

# FORENSIC SCIENCE STATEWIDE BODY SUBCOMMITTEE OUTLINE OF POTENTIAL LEGISLATION

Still to come...

## PART I: WHERE FORENSIC SCIENCE STATEWIDE BODY (FSSB) IS HOUSED IN STATE GOVERNMENT

Potential Models

- Michigan Commission on Law Enforcement Standards, Executive, Michigan State Police
- Michigan Indigent Defense Commission, Executive, LARA
- Judicial Tenure Commission, Judicial
- Legislative Corrective Ombudsman, Legislative, Michigan Legislative Council

## PART II: COMPOSITION

- Majority Scientists
- Commission subcommittee discussions
- Criminal Legal System Stakeholders – Retired Judge, Prosecutor, Defense Attorney?
- Member of Public – Formerly incarcerated individual? Victim Services? Innocence Organizations?

## PART III: PROCESS

- Open Meetings Act
- Freedom of Information Act
- Certain number of required meetings per year
- Director sets org chart, identifies appropriate staff, and seeks appropriations
- Ability to retain expert contractors to help with investigation and review
- Commission members shall not receive compensation, but shall be reimbursed for their reasonable actual and necessary expenses
- Reporting requirements include impact on individual people / cases

Working towards consensus...

## PART IV: MANDATE

Providing Principles and Goals for the permanent Forensic Science Statewide Body (FSSB) to implement.

### Accreditation of Laboratories

- ❖ A forensic laboratory that conducts forensic analysis must be accredited by an accrediting body that requires conformance to the appropriate quality assurance standards and to forensic-specific requirements such as ISO 17025, and that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories.
- ❖ Timeframe: Two years after the effective date of statute.
- ❖ The FSSB shall verify that forensic laboratories have obtained the accreditation required under this subsection.
- ❖ If a forensic laboratory will not meet the accreditation requirements within the time required by this subsection and the forensic laboratory submits a petition to the FSSB requesting an extension of time or a permanent waiver before the forensic laboratory is in violation of this subsection, the commission in its discretion may grant the extension of time or waiver for the forensic laboratory to meet the accreditation requirements.

### Registration

- ❖ The FSSB shall establish a process to register forensic experts that requires conformance to forensic-specific requirements. This process shall consider the challenges of providing experts for indigent defendants and shall be reviewed periodically to ensure equitable access to quality science.
- ❖ The FSSB shall establish and maintain a publicly accessible record of forensic experts that includes their registration status, prior cases where they have testified, and records of past misconducts determined by the commission.
- ❖ FSSB examines and establishes minimum qualifications for certain disciplines.

# Complaints, Reports, and Investigations

## General Concepts

- ❖ Who discloses: Design a system of reporting of negligence, misconduct, or nonconformance by or in a forensic laboratory or an expert witness that affects the integrity of the forensic science or forensic medicine results, or the practice of forensic science.
- ❖ When to disclose: Any significant event or significant nonconformity related to an accreditation requirement for which there is a reasonable expectation that knowledge of the event or nonconformity by interested parties external to the forensic science provider would call into question the quality of the forensic service provider's work must be disclosed.
- ❖ The results / work product must be impacted. Not a forum for personnel complaints that do not substantially impact the work product.

## Types of Reports / Complaints (Made in a manner required by FSSB)

- Formal lab reports and responses – Negligence, misconducts, nonconformance that has affected the integrity of the forensic science or forensic medicine results.
- Employee Whistleblower – If an employee of a forensic laboratory or any other individual has discovered, has suspicion, or has reason to believe an act of professional negligence, misconduct, or nonconformance has affected the integrity of the forensic science or forensic medicine results, that employee or individual may report that act.
- Media
- Criminal Legal System Stakeholders, including people prosecuted

## Types of Investigations

1. Educational Investigations: Initiate an investigation of a forensic discipline for educational purposes without receiving a complaint if the Commission determines the investigation would advance the integrity and reliability of forensic science.
2. Complaints and reporting resulting in investigations
3. Invited Investigations by Laboratory

## Complaints and Reporting

- ❖ Process for the majority of complaints – evaluated on a severity and risk of recurrence framework to be implemented by the Forensic Science Statewide Body.
- ❖ Only “high severity” and “high risk of recurrence” result in automatic independent investigation and response. Everything else referred to service provider for report and investigation. Staff to make recommendation to full FSSB.
- ❖ Certain complaints / reports will require information requests from the forensic science service providers prior to severity/risk of recurrence evaluation.
- ❖ Multi-layer response – Forensic Science Statewide Body will generally request an internal response from the forensic science service provider on a timeline, then FSSB will evaluate if a further investigation is necessary.
- ❖ For the majority of complaints that are referred for report and investigation, upon delivery of findings, the FSSB reviews, opportunity for complainant to respond, close case or refer for further investigation and/or corrective action.
- ❖ FSSB shall receive a copy of this report and response and publicly disclose, absent confidential information.
- ❖ For all independent FSSB investigations, either those occurring because high severity and high risk of recurrence, or because referral for report and recommendation insufficient, then **supermajority** of Forensic Science Commission required.
- ❖ If there is an independent investigation by FSSB, steps must be implemented to avoid duplication of investigations.
- ❖ Reporting of Forensic Science Laboratory internal audits if they meet the reporting requirements. (e.g. forensic science method audits, not personnel or financial); provision of management system review annually to the FSSB.

## Process Issues (Still to be discussed by subcommittee)

- ❖ Confidentiality until investigation is complete and only if founded. One potential model, MCR 9.261, Judicial Tenure Commission.
- ❖ Timeline – \_\_ Months after complaint referred to lab for further info, \_\_ months after referral for report and recommendation so that lab conducts initial investigation, report, and recommendations for majority of disclosures and complaints.
- ❖ Does not apply to ongoing or open criminal investigation.
- ❖ Investigation process – subpoena power? Examination of records, documents?

## Results (Still to be discussed)

- ❖ Does not supplant appellate process
- ❖ Public report, recommendations, reprimands, corrective actions
- ❖ The Commission may provide a recommendation for a larger-scale, institutional response if required.

## Notification

- ❖ The FSSB shall develop and implement a notification procedure for investigations conducted under this section and disclosed information that includes all of the following:
  - Notification to institutional stakeholders: Prosecuting Attorneys Association of Michigan; the State Appellate Defender Office; the Michigan Indigent Defense Commission; local prosecutors and public defenders; the Michigan Judges Association; the Michigan District Judges Association; the Department of Attorney General; and prosecution Conviction Integrity Units.
  - Notification to a convicted person in the criminal case, and that person's attorney:
    - A requirement that the convicted person in the criminal case acknowledge receipt of the information described under this subsection and a method for the commission to receive the acknowledgment.
  - A description of the technical issue and a written summary of the facts.
  - A protocol for the FSSB to provide potentially affected defendants with information regarding relevant resources including, but not limited to, public defenders.
  - Information that any remedy still must follow standard appellate and post-conviction remedies, rules, and procedures.
- ❖ The notification procedures apply to both independent FSSB investigations and laboratory disclosures.
- ❖ The FSSB shall ensure notification procedures respect due process concerns and respect laboratory remediation and corrective processes.
- ❖ Includes notification of the disposition, if that disposition includes a finding that an act of professional negligence, misconduct, nonconformance, or a change in science affected the integrity of the results of a forensic analysis.

## Education and Information

- ❖ Provide a clearinghouse and disseminate information of developments in forensic science.
- ❖ Provide information on available education and training to all stakeholders.
- ❖ Provide a central database of Forensic Science Experts.
- ❖ Collect and analyze information related to the impact of current laws, rules, policies, and practices on forensic crime laboratories and the practice of forensic science; evaluate the impact of those laws, rules, policies, and practices on forensic crime laboratories and the practice of forensic science; identify new policies and approaches, together with changes in science, and technology; and make recommendations for changes to those laws, rules, policies, and practices that will yield better results in the criminal justice system consistent with the sound practice of forensic science.

## Recommendations for Best practice and Grants for Implementation

(No consensus yet)

- ❖ Allows for advancements in quality control. Provides an incentive for institutional labs to support changes and disclosure that otherwise might be cumbersome.
- ❖ The FSSB shall recommend the appropriations required so that adequate resources and facilities are available for Forensic Science Service Providers.
- ❖ The FSSB shall identify and encourage best practices for Forensic Science Service Providers to improve the practice, delivery, and use of forensic science in Michigan.
- ❖ Priority areas for best practices include:
  - Funding to assist analysts and experts obtain certification in areas of expertise
  - Funding to assist compliance with accreditation requirements
  - Strengthen forensic science methodologies and quality assurance standards
  - Access to evidence for all stakeholders
  - Compartmentalization and independence from the prosecution function and responses to cognitive bias
- ❖ When a best practice is authorized by the Commission, public forensic science labs may apply for grants on a schedule and process identified by the Commission.
- ❖ On a standard Fiscal Year budget cycle, the Commission shall recommend to the legislature appropriation required to fund these grants.
- ❖ The Commission shall consider implementation of a separate grant process in exceptional circumstances for private labs.