

# FORENSIC SCIENCE PRACTICE POTENTIAL RECOMMENDATIONS

Updated 10/17/2022

## COMMITTEE MEMBERS

- Jeff Nye
- Dr. Ruth Smith
- Sen. Stephanie Chang
- Dr. Barbara O'Brien
- Rep. Laurie Pohutsky
- Col. Joe Gasper
- Dr. Jeff Jentzen

### OBJECTIVE 1: CONDUCT A STATEWIDE SURVEY OF FORENSIC SCIENCE SERVICE PROVIDERS SERVICE PROVIDER SURVEY RESULTS

- 31 total responses including 16 (local/county law enforcement), 3 (statewide law enforcement-MSP), 7 (Medical Examiners and Psychiatric Support) and 5 (Private Forensic Laboratories).
- Medical Examiners: no law enforcement affiliations, most accredited to NAME but not ILAC affiliated, most have certifications, no proficiency testing, limited corrective actions/peer review/complaint processes. Looming “crisis” in staffing. “Bias” does not apply to pathologists.
- Private Providers: no law enforcement affiliations, very small in capacity, limited scope in services provided, one accredited, work for both prosecution and defense, minimal proficiency tests/corrective actions/peer reviews.
- Local Law Enforcement Providers: very small capacity, very limited scope of testing for most. No proficiency tests/corrective actions/peer reviews, primarily provide service to prosecution for most. Only OCSO and BCPD are accredited to international standards. Some evidence of quantity in lieu of quality for unaccredited laboratories. No certifications or licensure.
- MSP Provider: Three separate divisions. Offer forensic services in most disciplines. Policies exist for corrective actions, notifications, transparency. Interact with defense, but most work done for prosecution. Not all disciplines accredited to international standards.

### PRACTITIONER SERVICE PROVIDER SURVEY RESULTS

- 26 total responses.

## OBJECTIVE 2: INDEPENDENCE WITHIN LAW ENFORCEMENT AGENCIES

- Case manager, bias training help mitigate.
- Training and removing biases to remove any potential negative impacts on case analysis.
- Hiring practices from survey
- The committee evaluated various models of forensic science service providers. These models included forensic science service providers housed within law enforcement agencies, as an independent state department and as an independent quasi-governmental entity with a board of directors. The committee determined that there is no one-size-fits-all solution to where a forensic science service provider should be housed; rather it is dependent upon the circumstances of the jurisdiction and the relationship a public forensic science service provider has with its parent organization.
- A concern was raised during a full task force meeting regarding the employment of law enforcement officers in forensic laboratories. The committee discussed this concern and evaluated the various positive and negative possibilities of employing enlisted staff members. The committee recognizes public perception concerns about the relationship between law enforcement and forensic science analysis, namely the potential for bias. However, bias comes in many different forms and is not isolated to just law enforcement officers.
- The committee acknowledges that adhering to certain accreditation standards should mitigate bias and independence concerns raised. For example, ISO 17025:2017 has standards evaluated by independent assessors related to: bias training; mitigating the influence of bias; and organizational independence by having the authority to carry out the forensic science service provider's objectives and eliminating outside influences.
- **Recommendation:** Law enforcement agencies evaluate their hiring practices to ensure the most qualified and competent individual is hired for any given position within a forensic science laboratory, without special consideration for enlisted member status.
- **Recommendation:** Future monitoring by the Commission of forensic science service providers housed within law enforcement agencies for potential conflict or bias that may result from undue influences.

## OBJECTIVE 3: ACCESS

- REQUEST FOR ADDITIONAL ANALYSIS
  - The committee has discussed, at length, the issue of equal access to defense attorneys

- Specifically, requests for additional analysis have an existing process that includes defense/prosecution discussion followed by request from the investigating agency.
- Specifically, a request from a defense attorney can be vetted by the presiding judge and a court order submitted for testing.
- **Recommendation:** Non-MSP service providers to use similar models for requesting analysis.
- **Recommendation:** education to attorneys, judges and investigating agencies on laboratory capacity, technical competencies, and process for making additional requests.
- **Recommendation:** turn this training into a fully available video or statute.
- Contact with experts by stakeholders
  - The committee discussed FSD, in particular. I explained that we have some improvements we can make in this area specifically related to pretrial conferences and access to case file information
  - **Recommendation:** FSD create model policies to improve access by defense to experts and case information. FSD can then share these model policies with other forensic science service providers.
  - **Recommendation:** FSD create a model MOU with non-criminal justice partners (e.g. Innocence Clinics) regarding access to case file materials and at the same time protecting sensitive PII and criminal justice information.
- Clearinghouse Process (Case Manager)
  - The committee discussed the concept of separating lab scientists/examiners from potentially biasing information from investigators. The committee also discussed the complexity of limiting information to laboratory staff and the net negative effect on efficiency.
  - **Recommendation:** Forensic science service providers evaluate and implement, where possible, practices that limit the lab staff access to potentially biasing information either through policy, case managers or other possible methods.

#### OBJECTIVE 4: PRACTICES FOR QUALITY CONTROL AND COMPARTMENTALIZATION

- Blind Proficiency Testing
  - The committee discussed and heard presentations on blind proficiency testing. Specifically, the cost both monetarily and resources to conduct such a program. We also discussed the challenges related to keeping the program blind and requiring participating from law enforcement agencies as “actors”.

- **Recommendation:** All forensic science service providers institute a blind proficiency testing program. Intent is to evaluate each discipline and method on an annual basis.
- **Recommendation:** All forensic service providers consider interlaboratory evaluations or re-analysis audits (QARA-MSP) as an additional quality assurance measure.
- Sequential Unmasking
  - Sequential unmasking is the process of releasing case details only as they are needed in a manner that would limit the potential for bias. For instance, releasing only the evidence items for testing with no case information. Once the evidence is tested and potential evidence of comparison quality is determined, providing the reference materials from persons of interest for comparison. Then providing case context to determine probative value. This concept is similar/related to the case manager. If instituted, this has the potential to add significant inefficiencies to case processing.
  - **Recommendation:** Further studies and research be conducted to determine the feasibility of instituting sequential unmasking and its effect on case productivity and bias reduction.
  - **Recommendation:** Create policies internally that address unmasking.
- Accreditation requirement for all service providers
  - Accreditation measures the overall performance of a laboratory and its adherence to international standards. The committee discussed the positive and negative impacts on requiring accreditation for all forensic science service providers. Some service providers may not have the resources and/or the personnel to complete the accreditation process. Requiring accreditation brings everyone in Michigan to a minimum level of competence and performance.
    - Accreditation will ensure quality management systems
    - Accreditation will ensure training programs
    - Accreditation will ensure minimal educational requirements
    - Accreditation will ensure disclosure
    - Accreditation will ensure adequate resources
    - Accreditation will ensure corrective actions and risk assessments
    - Etc.
- **Recommendation:** All Forensic Science Service Providers become accredited to ISO 17025 and/or 17020 from an ILAC member accrediting body.
- **Recommendation:** All Forensic Science Service Providers become accredited within two years of the requirement.
- **Recommendation:** State of Michigan provide sufficient monetary and knowledge support to effectively assist providers to become accredited within the allotted time.

#### OBJECTIVE 5: Disclosure of Negligence/Misconduct

- The committee discussed the disclosure of acts of negligence and misconduct thoroughly. We discussed the need for the community to know of these acts balanced with the rights of the individual. We discussed the MSP Professional Standards process, complaint systems, internal investigations, the requirements to report to an accrediting body, *Brady/Giglio* requirements for legal proceedings and individual rights as they relate to HR proceedings and union representation.
- The committee discussed, at length, the types of negligence and misconduct that may be reported to a statewide body and what types may not need to be disclosed.
- **Recommendation:** Develop a model policy for reporting Negligence/misconduct to the employer for internal investigation, followed by disclosing to the accrediting body for any additional investigation and lastly to the statewide body for any further actions. The intent is to track patterns of specific individuals, transfer of employees to new employers, and be a further obligation above Brady disclosure.
- **Recommendation:** Create model policy related to methodologies used in laboratories and quality related disclosures that are not based upon negligence/misconduct.

#### OBJECTIVE 6: Training Requirements

- The committee discussed training requirements for staff members of forensic science service providers. Discussions around training requirements from accreditation included a requirement to have a training program, but there were no requirements of how extensive the training program needed to be.
- **Recommendation:** The committee recommends an initial training program that covers topics such as bias, courtroom testimony, ethics, technical discipline specifics that cover the range of testing/conclusions the expert will be expected to encounter etc.
- **Recommendation:** The committee recommends a continuing education program that requires a minimum of 8 hours annually of technically relevant material, externally provided, based on the scope of testing the individual conducts.
- **Recommendation:** Ethics and bias training be provided annually to all forensic science service providers.

#### OBJECTIVE 7: Resource Needs

- The committee discussed a number of items related to resource needs. The survey did disclose that there are resource needs at the local/county laboratories. The committee also discussed that the survey was limited in the number of participants, and it is really difficult to determine resource needs other than that they are under-resourced.

- **Recommendation:** The committee recommends that a detailed annual needs assessment be conducted across the state of Michigan forensic science service providers to better understand the needs in the community.
- **Recommendation:** The committee recommends a funding stream be established to provide grants to forensic science service providers to fill resource needs to improve the capacity, quality and scope of testing offered. The committee did have questions regarding funding provided to private laboratories if it is for a public purpose?

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