



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
TASK FORCE ON FORENSIC SCIENCE
LANSING

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

Task Force on Forensic Science
July 19, 2022
Virtual Meeting via Zoom

Meeting Minutes

Voting Members	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
Mr. Matthew J. Wiese	Prosecuting 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
Non-Voting Members	
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 Robert Bezotte	The Michigan House of Representatives, designated by the Speaker of the House
Representative Laurie Pohutsky	The Michigan House of Representative, designated by the House Minority Leader.

I. Call to Order

- Col. Joseph M. Gasper called the Task Force on Forensic Science meeting to order at 9:32 a.m.
- All were advised the meeting was being recorded.

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 Zoom
Chief Justice Bridget M. McCormack, Co-Chair	X		Virtual via Zoom
Mr. Jeff Nye	X		Virtual via Zoom
Mr. Jonathan Sacks	X		Virtual via Zoom
Mr. Matthew J. Wiese	X		Virtual via Zoom
Dr. Jeffrey M. Jentzen, M.D., Ph.D		X	
Mr. Kent Gardner	X		Virtual via Zoom
Mr. Christopher R. Bommarito	X		Virtual via Zoom
Mr. Brandon N. Giroux	X		Virtual via Zoom
Hon. (ret.) Dr. Donald Shelton, Ph.D.	X		Virtual via Zoom
Dr. Ruth Smith, Ph.D.	X		Virtual via Zoom
Dr. Barbara O'Brien, Ph.D.	X		Virtual via Zoom
Judge Paul J. Deneffeld	X		Virtual via Zoom
Ms. Lori Montgomery, Attorney General designee	X		Virtual via Zoom
Non-Voting Members			
Senator John Bizon	X		Virtual via Zoom
Senator Stephanie Chang	X		Virtual via Zoom
Representative Robert Bezotte		X	
Representative Laurie Pohutsky	X		Virtual via Zoom

III. Approval Vote of the May 10, 2022, Meeting Minutes

- A motion to approve the May 10, 2022, meeting minutes was given by Dr. Barbara O'Brien and seconded by Mr. Jonathan Sacks.
- With no discussion, the May 10, 2022, meeting minutes were approved with 13 Yeas, 0 Nays, and 0 Abstained.

IV. Subcommittee Recommendations

- Subcommittee 2: Forensic Science Practice, Speaker: Mr. Jeffrey Nye
 - Prior to presenting the Forensic Science Practice Subcommittee recommendations, Mr. Nye provided a summary of the Forensic Science Provider Survey Topics and Results
 - Survey Topics:
 - Independence
 - Accreditation Status
 - Service and Scope (Capacity, Services Offered, Footprint they have in Forensic Science)
 - Quality Management System (Maturity Level of their Quality Management System)
 - Reminders: We have a very broad definition of forensic science; There are blind spots within the survey: Arson Investigator, traffic crash reconstruction, and behavioral sciences; small data set; Our survey respondents are people that received the survey, which included nearly every law enforcement agency in the state, medical examiners, private practitioners, and government laboratories.
 - Survey was initially open for 3 weeks, plus a 2-week extension.
 - There were 30 total responses to the survey: 16 from local or county law enforcement agencies; three from the Michigan State Police; Seven from medical examiners; four from private laboratories.

Grouped respondents into 5 categories: (1) medical examiner/medical provider, (2) private laboratory, (3) local law enforcement agency with a small forensic science footprint, (4) local and county law enforcement agencies with a larger footprint, (5) statewide services (MSP).

- Respondents from the Medical Examiner / Medical Provider Group
 - University of Michigan
 - Kent County Medical Examiner's Office
 - Western Michigan University Homer Stryker M.D. School of Medicine – Department of Pathology
 - Mid-Michigan Medical Examiner's Group
 - Wayne County Medical Examiner
 - Center for Forensic Psychiatry (Ypsilanti, MI)
 - Occupational Research and Assessment
 - General observations related to data collected from this group:
 - None are associated with Law Enforcement.
 - Some are associated with universities.
 - They generally offer Disaster Victim Identification, medicolegal death investigation, forensic pathology, and forensic psychology.
 - Vary considerably in size (by FTEs)
 - Most have certifications of some sort because of their medical licenses and medical requirements.
 - Most are accredited primarily to NAME (National Medical Examiner's Association).
 - Some, if they had a laboratory associated with the Medical Examiner's organization or group, are accredited with CAP (College of American Pathologists).
 - Quality management:
 - Most do not have a proficiency testing program, and none have a blind proficiency testing program.
 - Quality Management Systems are varied, generally immature in nature. Many are lacking polices related to corrective actions. Many are lacking a complaint process. Many are lacking the monitoring for non-conforming work. Some have peer review of their work, but not to any great extent. Almost exclusively, they get some background information on every case they get.
 - Comments from the respondents of the survey:
 - One commented: Forensic Science should not be a part of Law Enforcement.
 - Most commented: There is a looming "crisis" about staffing shortages. Jeff added that nationally this is expected, as well, and because of this the federal government is beginning to offer, for example, academic incentives.
 - One commented: "County" Medical Examiners should be required to have annual training in death investigations.
 - Many extended an open invitation for Task Force members to visit and learn what they do before making recommendations.
 - One commented regarding bias policies: "This does not apply to us (Medical Examiners). We are pathologists, not lab technicians or analysts."
 - Comments were expressed regarding staffing shortages and non-competitive salaries.
 - Comment from the Psychiatric Hospital: "referral patterns of the courts account for a significant number of frivolous orders."
- Respondents from Private Forensic Providers:
 - Giroux Forensics (Owned by Task Force Member Brandon Giroux)
 - Forensic Science Consultants (Owned by Task Force Member Chris Bommarito)
 - Speckin Forensics (Private Laboratory in the Greater Lansing Area)
 - Primeau Forensics (Primarily digital forensics, private organization within the state)
 - General observations related to the data collected in the survey:
 - They are all private and not affiliated with law enforcement agencies.
 - Most are quite small in capacity, meaning they do not do a lot of case work, but there's a bit of variety within the private labs.

- Most are quite limited in the scope of service they provide, but each has carved out a niche area of forensics with very little overlap between them.
 - Only one is accredited (Forensic Science Consultants) to a recognized standard like ISO 17025 and has what would be considered a mature Quality Management System, with most others mentioning accreditation being a financial concern (not worth the investment if does not increase revenue) and not a priority.
 - The three unaccredited providers have an immature Quality Management System with minimal to no proficiency testing, no blind proficiency testing, no CARs (Corrective Action Reports), no peer reviews, etc. They might do quality work; they just don't have the quality system necessarily that an accredited laboratory would have.
 - Most do work for both the prosecution and defense.
 - Comments from the respondents of the survey:
 - No comments were given
- Respondents from Law Enforcement Agencies with little or no footprint in Forensic Science
 - Mackinac County Sheriff's Office
 - Iosco County Sheriff's Office
 - Clare County Sheriff's Office
 - Sanilac County Sheriff's Office
 - Michigan State University Police Department
 - Charlotte Police Department
 - Leelanau County Sheriff's Office
 - General observations related to the data collected in the survey
 - Some felt obligated to fill out the survey and basically responded they provide no forensic service, while others with some level of service did not respond.
 - Most provide either no forensics, or have a small footprint in traffic crash reconstruction, digital evidence, crime scene investigation, etc.
 - A Quality Management System is non-existent, with no proficiency testing, not blind proficiency testing, no policies on non-conformances, and no policies on notifying stakeholders.
 - Most of their work is exclusively for the prosecution with little interaction with the defense.
 - Comments from the respondents of the survey:
 - Most comments were related to additional resources in order to function. Forensic Science is very expensive and there is a lot of cost associated with it.
 - "Give more money to the Michigan State Police laboratories."
- Respondents from Law Enforcement Agencies with a larger footprint in Forensic Science
 - Arenac County Sheriff's Office
 - Montcalm County Sheriff's Office
 - Livonia Police Department
 - Kent County Sheriff's Office
 - Kalamazoo County Sheriff's Office
 - Wyoming Police Department
 - Detroit Police Department Lab Services
 - Battle Creek Police Department
 - Oakland County Sheriff's Office
 - General observations related to the data collected in the survey:
 - This group is a bit larger group, and they do some level of forensics.
 - There are a large number of other law enforcement agencies that did not respond to the survey that are also providing a forensic science service.
 - All are associated with law enforcement with only two of the group being accredited in forensic science to ISO 17025, with Oakland County Sheriff's Office being accredited through ANAB, and the Battle Creek Police Department being accredited by Perry Johnson Labs.

- *Noted that many of these labs misunderstood the question about being accredited and answered yes they are accredited – but to law enforcement standards rather than having their forensic services accredited to scientific standards.
- They offer a wide range of services: Latent Prints, Controlled Substances, Toxicology, Crime Scene Investigation, Firearms, Digital Forensics, Footwear, Tire Tracks, Trace, etc.
- Not every organization provided every service, but there are some that are closer to a full-service laboratory.
- The two accredited agencies, along with the Livonia Police Department, conduct proficiency testing, but none have a blind proficiency testing program.
- Most state the reason for not being accredited is it is not a priority, funding issues, and resource issues. Turnaround and capacity outweighed accreditation, with the importance of getting timely results outweighing everything else.
- Quality Management Systems range significantly, with the two laboratories that are accredited to a forensic standard, to the whole host of others that are not with definite differences on how they view quality. There is the Wyoming Police Department that has an interest in becoming accredited and has many of the policies and procedures and quality management things in place. Then there are other agencies that are providing a significant level of forensic services that are not accredited and haven't taken any steps towards having policies and procedures leading to a Quality Management System.
- In general, they mostly work for the prosecution.
- Generally, they do not have any certifications or licensure with respect to their laboratory.
- Comments from the respondents of the survey:
 - “Policies, procedures, and lack of resources create unnecessary delays in case turnarounds.” Conveys turnaround time being higher priority than quality of work.
 - “Forensic work done too slow won't be relevant to the investigation, so much of it is done when requested.”
 - Manner in which exams come in to the lab: “...every exam is needed in every case; we really need more personnel...Even defense attorneys will argue that you should have done a particular exam even if it would not have been probative to the case. Our workload in most labs have increased a lot while our staffing levels in many cases have been cut...a shortened academy to give them police authority while working scenes but realizing they wouldn't be working patrol. This would allow a certification process that could bring more applicants directly into labs while controlling quality of people doing the work.”
 - Most commented about heavy burdens and needing more resources.
 - “Crime labs in Michigan at the local level are very underfunded and, in many cases, hampered by union contracts designed for police officers. The contracts often mandate promotion of officers to lab analyst or technician ranks with no allowance of scientific talent or education.”
 - The Task Force should have contained more local agencies. “Involved as many local lab managers as possible because I suspect a much larger volume of forensic work is done at that level than is immediately obvious.”
 - “Contact with other labs in Michigan to ascertain best practices and possible new processing techniques/processes.” (Forum for lab managers to share experiences and knowledge)
- Respondents from Statewide Forensic Service Providers (MSP)
 - Biometrics and Identification Division (BID)
 - Intelligence Operations Division (IOD)
 - Forensic Science Division (FSD)
- General observations related to data collected in the survey
 - Affiliated with MSP.
 - Collectively offer forensic service in nearly all disciplines.
 - Greater than 350 personnel working forensic cases full-time.
 - Mature Quality Management System, being accredited for a long period of time.
 - Polices for corrective actions, notification of stakeholders, transparency, etc.

- Primarily interact with law enforcement and prosecution but do regularly interact with defense.
- Comments from the respondents of the survey:
 - Commented having difficulty with resources to keep up with technology changes.
 - IOD Invited Task Force members to learn more about what they do and learn about digital evidence and cybercrime efforts.
- Survey closing general comments:
 - There were a number of providers that did not respond, some with known significant impacts.
 - Some disciplines had no coverage in the survey (e.g. arson).
 - Some comments were insightful/thoughtful and may prompt the Task Force to follow-up for more detail.
 - Clear difference between those that are accredited versus those that are not, and the pretty big differences in how those laboratories and operations function; those working toward accreditation, and those not focused on quality as an immediate concern.
 - Some commented a survey was not a good method and offered visits as a better learning tool for the Task Force.
 - Requiring accreditation is going to have some significant impacts on services provided. Some agencies may elect to fold up their services and not continue with forensic science. (Can the community survive Task Force recommendations?)
- No questions from the Task Force members.

END OF SURVEY TOPICS AND RESULTS

- Forensic Science Practice Subcommittee Recommendations
 - Members: Chair, Mr. Jeff Nye, Dr. Ruth Smith, Senator Stephanie Chang, Dr. Barbara O'Brien, Rep. Laurie Pohutsky, Col. Joseph M. Gasper, Dr. Jeffrey Jentzen
 - Subcommittee meets generally every other week.
 - **Objective:** Conduct a survey on the State of Forensic Science in the State of Michigan; An additional survey to lab analysts and lab practitioners may go out depending on time.
 - **Recommendations:**
 - First survey is complete
 - 30 responses
 - Evaluating data
 - Summary presentation provided July 19, 2022
 - Survey to lab analysts pending
 - **Objective:** Look at Independence with Law Enforcement; Non-Profit model (Houston), Independent Government Agency (Virginia), Independent Governance within MSP: Michigan State Appellate Defender Office (SADO), Michigan Commission on Law Enforcement Standards (MCOLES), Michigan Indigent Defense Commission (MIDC).
 - **Recommendations:**
 - Objective was clearly overlapped with the Forensic Science Statewide Body Subcommittee. Deferred to this subcommittee discussions.
 - **Objective:** Access to services we offer; Taking a case manager approach and the need for additional analysis and contact with experts by stakeholders.
 - **Recommendations:**
 - Provide training to attorneys on how to get a request for analysis submitted to a forensic science service provider from both the prosecution and defense perspectives.
 - Provide awareness/training on availability of funding for outside testing.

- Recommend training and resources to address concerns on access to scientists by defense attorneys and prosecutors for trial preparation.
- Recommend training on how to obtain unredacted case files for attorneys on record. MSP requires a written request for access.
- Recommendations to create access to case files by non-criminal justice partners (e.g. Innocence Clinics) – possibly by statutory change. These organizations do not have the normal discovery process available and must rely on FOIA. The recommendation would be that the statute address Criminal Justice Information Center (CJIS) compliance and retention schedules, among others. The problem with non-redacted are files requested through the Freedom of Information Act (FOIA) require the files be redacted of any PII.
- Recommendation to create a sample/template discovery request that increases efficiency.
- **Objective:** Clearinghouse Process
 - **Recommendations:**
 - Recommend forensic science providers take steps to insulate examiners from unneeded case background information that may bias testing (e.g. case manager or scrubbing the information when it's submitted);
 - Recommend an annual training requirement for forensic science service providers to receive training in recognizing and mitigating bias. NOTE: If part of an accreditation program, there is training available.
- **Objective:** Practices for quality control and compartmentalization
 - **Recommendations:**
 - Recommend all forensic science service providers be accredited to a nationally recognized testing standard (e.g. International Organization for Standardization (ISO) 17025) by an accrediting body recognized by the International Laboratory Accreditation Cooperation (ILAC), if an accreditation is available. NOTE: Some agencies may not have the resources and personnel and the burden may remove them from service.
 - Programs that an accreditation is not available/appropriate (specialties), an oversight mechanism be instituted to ensure they are conducting quality work.
 - Recommend a blind proficiency test program be instituted for all forensic service providers with necessary support and resources made available. NOTE: Continued resources will be needed.
 - Recommend further studies related to sequential unmasking as a mechanism to reduce bias in examinations.
- **Objective:** Disclosure of Negligence / Misconduct
 - **Recommendations:**
 - Not prepared to provide recommendations at this time. No agreement yet but discussed, for example, a tiered approach – first investigation by the organization, and then elevating as appropriate.
- **Objective:** Training Requirements
 - **Recommendations:**
 - Recommend a number of hours of technical forensic science training per year by a qualified trainer.
 - Recommend an annual training requirement for forensic science service providers to receive training in recognizing and mitigating bias. NOTE: If part of an accreditation program, there is training available.
- **Objective:** Resources
 - **Recommendations:**
 - Recommend an outside body conduct a needs assessment for forensic service providers in Michigan. The needs assessment can follow a national model for needs related to legislation, financial support, and technical support.

PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

- Hon. (ret.) Dr. Donald Shelton commented he would like his committee to work with Mr. Nye's committee to come up with a standard rule for DNA discovery issues and on the discovery template because they would have to be based on the Michigan rules of criminal procedure.
 - Mr. Nye followed up with having a discovery template in place would be sort of an efficiency step, and he is glad to hear Dr. Shelton's group is looking at it as well.
- Mr. Christopher Bommarito commented Mr. Nye expressed concerns about some of the laboratories not having the resources to be accredited and that you may lose some services. Mr. Bommarito commented he doesn't think that is necessarily a bad thing.
 - Mr. Nye followed up with he doesn't disagree with Mr. Bommarito's comment, and added forensic science is expensive, and to provide a service and be successful at it takes an investment. Some organizations may not have the resources available to do that. Whether that happens or not, we have to be prepared as a state for where those services are going to be picked up and if we know anything, there is not a lot of spare capacity out there.
- Mr. Jonathan Sacks commented he's very pleased Mr. Nye mentioned the idea of an intermediary in the discussion of bias, because it does seem, for both the bias issues and the access issues, that one part of it is training and is more information for all stakeholders, including Defense attorneys, but the other part is some sort of intermediary.

END OF PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

V. Break

VI. Subcommittee Recommendations Continued

- Subcommittee 1: Forensic Science Statewide Body, Speaker: Mr. Jonathan Sacks
 - Members of the subcommittee are Senator John Bizon, Judge Donald Shelton, Judge Paul Denenfeld, Mr. Chris Bommarito, Mr. Kent Gardner, Mr. Brandon Giroux, Ms. Lori Montgomery, and Mr. Jeff Nye.
 - Meeting regularly on Friday afternoons every two weeks
 - Task Forces Goals – Executive Order 2021-4
 - Improve practice, delivery, use of forensic science in Michigan.
 - Strengthen forensic science methodologies and practices.
 - Create statewide protocols for disclosure of negligence or misconduct.
 - Create a process for allowing members of the public to report alleged professional negligence or misconduct.
 - Adopt best practices for individuals who practice or apply forensic science.
 - Create procedures for updating stakeholders on developments.
 - Create a post-conviction notification procedure.
 - Forensic Science Statewide Body recommendations
 - Mr. Sacks commented on some of the highlights of Mr. Nye's survey results and presentation covering resource shortages; the haphazard accreditation for different institutions and agencies; access and interactions with defense counsel; the need for independence; and quality management. It was hard to hear the tradeoff between results and quality.
 - The subcommittee provided an outline for potential legislation with a focus on mandates and general concepts but not the final process; noted that these concepts are based on compromise and consensus:
 - Structure in State Government – Where a statewide forensic science body would be and how would it operate. Would it be a part of the Legislative Council system? Would it be an independent sort of Commission within an agency like Licensing and Regulatory Affairs (LARA)? The independence doesn't just matter for the statewide body, but it also matters for the Michigan State Police Crime Lab. Examples are the Michigan Commission on Law Enforcement Standards (Executive, Michigan State Police); Michigan Indigent Defense Commission (Executive, LARA); Judicial Tenure Commission (Judicial); and Legislative

Corrective Ombudsman (Legislative, Michigan Legislative Council). Recommendations to follow.

- Composition – The composition of the statewide body
- Process – How often the statewide body would meet?; Open Meetings Act; Freedom of Information Act; Organization Chart; Staffing; appropriations; Expert contractors; compensation (members not receiving compensation but being reimbursed for their reasonable actual and necessary expenses); and reporting requirements.
- Mandate of the Statewide Body
 - Mandate sources of information: Subcommittee discussions; Prior meetings and reports of the Task Force subcommittees; Senate Bills 276 and 277 from 2019; Illinois legislation; and the informal Forensic Science Task Force survey responses.
 - Commissions Review Committee consensus folded into the Forensic Science Statewide Body's discussion in the areas of Review of Required Accreditation, Licensing / Registration, Investigation and Review, and Guidance on Discipline-wide Issues, and into the list of mandates.
 - The Task Force survey gives some guidance as to where people are and very much matches the discussion of the Forensic Science Statewide Body subcommittee. 10 Task Force members completed it, which may include some non-voting members.
 - 100% of the people who filled out the survey feel like there should be an accreditation mandate.
 - 90% of people thought that registration of expert witnesses beyond just the lab should be included.
 - 100% thought there should be complaints, reports, and investigations function.
 - 90% felt there should be a notification function for separate stakeholders.
 - 90% felt there should be an education sort of clearinghouse function.
 - 70% felt there should be a database of information, with the remaining commenting they need more information on what this means.
 - 80% say there should be a Grants and Recommendation piece, with 10% saying they need more information.
- Mandates the subcommittee is working toward consensus:
 - **Accreditation of Laboratories:** The subcommittee feels we need an accreditation requirement and a verification of that accreditation; The Task Force or the permanent statewide body should not create new requirements, but should use existing ones, depending on the area, with the gold standard being ISO 17025. Accreditation isn't just for the Michigan State Police or something for Prosecution actors, but it is something for public and private forensic science providers; The timeframe of two years should be given to obtain accreditation, with an extension available.
 - **Registration of people beyond the laboratory, other expert witnesses, and other practitioners:** Establish a process to register forensic experts. This is different from accreditation as a one-person expert witness is not going to have the capacity or resources to be accredited. The statewide body can maintain a database and that database could include if there have been any misconduct finding and also where folks have testified before. The registration requirement in certain disciplines could include minimum qualifications.
 - **Complaints, Reports, and Investigations:** The statewide body should 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 the forensic medicine results or the practice of the forensic science; the results or work product must be impacted. Reporting and investigation would look at the types of reports, complaints, and responses, and if appropriate, move on to a larger level of an independent investigation and response.
 - Types of Investigations:
 - The first being **educational**, where it may not necessarily come from the complaints and disclosures a statewide body might decide, but something like facial recognition technology and wanting to learn more about it.

- The second part investigations related to **complaints** with a number of steps that would take place before an investigation would take place.
- The third part of investigations would be **invited investigations** where a lab might reach out to the statewide body to take a look at something to have a neutral recommendation.
- Areas of complaints could be related to formal lab reports, an employee whistleblower, things that come up in the media, and the criminal legal system where a complaint may come from a stakeholder, prosecutor, defense attorney, or a person who has been convicted. Steps would be in place for the progression of the complaints.
- Complaints that lead to an investigation by the statewide body:
 - Evaluation framework to measure severity and risk of recurrence where the statewide body would look at the complaint, ask for more information from the forensic science agency, look at the severity of the harm and risk or recurrence, and determine if the complaint is a one-time fluke or a more systemic issue. Only those with the highest problem areas would lead to an investigation. “High severity” and “High risk of recurrence” could result in an automatic independent investigation response after forensic science body resolution authorization.
 - Everything else would be a two-tiered process. If a complaint comes in, the forensic science state-wide body would refer back to the forensic science provider and ask for reporting and evaluation (many providers do this step for complaints today, such as MSP FSD). If necessary, further questions and information might result in an investigation.
 - Looking to distinguish between smaller complaints that can be resolved with a report and a recommendation from an agency internally versus really large-scale complaints that need an independent investigation. Some examples of larger-scale issues are the Detroit Crime Lab crisis, the issue with Data Master results, operating under the influence complaints, and other areas with systemic issues.
 - A supermajority of the forensic science statewide body would be required to trigger these investigations.
- Process of the investigations (Some pieces were talked about in the subcommittee, and some are just part of a larger outline and there may not necessarily be consensus in these areas):
 - Confidentiality
 - One possible example here is to structure this like the Judicial Tenure Commission so that in any investigation, the results of any investigation, unless it is at a pace where it is appropriate, wouldn't reveal names of lab analysts.
 - Timeline
 - An appropriate timeline would be needed for when an investigation and request for recommendations is made to the forensic science body.
 - Not apply to ongoing criminal investigations
 - There would need to be an understanding that if there is an ongoing criminal investigation, it can't be a parallel process that disrupts the criminal investigation.
 - Conduct of Investigations
 - To what degree there would be access to material and reporting.
 - Results of an investigation of a forensic science statewide body
 - Would not supplant an appellate process. This is a separate process that would take place and there would not be a power for the forensic science body to grant a person a new trial.
 - There would be a public report recommendation and, if appropriate, reprimands and corrective actions.
 - In some cases, there could be a recommendation for a larger scale institutional response beyond just a particular case.

- **Notification of the results of investigations and the results that have been reported.**
 - Notifications should go to Institutional Stakeholders which include the Prosecuting Attorneys Association of Michigan, the local prosecutors and public defenders, Michigan Indigenous Defense Commission, State Appellate Defender's Office, and the Michigan Judges Association, Michigan District Judges Association, Attorney General, and the Conviction Integrity Unit.
 - If impacting an individual, notifications would go to the effected, convicted person and last counsel.
 - Notifications would include independent investigations and laboratory disclosures,
 - Notifications would respect due process, confidentiality, laboratory remediation, and corrective measure.
- **Education and Information**
 - Clearinghouse for forensic science: Provide a location where people can find forensic science related information.
 - Available training: Provide a location where people could go to look up training opportunities.
 - Database of forensic science Experts (registration): This would include prior testimony and any misconduct findings.
 - Information and recommendations on laws, rules, and policy: This came directly out of the Illinois Forensic Body they set up. Judge Shelton's subcommittee has some recommendations for rules of evidence and jury instructions. In the long-term, as the statewide body matures, there should be a space for recommendations on laws that should change, Michigan rules of evidence that should change, and public policy related to forensic science.
- **Recommendations for Best Practices and Grants for Implementation**
(subcommittee has not reached consensus, but hopes discussion with the whole Task Force will result in recommendations):
 - Advocate for proper funding and resources for public labs. The survey indicates this is needed.
 - Identify and encourage best practices:
 - Certification: Is it needed for expert witnesses? It could include accreditation for organizations such as the Defense side, forensic science service providers, or smaller providers for whom it might be a hardship to get accredited.
 - Improved Methodologies and Quality Assurance Standards: Blind testing would be an example.
 - Access to Evidence: Provide better access to evidence for the Defense.
 - Compartmentalization, Independence from prosecution, Cognitive bias: A single person in the labs that could take care of discovery; Make sure actual testers are walled off from the prosecution in terms of the underlying investigation and participate with the prosecution as necessary; reducing cognitive Bias.
 - Grants to fund best practices: The forensic state body would ask for a grant system to fund the best practices. The Michigan Indigent Defense Commission model has worked well where minimum standards have resulted in grants to results in compliance.
- Closing comment: The subcommittee continues to work toward consensus in these areas. It is the hope that the Task Force will look at these five areas for recommendations: Accreditation of laboratories; Registration; Complaints, reports, and investigations; Notification; and Recommendations for best practice and grants for implementation.

PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

- Mr. Matthew Wiese: If there was a forensic science body, wouldn't that body want to set these processes up? Are we saying we would recommend that they establish these types of processes? There are all kinds of questions about the logistics of how does an investigation work? Who can be registered, etc.?
 - Mr. Sack's follow-up: The specific process absolutely would need to be set up by this forensic science body. As a subcommittee, we do not have the capacity to give the specific recommendations for how that would happen or as a Task Force long-term. The hope is that these principles and concepts can be the outline of what would be legislation that guides the forensic science body. For example: Institutional actors like the Michigan State Police or the Oakland County Sheriff's Office wouldn't want to sign off on something carte blanche that lets a forensic science body put together a system for investigations and complaints with little mandates. General concepts, like there should be a high severity issue, and there should be a risk of recurrence that's high that triggers the investigation would provide certain guidelines to use. This would ensure limits to what the statewide body is authorized to do.
- Mr. Matthew Wiese: There are tried cases where he doesn't believe defense expert witnesses would be qualified under this scenario. Examples would be a mixed martial arts expert, and where there was a retired forensic pathologist, whose testimony was clearly suspected questionable and didn't follow current medical practices. Going back to the symposium in January, a defense attorney said they didn't really know if this was a great idea because we have to agree what's good for the prosecution is good for the defense too.
 - Mr. Sack's follow-up: The piece here is the distinction between accreditation and registration. Where there are the requirements for the labs and those labs should get accredited; for an average witness, that's someone who would register. It is not someone who would be subject to an accreditation requirement. That person would register and be in a database if other defense attorneys or prosecutors need to look for someone in this area of expertise.
 - Mr. Matthew Wiese: So, in your (Mr. Sack's) assessment, registration would be required to even be called as a witness, or will we still go through the 702 analyses with the judge, as the gatekeeper, or would we look at if the witness doesn't have the registration stamp of approval. It just seems like we can't tell the trial court judge, if you as a defense attorney qualified somebody, that they can't testify because they didn't register.
 - Mr. Sack's follow-up: There is a requirement to register with the statewide body, but that doesn't mean if somebody's not registered, they can't testify. The rule of evidence is what controls that. There could be grounds for cross-examination if someone is not registered.

END OF PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

- Subcommittee 3: Criminal Legal System, Speaker: Hon. (ret.) Dr. Donald Shelton
 - Criminal Legal System subcommittee was charged with education issues, testimony issues, evidence and discovery, and jury instructions.
 - Education recommendations as of now:
 - Mandatory continuing education requirement for attorneys, and as part of that requirement attorneys appearing in a court or appellate criminal proceedings be required to include at least one annual course in forensic science evidence.
 - For appointed trial attorneys, through the Michigan Indigent Commission, we are recommending their continuing education requirement be narrowed to include a requirement for forensic science education for attorneys.
 - Similarly, the same recommendation for the Appellate Defender Commission for attorneys from SADO and the Michigan assigned appellate counsel system.
 - The Supreme Court preempted and adopted the mandatory continuing education for judges that will take place in January 2024 and will be overseen by a Judicial Education Board. Our recommendation is that continuing education requirement for judges include an annual requirement for forensic science evidence education for all criminal and civil judges. The recommendation is also that the Judicial Education Board have members who are experienced and knowledgeable in forensic science evidence.
 - Lastly, we are recommending that the American Academy of Forensic Science Accreditation should be a requirement for any school that offers forensic science education.

- Testimony recommendations: Because the American Bar Association and the Judicial Conference of the United States have recommended amending the federal rule 702, The Michigan Supreme Court should amend MRE (Michigan Rule of Evidence) 702 to correspond with the proposed amendments to FRE (Federal Rule of Evidence) 702 to improve the quality of *Daubert* hearings. Reasoning being judges have not faithfully followed the *Daubert* requirements in a number of ways. Some judges may have placed the burden of proof on the opponent of the evidence rather than the proponent. Some judges have left it to the jury to decide rather than the judge being the gatekeeper. The amendment clarifies that burden of proof is on the proponent. The standard of proof is that “more likely than not” the requirements have been met. Also adding language about the expert’s opinion reflecting reliable application (of principles and methods to facts of the case).
- Recommendations for Evidence and Discovery: The subcommittee has focused quite a bit on mandatory disclosure of discovery of DNA testing material and they don’t have consensus but will continue discussing it in the future. We will also be looking at whether we need to have a more general amendment to the Michigan Rules of Criminal Procedure as to disclosure of other types of forensic science evidence as well.
- Recommendations for jury instruction:
 - Expert witness instruction - Recommend that jury instruction not be given and that the Michigan Supreme Court delete Michigan Criminal Jury Instruction 5.10 and replace it with “No instruction regarding expert witness testimony should be given.” Giving expert witness instructions to the jury leads the jury to feel the judge has somehow vouched for the witness and it ends up giving the witness more credibility than what was intended. American Bar Association and other organizations have recommended this change.
 - Anti “CSI” Instruction - It is also recommended that the Supreme Court add a section to the Criminal Jury Instructions stating that “No instructions should be given concerning the adequacy of police investigation or the so-called “CSI effect”.

PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

- Mr. Jonathan Sacks: Regarding the discovery piece, has there been any discussion of a discovery rule that would include areas beyond DNA that would include background information from the labs beyond just the concluding report?
 - Hon. (ret.) Dr. Donald Shelton’s response: We have not yet. In Mr. Nye’s presentation he commented on creating a discovery template. I (Dr. Shelton) want us to consider a more general discovery proposal for all types of forensic science evidence and not just DNA. DNA has its own specific issues that we need to address. We will look at a more general discovery amendment relating to forensic science evidence.

END OF PRESENTATION FOLLOW-UP COMMENTS AND QUESTIONS

VII. Public Comments

- There were no public comments expressed

VIII. Review Task Force Timeline:

- September 20, 2022 (AM) – Review draft report and recommendation language (findings and draft recommendations must be provided in advance)
- November 1, 2022 (all day meeting scheduled) – Work through final recommendation language and vote
- December 13, 2022 (AM) – Any edits to final report and strategizing for implementation of recommendations

IX. Additional Topics

- Central location for Task Forces files and documents: Col. Gasper recommended: The creation of a central location to house Task Force files and documentation. Reasons being ease of access, we can make sure everyone on the Task Force has access, and then additionally making sure we’re protecting the information for release. A OneDrive folder will be created to house all the Task Force files and documents.

- Formal Document: Col. Gasper commented: We need to start working on the formal document, or at least a draft of that formal document. That document will be on OneDrive. Just the subcommittee chairs should make modifications to the document.
 - Mr. Wiese suggested turning on track changes so the changes can be seen, and comments can be entered (i.e. unanimously agreed upon, point for discussion or debate, etc.) and viewed.
- Judge Paul Denenfeld raised the question on whether or not drafts would be FOIAable, expressing concerns about the public giving their own opinion about drafts at an early stage. Judge Denenfeld also commented it is great to work toward consensus, but we need to acknowledge consensus may not necessarily mean unanimity and working for consensus and seeking unanimity is great.
 - Col. Gasper commented he will get with the Department expert regarding drafts and FOIAs.

X. Next Meeting

- DATE: Tuesday, September 20, 2022
- TIME: 9:30 a.m. – 12 p.m.
- LOCATION: TBD – (Remote or in-person at Michigan Hall of Justice, 925 W. Ottawa, Lansing, MI)

XI. Adjournment

- Meeting was adjourned by Col. Joseph M. Gasper at 11:41 a.m.