



STATE OF MICHIGAN

TASK FORCE ON FORENSIC SCIENCE

LANSING

GRETCHEN WHITMER
GOVERNOR

CHIEF JUSTICE BRIDGET M. McCORMACK
COL. JOSEPH GASPER
CO-CHAIRS

Task Force on Forensic Science
November 22, 2021
Virtual Meeting via Teams

Meeting Minutes

Voting Members Present	Representing
Col. Joe Gasper, Director	Michigan Department of State Police
Chief Justice Bridget M. McCormack	The Michigan Supreme Court
Mr. Jeff Nye, Director	Michigan Department of State Police, Forensic Science Division
Mr. Jonathan Sacks	Public defenders or criminal defense attorneys
Dr. Jeffrey M. Jentzen, M.D., Ph.D.	Board-certified pathologists with experience in forensic pathology
Mr. Kent Gardner, Director	Oakland County Sheriff's Department Forensic Laboratory
Mr. Christopher R. Bommarito	Forensic science practitioners with at least five years of experience in the field
Mr. Brandon N. Giroux	Forensic science practitioners with at least five years of experience in the field
Hon. (ret.) Dr. Donald Shelton, Ph.D.	Individuals from the private sector or from a university in this state who have earned a doctoral degree in a distinct field relevant to forensic science and who have published scholarship related to the field in a peer-reviewed journal
Dr. Ruth Smith, Ph.D.	Individuals from the private sector or from a university in this state who have earned a doctoral degree in a distinct field relevant to forensic science and who have published scholarship related to the field in a peer-reviewed journal
Dr. Barbara O'Brien, Ph.D.	Individuals from the private sector or from a university in this state who has published scholarship related to cognitive bias
Judge Paul J. Denenfeld	The 17th Circuit Court of Kent County, designated by the Chief Justice
Ms. Lori Montgomery, Attorney General Dana Nessel's designee	The Michigan Attorney General's Office
Voting Members Not Present	
Mr. Matthew J. Wiese	Prosecuting attorneys
Non-Voting Members Present	
Senator John Bizon	The Michigan Senate, designated by the Senate Majority Leader
Senator Stephanie Chang	The Michigan Senate, designated by the Senate Minority Leader
Representative Laurie Pohutsky	The Michigan House of Representative, designated by the House Minority Leader.
Non-Voting Members Not Present	
Representative Robert Bezotte	The Michigan House of Representatives, designated by the Speaker of the House

I. Call to Order

- Chief Justice Bridget M. McCormack called the Task Force on Forensic Science meeting to order at 9:30 a.m.

II. Roll Call

- Roll call was taken, and a quorum was present.

Attendance Roll Call	Present Yes	Present No	Location, City, County, & State
Voting Members			
Col. Joe Gasper, Co-Chair	X		Virtual via Teams
Chief Justice Bridget M. McCormack, Co-Chair	X		Virtual via Teams
Mr. Jeff Nye	X		Virtual via Teams
Mr. Jonathan Sacks	X		Virtual via Teams
Mr. Matthew J. Wiese		X	
Dr. Jeffrey M. Jentzen, M.D., Ph.D	X		Virtual via Teams
Mr. Kent Gardner	X		Virtual via Teams
Mr. Christopher R. Bommarito	X		Virtual via Teams
Mr. Brandon N. Giroux	X		Virtual via Teams
Hon. (ret.) Dr. Donald Shelton, Ph.D.	X		Virtual via Teams
Dr. Ruth Smith, Ph.D.	X		Virtual via Teams
Dr. Barbara O'Brien, Ph.D.	X		Virtual via Teams
Judge Paul J. Denefeld	X		Virtual via Teams
Ms. Lori Montgomery, Attorney General designee	X		Virtual via Teams
Non-Voting Members			
Senator John Bizon	X		Virtual via Teams
Senator Stephanie Chang	X		Virtual via Teams
Representative Robert Bezotte		X	
Representative Laurie Pohutsky	X		Virtual via Teams

III. Approval Vote of the 9/28/2021 Meeting Minutes

- With no discussion, the 9/28/2021 meeting minutes were approved with 13 Yeas, 0 Nays, and 0 Abstained.

IV. Task Force Extension Update

- A previous vote was taken and unanimously passed to possibly extend the Task Force through December 2022.
- The information was relayed to the Governor's office and confirmation was received that an extension to December 31, 2022 will be issued.
- Noted: All Task Force members received a revised "Rules of Procedure" document for Task Force activities.

V. Presentation: Findings from the Commissions Review Subcommittee (w/discussion)

Presenter: Mr. Christopher Bommarito (Subcommittee Chair)

- The Commissions Review Subcommittee tasks are:
 - Survey forensic science commission efforts in other states and compile lessons learned, with a focus on improvements across a state in the quality and consistency of forensic science, impact to forensic science funding, and any unintended negative consequences of commissions.

- Review models in other states that make forensic labs independent of law enforcement agencies.
- Interviews were conducted of multiple stakeholders representing accredited laboratories, laboratories under the umbrella of a commission and/or advisory panel, and Innocence Clinics regarding the establishment of a statewide forensic science entity. States interviewed included Michigan, Texas, Virginia, Missouri, Delaware, and New York.
 - The Subcommittee's consensus is an entity is necessary to address the state of forensic science evidence in Michigan with the entity functions including, at minimum:
 - Review of required accreditation for all public and private forensic laboratories or providers.
 - Licensing/registration of all persons who offer/provide forensic science opinions or testimony services, along with the authority to revoke licenses/registrations.
 - Investigation and review of complaints against forensic science laboratories or providers.
 - The Subcommittee presented possible additional functions of a statewide entity as follows:
 - Licensing or registration of expert witnesses (subcommittee arrived at a consensus)
 - Complaints and self-disclosures processes
 - Continuing education requirements (through certification) and resource creation/gathering
 - Provide legal counsel to the commission or other entity
 - Review of the science/discipline-wide issues (subcommittee arrived at a consensus)
 - House a central database for information that could include:
 - Information on laboratories
 - Information on expert witnesses
 - History of complaints
 - Educational resources
 - Established best practices
 - Sharing location for public laboratories information
 - Requirements for laboratories to disclose issues.
- Interviews were conducted with various stakeholders in the industry regarding forensic science oversight bodies.

(End of Presentation)

- Chief Justice McCormack asked Mr. Bommarito how to best help his subcommittee move forward.
 - Mr. Bommarito's response:
 - Have the Task Force discuss some of the presented issues, especially the areas where the subcommittee did not reach a consensus.
- Task Force follow-up discussion:
 - Mr. Jonathan Sacks responded with further requests for commission activities, including: forensic science support in legal practices (training, review of guidelines for expert witnesses); and incentive structure, modeled similarly to MI Indigent Defense Commission, with grants awarded by commission to labs to achieve - for example - accreditation, licensing, and independence from law enforcement, according to best practices and minimum standards set by commission.
 - Mr. Bommarito acknowledged removing Forensic Science Division (FSD) from Michigan State Police (MSP) is not an easy task, especially due to multi-million-dollar labs housed within MSP complexes.
 - Mr. Nye responded the independence concerns should apply beyond just MSP's FSD to labs outside of MSP plus forensic science providers within MSP but external to FSD.

- Hon. (ret.) Dr. Donald Shelton responded that independence from law enforcement may be accomplished through procedural and management independence as opposed to physical and funding independence.
- Judge Paul J. Denenfeld provided additional comments regarding establishment of a commission: subcommittee believes the oversight entity should be more broad in scope than forensic science advisory boards/councils in some states, but that a Michigan entity should include scientific advisory boards; subcommittee admires what Texas commission has done but does not aspire to replicate the same model in MI; legal counsel from a commission to labs could easily create a conflict of interest, and Judge Denenfeld believes the current practice of MSP and FSD relying on prosecutor's organization for legal advice creates a fundamental problem and perception of bias.
 - Jeff Nye responded with context about prosecutor's association providing legal advice: in the past, there used to be a paid position in the Attorney General's Office that provided MSP legal advice, but this position no longer exists. MSP does have attorneys on staff, but they don't necessarily give FSD legal advice, but this also doesn't mean they're receiving legal advice from prosecutor's association.
- Mr. Bommarito added that transparency in complaint processes is important and that even as a forensic science provider, he would not know how to file a complaint today against a particular provider.
- Lori Pohutsky added that the Attorney General's Office Public Integrity Unit does not investigate complaints filed with their office; if another entity investigates, the AG Office can legally pursue charges.
- Jeff Nye says struggling with the scope of an oversight entity, such as which forensic science disciplines and public labs, private, or university-driven providers? There could be so much included in the scope that it's unmanageable for an entity.
 - Mr. Bommarito responded that subcommittee did discuss accreditation scope and would include public and private. Another question is whether labs not based in MI but doing work and testifying in MI would have to meet mandates of a MI oversight entity.
 - Jeff Nye responds that in Texas labs must be licensed in the state and follow its commission requirements. Expects this could lead in Michigan to some small labs stopping their forensic work, which would divert the work to MSP.
- Mr. Bommarito asked for thoughts on an entity doing another separate accreditation (vs simply reviewing accreditation).
 - Jeff Nye responded that in some instances there are already layers of accreditation, such as compliance with ISO standards but also others for a specific discipline.
 - Mr. Bommarito responded that he believes an oversight entity should have enhanced standards as necessary, and that those decisions shouldn't be made until the entity is created, and that entity's structure should include scientists as the majority because they have knowledge in that industry to improve the forensic science product.
 - Dr. Jentzen responded that the Credentialing subcommittee felt current accreditation is sufficient for those labs which are accredited, without another layer. However, the subcommittee feels accreditation should be mandatory, and the oversight entity could enforce accreditation.
 - Jonathan Sacks responded that a second layer of accreditation seems unnecessary, but that some presentations have suggested sometimes accreditation is not enough. Emphasized that there should not be any recommendations for unfunded mandates; both the oversight entity and the labs will need resources because we don't want labs to spread thin when they already have large caseloads and backlogs.

- Mr. Bommarito and Jeff Nye responded about two accrediting bodies being primarily used today, and a third is less reputable; there might be value in an entity adding some enhanced requirements rather than not recognizing a given accrediting body. Association of Crime Lab Directors recognizes that becoming accredited can be a very big hurdle for a lab.
- Colonel Gasper requested a lay person example of differences in accreditation. Jeff Nye said that auditors for an accreditation body might have to be experts in the given field or may not work in that field; supplemental standards beyond ISO international standards may also be different. Mr. Bommarito added that the frequency of assessments may also differ.
- Jonathan Sacks suggested that really transparency and independence are the key goals. Perhaps rather than accreditation being set as a requirement, an entity should set minimum standards (which might be met by accreditation).
- Mr. Bommarito responded in agreement that the entity could add a layer of requirements without it being an accreditation.
- Hon. Shelton responded that the subcommittee consensus was regarding *review* of the accreditation and not a second accreditation.
- Mr. Bommarito called for discussion of licensing or registration of experts and explains the two different paths discussed by the subcommittee. Licensing would entail a review of the experts' qualifications and exams vs. registration for expert testimony so that bad actors' registration could be revoked.
 - Jeff Nye said that lab scientists working for an accredited organization are already bound by standards covering training, competency, and proficiency testing, but there will be a gap for independent experts to demonstrate their competency.
 - Mr. Bommarito replied that this is the reason to require either licensing or registration; the idea is that anyone could obtain registration, but then it can be revoked. Licensing, however, would include more layers of bureaucracy.
 - Hon. Denenfeld suggested that the task force is getting too caught up in the minutiae, and that in 2022 should focus on what are the broad duties recommended for an oversight entity.
 - Dr. Jentzen replied that the credentials subcommittee has discussed similar ideas regarding independent experts needed to testify in court, but there also needs to be some sort of oversight.
- Chief Justice McCormack asked for Task Force members' opinions regarding three areas:
 1. Review of required accreditation for all public and private forensic laboratories or providers.
 - Consensus Support: Bommarito, Nye, Jentzen, Sacks, Gasper, Gardner, Giroux, Shelton, O'Brien, Smith, Denenfeld, Montgomery, McCormack, Chang, and Pohutsky. (Note that Kent Gardner added he only supports any proposal that is accompanied by resources. Chief Justice McCormack echoed need for funding.)
 2. Require licensing OR registration of all persons who offer/provide forensic science opinions or testimony services, with the power to revoke bad actors' license/registration.
 - Support in general: Sacks, Jentzen, Denenfeld, McCormack, Pohutsky.
 - Support registration but not licensing: Bommarito, Giroux, Chang, Montgomery, O'Brien, Smith, Shelton
 - Requests additional discussion: Bommarito, Gasper, Nye, O'Brien.
 - Does not support: Gardner.
 3. Investigate and review complaints against forensic science laboratories or providers.
 - Support: Bommarito, Sacks, Jentzen, O'Brien, Denenfeld, Montgomery, McCormack, Chang, Pohutsky.

- Requests additional discussion: Gasper, Nye, Jentzen, Giroux, Shelton, and Smith.
- Does not support: Gardner.

VI. Break

VII. Public Comments

- Question asked by Mr. Luke S. (Guest, via Teams chat) "I would like to ask this Task Force to consider what kind of procedures can be put in place for expert witnesses to address cases like this... where a prosecutor misrepresents the expert's findings. Because in the case of John Ortiz-Kehoe, the prosecutor's actions led to the conviction of an innocent man, and Dr. Sauer refuses to comment on the situation."
- Chief Justice McCormack response: I believe issues like this are being addressed by several subcommittees.

VIII. Subcommittee Report-out and Discussion

- State of Forensic Science in Michigan – Chair: Mr. Jeff Nye
 - Draft of the survey is pretty much ready.
 - The intro provides the definition of forensic science from the executive order.
 - The survey will gather baseline information on forensic science providers, plus transparency, notification process, audits, complaint system, and independence.
 - In the process of determining who will get the survey.
 - Currently that list is 1000+ recipients.
 - Will the scope include digital forensics, etc.?
 - Mr. Bommarito suggested we set aside time to discuss the scope, the scope will determine what the commission will have jurisdiction over.
 - Judge Paul J. Denenfeld advised at the trial level there is a lot of digital evidence.
 - Chief Justice Bridget McCormack advised we will set aside time on the next agenda to talk about the scope.
- Commissions Review – Chair: Mr. Christopher Bommarito (Presentation)
- Improving Practices – Chair: Dr. Ruth Smith
 - The subcommittee is putting together a survey to gather information from the bench of forensic scientist for improvements.
 - They have discussed the following needs: requiring labs to be independent of law enforcement but not necessarily physically separate; expanding transparency and public accountability; quality control and proficiency testing; improving educational training opportunities for analysts and legal community and resources for analysts.
- Credentialing – Chair: Dr. Jeffrey Jentzen
 - There are many overlaps among the committees.
 - They are looking at outside labs that are not accredited and how a commission might provide them oversight.
 - Would like the scope to be determined for assistance.
- Education and Application of Forensic Science – Chair: Hon. (ret.) Dr. Donald Shelton
 - The subcommittee has a draft of their findings and have recommendations
 - Education for attorneys (trial and appellate level) and judges.
 - Continued education for forensic science expert witnesses is in purview of other subcommittees.

- Addressed students and a specific accreditation for the two higher institutions offering degrees in FS now.
- Address recommendations specific to attorney education at the trial and appellate levels.
- Will distribute recommendations draft to the Task Force members; would like to discuss at next meeting.
- Reporting, Testimony, and Rules of Evidence – Chair: Mr. Matthew Wiese (not present; subcommittee will have an update at next meeting)
- Negligence, Misconduct, and Misapplication Reporting – Chair: Senator Stephanie Chang
 - Hopes to have a memo from the Innocence Clinic to discuss soon and continue to address scope.
- Post-Conviction Notifications – Chair: Ms. Lori Montgomery (AG's Office)
 - Questions included in Mr. Nye's survey and waiting on results.
 - Everyone should be notified of post-conviction information. The problem is the need for resources and who's going to do it. Hopefully a commission or other centralized entity can help.

IX. 2022 Meeting Schedule – Locations TBD

(Public health considerations will determine if the meetings will be in-person vs. remote)

- January 25, 1pm – 4pm
- March 8, 9:30am – noon
- May 10, 9:30am – noon
- July 19, 9:30am – noon
- September 20, 9:30am – noon
- November 1, 9:30am – 4pm (All day meeting)
- December 13, 9:30am – noon

X. Adjournment

- A motion to adjourn was given by the Honorable Dr. Donald Shelton and seconded by Dr. Barbara O'Brien
- This Task Force meeting was adjourned by Chief Justice Bridget M. McCormack at 11:53 a.m.