



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2021-4

Task Force on Forensic Science

At the core of the American criminal justice system are the basic principles that a defendant is innocent until proven guilty and that every person accused of a crime is entitled to a fair trial. Wrongful convictions deprive innocent people of their freedom, deny closure to victims of crime, and undermine faith in the criminal justice system. Studies have demonstrated that the misapplication of forensic science is the second most common contributing factor in wrongful convictions in the United States. Even though this state's world-class forensic science laboratories reliably deliver sound results, forensic science goes well beyond the work of our labs.

In general, forensic scientists collect, preserve, and analyze scientific evidence during a criminal investigation. Forensic science service providers located within the State of Michigan receive and process evidence from thousands of cases each year, and their findings may be presented in court, directly influencing the determination of innocence or guilt. In addition, expert witnesses draw on forensic science when testifying in criminal cases, often providing expert opinion testimony on issues of critical importance. Therefore, it is essential that attorneys understand how to provide effective counsel when deploying or challenging forensic science to help make their case.

It is vital that the State of Michigan and its courts rigorously adhere to best practices for the use of forensic science within the criminal justice system. Moreover, these practices are evolving faster than ever with the advancement of new technology and scientific practices. Therefore, I am convening a task force to study issues related to forensic science and provide recommendations to strengthen the use of forensic science in Michigan's criminal justice system.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

Section 8 of article 5 of the Michigan Constitution of 1963 places each principal department of state government under the supervision of the governor unless otherwise provided.

Section 8 of article 5 of the Michigan Constitution of 1963 obligates the governor to take care that the laws be faithfully executed.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Definitions

- (a) "Forensic science" means the field of study of medical, chemical, toxicological, ballistic, or other expert examinations or tests performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. Forensic science includes the study of the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.
- (b) "Forensic science service provider" means an entity, or an agency of this state, that employs forensic science practitioners and issues reports prepared by forensic science practitioners.

2. Creating the Task Force on Forensic Science

- (a) The Task Force on Forensic Science ("Task Force") is created as an advisory body within the Michigan Department of State Police ("Department").
- (b) The Task Force must consist of:
 - (1) The director of the Department, or the director's designee from within the Department.
 - (2) The director of the Department's Forensic Science Division.
 - (3) One public defender or criminal defense attorney.
 - (4) One prosecuting attorney.
 - (5) One board-certified pathologist with experience in forensic pathology.
 - (6) One forensic science practitioner from a county forensic service provider.
 - (7) Two forensic science practitioners with at least five years of experience in the field.
 - (8) Two individuals from the private sector or from a university in this state, each of whom has earned a doctoral degree in a distinct field relevant to forensic science and who has published scholarship related to the field in a peer-reviewed journal.
 - (9) One individual from the private sector or from a university in this state who has published scholarship related to cognitive bias.

- (c) The Attorney General or the Attorney General's designee from within the Department of Attorney General may participate on the Task Force.
- (d) The following officers of the judicial branch of state government may participate on the Task Force:
 - (1) The chief justice of the Michigan Supreme Court or her designee from the Michigan Supreme Court or the Michigan Court of Appeals.
 - (2) A circuit court judge designated by the chief justice of the Michigan Supreme Court.
- (e) A member of the Michigan Senate designated by its majority leader, a member of the Michigan Senate designated by its minority leader, a member of the Michigan House of Representatives designated by its speaker, and a member of the Michigan House of Representatives designated by its minority leader may participate as non-voting ex officio members of the Task Force.
- (f) A vacancy on the Task Force must be filled in the same manner as the original appointment or designation.
- (g) All members of the Task Force serve at the pleasure of the governor.
- (h) The Governor must name a chairperson or chairpersons of the Task Force.

3. Charge to the Task Force

- (a) The Task Force must act in an advisory capacity to the governor and the director of the Department and must do the following:
 - (1) Review the state of forensic science in the state of Michigan.
 - (2) Advise the governor and the director of the Department.
 - (3) Complete its work and issue its final report detailing its findings and policy recommendations no later than December 31, 2021.
- (b) The Task Force must act in an advisory capacity to the governor and the director of the Department and may do any of the following:
 - (1) Develop recommendations to improve the practice, delivery, and use of forensic science in Michigan.
 - (2) Develop recommendations to strengthen forensic science methodologies and practices in the state.
 - (3) Develop recommendations for statewide protocols for disclosure of negligence or misconduct by employees at forensic science providers.

- (4) Develop recommendations for a process allowing members of the public to report alleged professional negligence or misconduct related to the practice or use of forensic science.
- (5) Develop recommendations for best practices for individuals who practice or apply forensic science in the criminal justice system.
- (6) Develop recommendations for a procedure for updating stakeholders on developments in forensic science.
- (7) Develop recommendations for a post-conviction notification procedure to notify parties affected by misconduct, negligence, or misapplication of forensic science.
- (8) Provide other information or advice or take other actions as requested by the governor.

4. Operations of the Task Force

- (a) The Department must assist the Task Force in the performance of its duties and provide personnel to staff the Task Force. The budgeting, procurement, and related management functions of the Task Force will be performed under the direction and supervision of the director of the Department.
- (b) The Task Force must adopt procedures, consistent with this order and applicable law, governing its organization and operations.
- (c) The Task Force may meet remotely, insofar as the meeting is consistent with applicable law.
- (d) The Task Force may select from among its members a vice chairperson.
- (e) The Task Force may select from among its members a secretary. Task Force staff must assist the secretary with recordkeeping responsibilities.
- (f) The Task Force must meet at the call of its chairperson(s) and as otherwise provided in the procedures adopted by the Task Force.
- (g) A majority of the members of the Task Force serving constitutes a quorum for the transaction of the business of the Task Force. The Task Force must act by a majority vote of its voting members.
- (h) The Task Force may establish advisory workgroups composed of individuals or entities participating in Task Force activities or other members of the public as deemed necessary by the Task Force to assist it in performing its duties and responsibilities. The Task Force may adopt, reject, or modify any recommendations proposed by an advisory workgroup.
- (i) The Task Force may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public. The Task Force also may consult with outside experts to perform its duties, including experts in the private

sector, organized labor, and government agencies, and at institutions of higher education.

- (j) The Task Force may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Task Force and the performance of its duties as the director of the Department deems advisable and necessary, consistent with this order and applicable law, rules and procedures, subject to available funding.
- (k) The Task Force may accept donations of labor, services, or other things of value from any public or private agency or person. Any donations must be received and used in accordance with law.
- (l) Members of the Task Force must serve without compensation.
- (m) Members of the Task Force must refer all legal, legislative, and media contacts to the Department.

5. Implementation

- (a) All departments, agencies, committees, commissioners, and officers of this state must give to the Task Force any necessary assistance required by the Task Force in the performance of the duties of the Task Force so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given to any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of the Task Force, consistent with applicable law.
- (b) This order is not intended to abate a proceeding commenced by, against, or before an officer or entity affected by this order. A proceeding may be maintained by, against, or before the successor of any officer or entity affected by this order.
- (c) Nothing in this order should be construed to change the organization of the executive branch of state government or the assignment of functions among its units, in a manner requiring the force of law.
- (d) If any portion of this order is found to be unenforceable, the rest of the order remains in effect.
- (e) This order is effective upon filing. The Task Force is terminated upon completion of its final report or on December 31, 2021, whichever is earlier.
- (f) Section 1(d) of Executive Order 2020-130 is amended to replace “appointed by the governor” with “designated by the governor.”
- (g) Executive Order 2020-193 is amended to add “authorized or” before every instance of “approved COVID-19 vaccine.”

- (h) Executive Order 2020-193 is amended to delete the last sentence of the third paragraph and replace it with the following: "As of February 27, 2021, the U.S. Food and Drug Administration has issued emergency use authorizations for three COVID-19 vaccines."

Given under my hand and the Great Seal of the State of Michigan.



Date: April 2, 2021

Time: 9:30 am

GRETCHEN WHITMER
GOVERNOR



By the Governor:



SECRETARY OF STATE

FILED WITH SECRETARY OF STATE

ON 4/02/2021 AT 11:16am