Not Approved For Toxicology Testimony and/or Laboratory Reports

1. An examiner may not report or state the dose of a drug or poison given based on analytical findings in post-mortem samples.
2. An examiner may not report or state an opinion that suggests his/her interpretation of the effects of a drug or poison can be specified to the individual whose sample was tested.
3. An examiner may not report or state an opinion that a drug or poison finding in hair is proof of ingestion of the drug or poison unless a metabolite that is unique to ingestion is also identified and/or validated wash procedures have been performed that can differentiate between exposure and ingestion.
4. An examiner may not report or state an opinion that an individual was impaired based on a drug concentration in a urine or hair sample.

**DEPARTMENT OF JUSTICE PROPOSED UNIFORM LANGUAGE
FOR TESTIMONY AND REPORTS REVIEW SHEET**

Directions: This review sheet is designed to assist you in evaluating the attached Proposed Uniform Language for Testimony and Reports document against certain criteria while maintaining internal consistency in review and assessing comments.

Your use of this rating sheet is completely **optional**. While it is anticipated this review sheet will encourage comments on issues of particular importance, you are welcome to submit comments in any format that you believe appropriate. This review sheet is not intended to limit comments in any way.

If you elect to use the review sheet, you may find it helpful to frame your comments as suggested below.

Proposed Uniform Language Discipline Reviewed:

Reviewer Name:

Reviewer Organization:

Statements Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements approved for use, including the most important highlights from the individual criteria comments.

- The statements approved for use are supported by scientific research.
- The statements approved for use accurately reflect consensus language.
- The statements approved for use are stated clearly.

Statements Not Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements not approved for use, including the most important highlights from the individual criteria comments.

- The statements not approved for use are supported by scientific research.
- The statements not approved for use accurately reflect consensus language.
- The statements not approved for use are stated clearly.