



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
May 10, 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

- Chief Justice Bridget M. McCormack called the Task Force on Forensic Science meeting to order at 9:30 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	
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	
Dr. Jeffrey M. Jentzen, M.D., Ph.D	X		Virtual via Zoom
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	
Judge Paul J. Denefeld	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	
Representative Robert Bezotte		X	
Representative Laurie Pohutsky	X		Virtual via Zoom

III. Approval Vote of the March 8, 2022, Meeting Minutes

- A motion to approve the March 8, 2022, meeting minutes was given by the Hon. (ret.) Dr. Donald Shelton and seconded by Dr. Ruth Smith.
- With no discussion, the March 8, 2022, meeting minutes were approved with 11 Yeas, 0 Nays, and 0 Abstained.

IV. Presentation and Discussion: Admissibility of Social Science Testimony

Speaker: Honorable Dr. Donald Shelton, Ph.D.

- Chief Justice McCormack's opening comments: There was a lot of discussion around behavioral science expert testimony and social science expert testimony and how we, as a task force, might address this area. Judge Shelton volunteered to prepare some considerations for us.
- Hon. (ret) Dr. Donald Shelton: Our Task Force is charged to review the state of forensic science in Michigan, and to make recommendations to improve the practice, delivery, and use of forensic science, and to strengthen forensic science methodologies and practices in the State.

Court testimony by social scientists, as opposed to physical scientists, I submit, is one important form of forensic science. Although there are a lot of other areas where psychiatrists, psychologists, and sociologists testify, the most common and legally problematic testimony comes from social scientists involves three areas: (1) Eyewitness Testimony, (2) False Confession Testimony, and (3) "Syndrome" Testimony, particularly in child and adult sexual abuse cases.

- Witnesses regarding eyewitness and false confessions are typically called by the defense, while syndrome witnesses are often called by the prosecution.
- Social science issues are a large part of the national wrongful conviction data.
 - Mistaken witness testimony accounted for 27% of all wrongful convictions.

- Perjury or false accusations was a factor in 61% of all wrongful convictions.
- False confession was a factor in 12% of all wrongful convictions.
 - When considering these factors as to the type of crime, social science testimony, especially the syndrome testimony, is important. Perjury or false accusations is the leading cause of wrongful convictions for child sex abuse at 85%, while mistaken witness accounted for another 12%. In adult sexual assault cases, the same two factors dominate, with mistaken witness accounting for 67%, and perjury or false accusations accounting for 44% of these wrongful convictions.
- The Michigan experience regarding wrongful convictions for social science issues is similar.
 - Mistaken Identification: Involved in 40 out of the 148 exonerations
 - Murder was 16 (41%)
 - Adult sexual assault was 9 (23%)
 - Child sex assault was 1 (3%)
 - Notably, 88% of the defendants who were convicted by mistaken identification were black.
 - Perjury or False Accusations: There were 92 out of the 148 exonerations
 - Murder was 42 (48%)
 - Adult sexual assault was 10 (11%)
 - Child sex abuse was 16 (17%)
- Social Science Testimony Admissibility
 - The so-called “soft sciences” have both developed and been called into serious question by modern scientific examination.
 - Initially there was an underlying question of whether *Daubert*, or even *Frye*, applied to the behavioral sciences at all. Some argue that behavioral sciences are somewhat different and should be treated differently by the courts. Some *Frye* states, including Michigan, initially agreed.
 - In Federal Courts, and in the many states that have adopted *Daubert* as Michigan later did, the issue was seemingly resolved in the *Kumho* case when the Supreme Court held that the *Daubert* standards, and the gate keeping role of judges, applies to all experts. The basic lesson of *Kumho Tire* is that all expert evidence, whether it is described as scientific or otherwise, must pass the basic threshold of testimony validity.
 - Eyewitness Identification Experts (1)
 - Eyewitness Identification Experts are typically offered by the Defense in criminal cases to raise reasonable doubt about the reliability of government witness claims to identify the defendant as the perpetrator. The Defense may seek to present expert testimony based on the scientific research that shows that eyewitness testimony, in general, is just not very reliable. The Defense may also want to elicit testimony that the particular conditions, lighting, or whatever present, makes that identification scientifically suspect. There is a significant body of scientific research to support the Defense position. Psychological studies have shown that humans are just not very good, some less than 50%, and should be random in identifying people they saw briefly during a traumatic incident. They also indicate that identification of persons of a different race than the witness is especially unreliable. The exonerations based on faulty identifications are the ultimate evidence of the unreliability of eyewitness testimony. Legally, although there was some hesitancy to admit Defense expert testimony about eyewitness unreliability, most courts have upheld that the admissibility of expert eyewitness testimony is to be decided by the same factors used in evaluation other scientific testimony, whether under *Frye* or *Daubert*, or even general relevancy questions. There is no Michigan Supreme Court case that explicitly admits experts regarding the reliability of eyewitness testimony. Most of the Court of Appeals cases only address the issue in the context of an allegation that the Defense Counsel was ineffective for not calling such an expert witness.
 - False Confession Experts (2)
 - Looking at false confession experts, expert testimony about the factors surrounding false confession is usually offered by the Defense. There is significant research about the factors that can lead to a false confession and then to a wrongful conviction. In the last two years alone, four innocent persons in Michigan were exonerated after serving an aggregated total of more than 100 years in prison for wrongful murder convictions that

were based on false confessions. Michigan law about the admissibility of false confession expert testimony is unclear. In 2012, the Supreme Court held, that because the claim of a false confession is beyond the common knowledge of an ordinary person, expert testimony about this phenomenon is admissible under Michigan Rule of Evidence (MRE)-702, but an expert explaining the situational or psychological factors that may lead to a false confession may not comment on the truthfulness of a defendant's confession or vouch for the veracity of a defendant recanting a confession, or give an opinion as to whether the defendant was telling the truth when he made the statement to the police.

▪ "Syndrome" Testimony (3)

- Much of the debate about the application of legal standards of admissibility to social science has arisen in the context of expert testimony from psychiatrists, psychologists, social workers, or even counselors. Over the past 20 years, lawyers have sought to present expert testimony concerning various of what are called syndromes. Syndromes are symptoms or characteristics that they claim are typical, or at least consistent, with the behavior of either the victims or the alleged perpetrators of certain crimes. A syndrome is not necessarily a medical diagnosis, but rather, it is just a recognizable complex of symptoms and physical findings which indicate a specific condition for which a direct cause is not necessarily understood. Two common forms of criminal case testimony involve the battered woman syndrome and the child sexual abuse accommodation syndrome; both offered by the prosecution. Prosecutors have also offered other various syndromes including battering parents' syndrome, separation trauma, and rape trauma syndrome. The testimony is usually offered to corroborate the testimony of the complainant or to rebut certain claims of the defendant.
- Battered Woman Syndrome is a psychological and behavioral phenomenon that describes characteristics of women living in battering relationships. The syndrome has been discussed for over 30 years, and it is regarded as a subcategory of post-traumatic-stress-disorder. The four principal elements of Battered Woman Syndrome are: (1) The woman believes that the violence was her fault; (2) The woman has an inability to place the responsibility for the violence elsewhere; (3) The woman fears for her life and/or her children's lives; (4) The woman has an irrational belief that the abuser is omnipresent and omniscient.
 - Defense attorneys have offered Battered Woman Syndrome as a duress defense for women accused of assaulting or killing a male partner. Many courts have recognized that expert testimony of the Battered Woman Syndrome could play a pivotal role in a claim of duress. Other courts have not allowed it. Prosecutors have offered Battered Woman Syndrome to corroborate the testimony of the complainant or to rebut certain claims of the defendant. Most often the prosecution offers such testimony from psychologists, or social workers, or even counselors to bolster the testimony of an alleged victim when she has recanted a previous accusation.

Perhaps the most controversial type of social science testimony involves what's called the Child Sexual Abuse Accommodation Syndrome (CSAAS). In 1983, Roland Summit, a physician, proposed a theory to describe children's reactions when they are sexually abused and dubbed it the Child Sexual Abuse Accommodation Syndrome. The syndrome is comprised of one or more of these five elements: (1) secrecy; (2) helplessness; (3) entrapment and accommodation; (4) delayed disclosure; (5) retraction. Prosecutors sought to use this syndrome to bolster the testimony of a child witness who had failed to report alleged abuse, or even denied abuse, or retracted statements about alleged abuse. Even prior to *Daubert*, there was significant controversy under *Frye* about the admissibility of expert witness testimony concerning the CSAAS with some courts admitting it and other courts excluding it. Some things are clear. Prior to *Daubert*, courts generally agreed with the proposition that the prosecution cannot use CSAAS to prove that the abuse actually occurred, or that the child witness is being truthful. Most psychologists agree that it's not ethically or legally permissible for clinical psychologists to testify that the post abuse symptoms of a child indicate that the abuse actually occurred. Research has not identified any symptoms

that are clear indicators of sexual abuse, nor has it provided evidence of a particular set of symptoms specific to childhood sexual abuse. The nature of empirical research on child sexual abuse, as well as the nature of these experiences, from that it is highly unlikely that a symptom marker of childhood sexual abuse will ever emerge that can be used in court to prove a history of childhood abuse. However, several courts, nevertheless, allowed prosecution witnesses to testify about CSAAS to “explain” or “rehabilitate” a child witness who failed to make a timely report of alleged abuse, or initially denied it, or recanted an earlier accusation. The Michigan Supreme Court followed that trend in *People vs. Peterson* and the companion of *People vs. Smith*. Our court held that it was in error to admit testimony of two social workers and a clinical psychologist about CSAAS in the prosecution in chief. The testimony, they said, was an impermissible attempt to vouch for the credibility of a witness, and because these witnesses told the jury that the victim’s symptoms were consistent with those of a sexual abuse victim. They held that unless the defendant raises the issue of a particular child victim’s post incident behavior, or attacks the child’s credibility, an expert may not testify that the particular child victim’s behavior is consistent with that of a sexually abused child, but the Court then used the harmless error reasoning to uphold the convictions anyway. Michigan was still a *Frye* state when the *Peterson* and *Smith* cases were decided. The important basic question about the status of CSAAS admissibility in Michigan is whether it can survive under the validity standard set forth in *Daubert*. More recently the Court was asked to revisit its admissibility in light of *Daubert* in *People vs. Mejia*, a case alleging that Defense counsel was ineffective for not challenging the admissibility of the testimony of a social worker about CSAAS. Four of the Justices simply declined the application for leave to appeal from an unpublished Court of Appeals decision that denied the ineffectiveness of Council claim. Justice McCormack, along with Justice Bernstein and Cavanaugh, dissented. Justice McCormack said that she would grant leave to appeal further review of the argument that the question of the admissibility of CSAAS under *Daubert* and the *Peterson* case are right for reconsideration. The majority of the courts, she said, currently admit such evidence, but recently courts around the country have been grappling, troubled with questions about the validity of that evidence. She (Justice McCormack) referred to the New Jersey Supreme Court, which noted that CSAAS is not recognized in the DSM (Diagnostic and Statistical Manual of Mental Disorders) and has not been accepted by the American Psychiatric Association, The American Psychological Association, or the American Psychological Society. She suggested the court join the conversation about continued validity.

The problem with CSAAS and with much social science testimony, is that the concept is based on clinical rather than scientific observations. Scientists are trained to test hypotheses and theories with controlled scientific methods and attempt to remove any bias in the response of the subject. Therapists, like social workers, or counselors, or clinical psychologists on the other hand, are trained to make subjective assessments of the subject responses and they base any broad conclusions on the anecdotes from those responses. Anecdotal conclusions can be useful for therapists, but they are contrary to a scientific method. Allowing conclusory testimony from witnesses, such as social workers or counselors, based on their anecdotal experience, is essentially not the forensic science described in *Daubert*. The New Jersey Supreme Court recently required a *Daubert* type hearing to examine the validity of CSAAS. After that hearing the New Jersey Supreme Court pointed out the important distinction between clinical anecdotal observations and scientific research. The Court held that expert testimony about CSAAS, in general, and its component behaviors other than delayed disclosure, may no longer be admitted in criminal trials. After a thorough review, the Court stated, one of the underlying problems is with the original concept being based on anecdotal rather than scientific conclusions saying it is important to note CSAAS stems from observations made in clinical practice, not systemic scientific study. Dr. Summit’s seminal 1983 article reflected the conclusions of a clinical psychiatrist and advocate for victims of child sexual abuse, and not a body of empirical data...Clinical wisdom is valuable, but it must be examined with care and objectively tested.

Likewise, the Kentucky Supreme Court also reexamined the admissibility of the syndrome. They referred to a prior case (*King v. Commonwealth* – 2015) and held that it was not admissible and said the validity of the theory was not evident in 1985 and it is not self-evident today. The gravity of the issue is self-evident, given the serious personal and social consequences at stake. It would seem likely over the past three decades that the theory would have been exposed to thorough and rigorous research to demonstrate its validity. We have never ruled the theory to be inadmissible because it's demonstrably wrong; rather, we have ruled inadmissible because no one has offered proof of its validity. That ruling is unlikely to change unless the proponents of the theory provide proof of the relevant factors weighing on the theory's credibility.

So, where does that put us? We are tasked to make recommendations to improve the practice, delivery, and use of forensic science, and to strengthen those methodologies and practices in the State. Particularly the context of our discussion of the admissibility of CSAAS and other social work or counselor testimony in alleged child abuse cases needs to focus on the problem of wrongful convictions. There have been 20 wrongful convictions of child sex abuse in Michigan and 16 (80%) of those were due to perjury, or false accusations. An analysis of the validity of CSAAS testimony should begin there.

- Questions and comments following the presentation:
 - Chief Justice McCormack: Asked Dr. Shelton to suggest how he thinks we should proceed.
 - Dr. Shelton comments: (1) The basic principle we need to recognize is that social science or behavioral science testimony is one significant form of forensic science evidence that ought to be considered by our Task Force and by any Commission or Body that we recommend, taking the position that a *Daubert* hearing is required before the admission of any social science or behavioral science testimony in the same way as it is required or not required for any physical forensic science testimony. (2) Recommend that testimony be evaluated according to the same standards we apply under *Daubert* to physical sciences, particularly the question of error rates, testability, standards, and so forth.
 - Chief Justice McCormack comments: This seems to fall within Dr. Shelton's subcommittee, and he is the guy for the job.
 - Dr. Shelton's response: He would be happy to raise this issue with the subcommittee on the testimony basis, and then proceed from there, unless there are folks who think we should not be doing this.
 - Judge Paul Denenfeld comments: Our Supreme Court has decided some cases that, at least, are on the edges of what we are talking about. *People v. Thorpe* dealt with a particular expert (Thomas Cottrell) who was essentially vouching by giving statistical testimony in child abuse cases. Even after *Thorpe*, we do not have a Criminal Sexual Conduct (CSC) trial in Kent County without Thomas Cottrell testifying. So, what has happened is that prosecutors have carved out areas where Cottrell may be able to testify without actually violating the *Thorpe* holding about vouching. He is presented as an expert. *Thorpe* is the law, and I accept that as I must, but it does seem to me that there are areas that need to be explored. I talk about Cottrell because I actually keep an outline of every opinion that comes out involving Cottrell. It is getting to be pages long and these are important appeals opinions, most unpublished with only a few published, and he has become a statewide expert witness on this. He would like to explore whether or not Cottrell, and others like him, should be subject to more probing inquiry as to the basis for their testimony.
 - Chief Justice McCormack commented: The subcommittee has a little bit of work to do on this topic and that the subcommittee can probably figure out some good recommendations.

V. Presentation: Illinois Forensic Science Commission

Speaker: Mr. Jeff Nye

- Chief Justice McCormack's opening comments: Illinois has a newly formed Forensic Science Commission and Jeff is going to provide some general highlights about that Commission so that we understand what form it's taking and what it's doing. If we think it should be studied further, perhaps we can refer it to the appropriate subcommittee.

- Mr. Jeff Nye: The Illinois Forensic Science Commission was signed into law in August 2021. It does not only establish the Commission, but it gives an outline of the objectives of the Commission and also established the composition of the Commission. These are areas we have discussed and are important areas for us to further discuss as we continue with this Task Force. There are about eight different objectives, boiled down to a few bullet points, noting some of the language they use is quite different than what we have discussed in the past:
 - Provide Guidance of efficient delivery and sound practices for forensic science
 - This is simply to provide guidance.
 - Provide a forum for communication and coordination with stakeholders
 - These are the delivery, the practice, and communication coordination; All things that we have discussed here in Michigan. But the tone is a little bit more of just guidance in a forum and an opportunity for people to have discussions to see how improvements can be made.
 - System-based approach, review the delivery of services and sound practices for forensic science. Goal of reducing/eliminating factors and inefficiencies that contribute to backlogs and errors. Focus on education/training/funding/hiring/procurement, etc.
 - This is a system's approach, so for me (Mr. Nye), it's not just about forensic science, but it's all the stakeholders included within forensic science. It's to review how the services are delivered, how they're received, what sound practices there should be, all in an effort to eliminate or reduce factors that contribute to things like backlogs and backlogs with errors. It also especially has a focus on things related to education, training, funding, hiring, and procurement. It is very, very supportive in nature. It gets at some of the goals we've been talking about as well.
 - Review significant non-conformities and offer recommendations
 - The area of voluntary reporting and notifications, they deal with slightly differently. The major word being "significant." It is a review of significant non-conformities, and they offer recommendations, and that is done generally through an annual report to the Commission. It would be significant issues, and then the response from the Commission would be offering recommendations.
 - Provide education/research/training for scientist/police/judges/attorneys.
 - We have spent a lot of time on things like education, research, and training for everyone in the continuum, including the scientists, law enforcement, judges, and attorneys, so there is a lot of consistencies from some of the things we have talked about.
 - Evaluate impact of current laws/rules/policies/practices on forensic crime laboratories; identify new policies and approaches with recommendations.
 - The Commission would evaluate impacts on current and future laws, policies, and practices and how they might impact, both positively and negatively, the forensic science laboratories and then obviously identify anything new that might want to be recommended as far as policies and laws for the legislature or Governor's office to address.
 - Catch-all phrase: Additional duties as assigned by the General Assembly by resolution or the Governor.
 - Basically, that duties as assigned for anything the legislature, or the State of Illinois General Assembly, or Governor by resolution, that they might want the Commission to address could be dealt with in that manner.
 - Ensure adequate resources/facilities.
 - This is to ensure adequate resources and facilities for those laboratories that are operating within the state.
- Mr. Nye's follow-up comments: I've talked about the fact that significant, the word significant has a lot of interpretation around that we've have some discussion previously about what's significant, what's reportable, and what's not reportable. I think that would take a lot more discussion. The way Mr. Nye reads the legislation, the Commission is not really an oversight body, but more of a forum for discussion, development, a process for improvement, and making recommendations. Another thing that is important is it is housed within the Illinois State Police. We have had a lot of discussion and that is something we continue to discuss within our Task Force if we do develop something in the State of Michigan and where that body would be housed. Again, the tone with Illinois is very different, it is very supportive, the end goal being improvements in a lot less of the oversight type of tone.

- Commission Composition
 - One laboratory director from each publicly funded laboratory (*Important to note that not all laboratory directors in some systems were prior forensic scientists*)
 - Every publicly funded laboratory in the state of Illinois has representation on the Commission and that is done by representation by their laboratory director.
 - One prosecutor
 - One defense attorney
 - Three practicing forensic scientists
 - One retired judge
 - One academic representative
 - One community representative (SANE, victim advocate, Innocence Clinic, etc.)
 - This isn't something our Task Force had previously discussed but may be good to consider.
- Mr. Nye's follow-up comments: This is something Mr. Nye and Mr. Jonathan Sacks have talked about to bring up to that committee to do a little deeper dive and then probably reach out to member of Illinois and their Commission to see in practicality how it has been working and whether they have had meetings or not, and just how things been going on their side.
- Mr. Jonathan Sacks comments: Mr. Nye and he did briefly touch base on this last week, and he will do the update for the Commission Subcommittee later in this meeting. But for the next meeting, basing a lot of it on the prior Michigan legislation that was introduced by Senator Chang and some of her colleagues. We can include the Illinois legislation in that discussion as well. Mr. Sacks' initial reaction is half of it is very much along the lines of what we are talking about, which is a body that functions on education, responding to new developments, making recommendations, and that sort of advisory and educational capacity. The other half that we've really been working on including, it is not as strong on something I hope we do include, and that is some degree of investigation in addition to review, some more robust staffing for disclosures and complaints. Another area we've focused on for the statewide body and the future of public labs in Michigan is the independence piece. The Illinois Commission is still part of the Illinois State Police, and so many of the commissioners were the lab directors. The advisory guidance focus on resources are all good things. This is something his subcommittee will look at and discuss in tandem with Senator Chang's prior legislation.
- Judge Paul Denenfeld comments: I certainly see some good things about what Illinois is doing, but it seems that it is much more of an advisory function than it is actually a comprehensive entity that would be dealing with all parts of things like accreditation and the other things that we have been talking about. Philosophically we all have our own views on that.
 - Question: Would the Illinois model be responsive to the Governor's executive order here, which as I recall, seems to be calling for more than simply an advisory Commission, but for more specifics and details that would go to the Governor? I recall it being much more specific about the kinds of things that it is asking for.
- Hon. (ret) Dr. Donald Shelton comments: I'm a little concerned about the Illinois preponderance of laboratory directors, which seems to be heavily weighted there. A comment about his subcommittee discussions is that we have to recognize that a lot of experts who testify in court don't come out of laboratories. I hope that we don't become so focused on the laboratories that we forget to include provisions that relate to the non-laboratory experts.
- Mr. Christopher Bommarito comments: Mentioned that he did do some research on the Illinois Commission and really did not include that in their reports because it was too new. There wasn't really a lot of great feedback as to what has happened thus far and how effective it's been. There were concerns amongst a couple lab directors about their reporting requirements as far as nonconformities. Their concerns were that laboratories would state certain things as significant non-conformities. So, some lab directors felt that it might result in a step backwards in their quality systems because of their hesitancy to report some of these non-conformities.
- Chief Justice McCormack comments: It sounds like your (Mr. Sacks') subcommittee will have some work to do. Mr. Sacks is getting whatever information we can get, and maybe there are some updates to be learned.

VI. Public Comments

- There were no public comments expressed

VII. Break

VIII. Review Task Force Timeline:

- July 19, 2022 (AM) – Review and discuss findings and recommendations proposed by subcommittees; identify areas which still need to be addressed
- 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

- Chief Justice McCormack commented:
 - The schedule can be adjusted as the Task Force goes forward.
 - A way to provide recommendations would need to be set up, possibly a Drop Box type style.
 - Subcommittees will be busy over the next two months and should probably start working on draft recommendations.

IX. Subcommittee Report-out and Discussion

- Forensic Science Statewide Body – Chair: Mr. Jonathan Sacks
 - The subcommittee has had two meetings and have set a standard meeting time for once every two weeks.
 - The subcommittee has proposed a timeline and it looks like it is very much in sync with the timeline just presented.
 - The subcommittee is looking at the primary topic areas and where they are.
 - The July meeting will hopefully have an outline for a legislative proposal.
 - The September meeting have an actual draft of that legislation.
 - Review the two mandates (Structure and Responsibilities and Objectives) for the Forensic Statewide Body Subcommittee and what will be in these recommendations and hopefully draft legislation.
 - Review what the structure will look like, both the structure within state government and all the members of this Commission, and also the responsibilities and objectives.
 - As a group, the subcommittee is focusing first on the responsibilities and objectives. Once there is a consensus there, and there is a start of a plan, then the structure can follow.
 - Two pieces that have hopefully rooted us in these discussions come from the executive order: to improve the practice, delivery, and use of forensic science. Goals from EO: 1) To strengthen forensic science methodologies and practices; to create statewide protocols for disclosure of negligence or misconduct; to create a process for allowing members of the public to report alleged professional negligence or misconduct; to adopt best practices for individuals who practice and apply forensic science; to create procedures for updating stakeholders; and to create a post-conviction notification procedure. Functions discussed by previous Commissions Review subcommittee that had some agreement: 2) Review of required accreditation; licensing / registration; investigation and review; and guidance on discipline-wide issues.
 - Process: The subcommittee is in agreement that it is too difficult for the group within the next seven months or so to answer every single question for exactly how recommendations would work. The hope is that the full Task Force will recommend statutory mandate for the permanent Forensic Science Body to implement.
 - Topic areas of what a Forensic Science Statewide Body would look at. (Not necessarily a consensus, but highlights of discussion that will hopefully lead to a consensus.)
 - Disclosures and Complaints:

- The subcommittee feels the oversight provided by accreditation bodies for complaints is a closed system and it should be compared to a more transparent review by an independent body.
- Hierarchy of Complaints: The subcommittee has talked about different ways to look at complaints and disclosures. Best examples are public complaints versus self-disclosures of negligence or misconduct from the different public labs, and then public complaints and where they may come from; A complaint by a single attorney, or a single person who has been prosecuted might be different from a complaint that looks at a series of dozens of different cases or convictions.
- Scope of Complaints: The subcommittee has talked about the scope of complaints right now. Michigan State Police now looks at six to ten complaints per year, and zero to one of those complaints each year have merit. So, the formation of a statewide body might increase and provide a clearinghouse for more complaints, but it seems to be a manageable number of complaints to work with.
- Minimum Standards and Best Practice Grants: Framework would need to be set up to implement any new standards required, like blind testing. An example that has worked in Michigan with structure of the Indigent Defense Commission are best practice grants and grants to implement minimum standards. This would be an incentive structure of public labs and, in some cases private labs, to get state grants when they comply with the minimum standards. The subcommittee has spent some time discussing whether this is something that is limited to public labs, or whether it is something that should apply to private labs or private experts as well. The subcommittee agrees that the standard is a little different for Michigan State Police, Oakland County, and Battle Creek, agencies that are 85% or more forensic science, should have a different access point to grants and standards than an individual expert. Perhaps there can be different funding streams or different types of labs they fall into, and also different regulations there for standards. Discussed also was cost concerns in that a forensic science body should not just be a blank check towards grants and reforms that should happen. It should be something that is carefully looked at by the members of the Commission, and by the staff, and obviously by the Legislature in appropriating the money.
- Quality Control: Quality Control is rooted in the Executive Order and is to improve the practice, delivery, and use of forensic science in Michigan, strengthen Forensic Science methodologies and practices, and adopt best practices for individuals who practice or apply forensic science.
 - Accreditation definitely gets us some of the way there, but it does not cover all the areas of forensic science. Dr. Shelton's presentation, which looked at social sciences are areas that do not have accreditation. The subcommittee talked about not all accrediting bodies are equal; this is something that should be a part of quality control.
 - The subcommittee also talked about how guidance and mentoring for quality control can be a mandate of a forensic science statewide body or Commission.
- Post-Conviction notification procedures: The subcommittee has a lot of agreement over what a mandate should look like. A statewide body should serve as a clearinghouse for post-conviction notifications and that clearinghouse should inform all the different stakeholder groups, being the Prosecuting Attorney's Association, defense attorneys and public defender groups, judicial groups, forensic scientists, and practitioners. The forensic science body could help to guide a larger scale response with part of the mandate to recommend and facilitate.
- Credentials, Accreditation, and Registration:
 - There needs to be a distinction between government labs, private labs, and individual experts.
 - All labs that practice forensic science, the practitioners specifically, should be accredited by external bodies.
 - For experts, perhaps there is some system of registration only, as accreditation might be too expensive or too much of a burden.
 - Some of this work, as with many of these topic areas, has been accomplished already in the Senate Bill and in the newer versions of the Senate Bill for 2019. The subcommittee's next meeting we'll be looking at that bill and figuring out the pieces that hopefully can be part of the permanent legislation.

- New Technologies, Methods, and Developments: There seems to be some agreement that the focus should be scientists and forensic scientists and that the Commission or Statewide Body should not necessarily reinvent the wheel. There are organizations like NIST, the National Institute of Standards and Technology and OSAC, Organization of Scientific Area Committees for Forensic Science, already publishing information on new technologies and developments. Here the Forensic Science Body should be a clearinghouse and disseminate and make easily accessible that information, including new technologies and developments that may be problematic. Part of the review of new technologies and methods is specific Michigan practice and events, and the response to Michigan issues should include voices outside of the state too, so it does not just become an insular group where it gets too Michigan focused, where outside experts might be able to say this is something Michigan is not doing quite right.
 - Another area the subcommittee talked about is the Forensic Science Body serving as a central database and information clearinghouse that could include new technologies just mentioned, expert information, experts who are registered, a history of complaints, a database of those sort of complaints and disclosures, and educational resources.
 - Another area discussed is training and the requirements for training for stakeholders, forensic science service providers, judges, prosecutors, and defense attorneys.
 - Mr. Sack's closing comments: This is not necessarily consensus as to where things are going, but is a highlight of the discussion areas, hoping it will serve to put together more specific recommendations for what a statute could look like at the July meeting. The survey Task Force members were asked to complete (anonymously) goes through the different areas mentioned and it asks if there is support for a forensic statewide body. The results of the survey will help indicate where there is consensus or not and guide where we are going in July.
 - No questions or comments followed the update.
- Forensic Science Practice – Chair: Mr. Jeff Nye
 - The subcommittee has met at least once and there has been a lot of work going on behind the scenes outside of the meeting.

The primary/major objective of this subcommittee is to conduct a statewide survey to assess the status of forensic science; that is a “shall” in the Executive Order from the Governor’s Office. The final survey is ready to send out and now the subcommittee is spending a lot of time deciding on who the recipient list is going to be and trying to get a final contact list. The survey will be delivered through email. One challenge that we have had is that we, the Forensic Science Division, receive evidence from most, but not all, law enforcement agencies in the state. So, we can certainly obtain a list of all the people that submit to us, but the difficulty is that list is not at the organizational level, but more to the actual investigator or officer level. Mr. Nye was able to contact the Michigan Association of Chiefs of Police (MACP) and they have agreed to help with the distribution of the survey through their association. One gap in their membership list is the Michigan Sheriffs, but we were able to pull together email contacts for most, but maybe not all the Sheriffs within the state. With the assistance of Chief Justice McCormack’s, we were able to get a list of other laboratories that are accredited, helping us add a couple hundred more contacts for possible recipients of the survey. Also included are medical examiners that are either accredited or listed some way with MAME, the Michigan Association of Medical Examiners. But to be fairly open, there will be some gaps in that list and that’s part of what our conclusions may ultimately be, that we do not have a good handle on everyone that is doing forensic science in the state. One concern of the subcommittee is to make sure enough responses come back and being able to draw some conclusions from the survey. A draft letter has been started that hopefully the Co-Chairs, Chief Justice McCormack, and Col. Gasper, would be willing to sign that would be included in the email that goes out to each survey recipient, adding a little more legitimacy to the survey and that the Co-Chairs support the survey. Once the letter is signed, the survey will be ready to go out. The subcommittee has also had a lot of discussion about who the survey should come from. Dan Churchman, our individual who has been helping us in the background with the website and is sort of our data analyst person, has a general @michigan.gov email address, so it does not look like it is coming from the State Police, or it doesn’t look like it’s coming from someplace else and that it is more of a generalized survey being distributed. The subcommittee

has also talked about Dan Churchman being the point of contact in case somebody has technical difficulties with filling in the survey or has questions that he could bring back to either the Task Force or the committee if it were questions about the survey specifically. The consensus was to allow individuals three weeks to fill out the survey, with reminders going out at the end of the first week, the end of the second week, and three days prior to the closure of the survey. The survey should take about 15 minutes to complete with the answers being right at the top of their mind without having to refer to other documents or needing to gather information. One exception might be turnaround times or capacity related questions. Separate from the Survey of the Status of Forensic Science, Dr. Smith, and her committee, under the prior organizations of the committees, developed a survey for lab scientists at the scientist level. To avoid overlap between the two surveys and confusion, the second survey will be sent out once we close the first survey.

- The next objective was to look at the independence within law enforcement agencies. Different models would be the nonprofit model in Houston, the independent government agency model that the Virginia Department of Forensic Science offers, and the models with the State of Michigan that have independent governance, such as how Michigan State Appellate Defender Office (SADO), Michigan Commission on Law Enforcement Standards (MCOLES), the Michigan Indigent Defense Commission (MDIC), and others might be organized. As a committee this has not been discussed since the last meeting. The committee's focus was on the survey. Once the survey is out, the committee will discuss the independent models that are out there.
 - Another objective is access to the public funded laboratories, with things like requests for additional analysis or contact with experts by different stakeholders. There are processes already in place where attorneys can meet and help resolve questions related to untested items, and then they always have the ability to go in front of a judge and request a court order and sort of advocate for additional testing in necessary. Receiving requests specifically from Defense attorneys from publicly funded laboratories does create a lot of challenges. As a committee we may have further discussions over the next couple of months as to whether we want to create any recommendations in that specific area.
 - Education opportunities for attorneys is another area where the subcommittee has discussed some areas where they can make some recommendations for improvements on how to provide additional education opportunities for attorneys and how to procedurally interact with forensic laboratories to help make the process a little smoother.
 - A clearinghouse process or having a case manager to help separate or to create a little more of a barrier between law enforcement and the laboratory is an area the subcommittee can make some recommendations. There is a reasonable level of consensus within the subcommittee in this area. It is just mostly about developing the recommendation and then trying to figure out what type of support might be necessary, because it would be a pretty significant change for many of the laboratories in the state to have a case manager level between the analysts and actual investigators.
 - Quality Control and what the subcommittee calls compartmentalization or sequential unmasking, is another area where some recommendations can be made.
 - Disclosure of negligence and misconduct. There is a little overlap between this subcommittee and the Statewide Body subcommittee, with the Statewide Body subcommittee being a bit further along in their discussion.
 - Training requirements specific to scientists is set aside from the training requirements that may come for law enforcement or attorneys and judges. Specific training requirements are very detailed within accreditation requirements, as well as any internal requirements to become competent.
 - Need of resources is an area where recommendations can be made on how we communicate our resource needs for any specific laboratory.
 - Once the survey is out the subcommittee will double back on the other areas.
- Questions and comments following the update
 - Hon. (ret.) Dr. Donald Shelton question: Has the subcommittee looked at bias from the relationship between the law enforcement agencies and the laboratory personnel?
 - Mr. Nye's response: In the survey there are questions related to any bias training. But that is an area within the survey that's going to be really challenging because it's hard to simply just

- have a drop-down answer; it is more of a narrative answer that we expect from the recipients, but there are a couple of questions in that area.
- Hon. (ret.) Dr. Donald Shelton commented he was referring questions to the subcommittee, not necessarily the survey, about the whole issue of the real independence of the laboratory in terms of information received from law enforcement and how it may bias results.
 - Mr. Nye commented this related to his comment regarding having a case manager or having sort of a middle person between the law enforcement submitting the case and the person doing the analysis. This is an area the subcommittee can make some recommendations.
 - Dr. Jeffrey Jentzen commented that Michigan Department of Licensing and Regulatory Affairs (LARA) has come out with a mandated implicit bias training for all physicians in Michigan – which includes medical examiners. All are now required to take a one-hour training course in some kind of accredited training program.
- Forensic Science Use by Criminal Legal System Stakeholders – Chair: Hon. (ret.) Dr. Donald Shelton
 - Below is a list of items that have been discussed but the subcommittee has not adopted any of these specific recommendations yet.
 - For education: Mandatory continuing education for attorneys and mandatory continuing education for judges along the lines of what was adopted by the Supreme Court, which will be effective January 2024.
 - For Evidence and Discovery: Revisions to the general forensic science discovery provisions of Michigan Court Rules (MCR) 6.202 and the addition of specific discovery requirements for DNA testing information under MCR 6.200.
 - For Jury Instructions: The elimination of Criminal Jury Instruction 5.10 – Expert Witnesses. This is the instruction judges give during the course of trial regarding expert witnesses and the issue which has been written about considerably, in that the judge appears to be vouching for a particular expert witness by recognizing them as an expert witness. The subcommittee discussed what is called an Anti-CSI, or the adequacy of police investigation jury instruction and that the Michigan Criminal Jury Instructions be amended to say no Anti-CSI or adequacy of police investigation instruction be given. The subcommittee discussed the advisability of adding jury instructions regarding specific forensic science evidence other than DNA, such as fingerprints, ballistics, bite marks, etc.
 - Regarding testimony: The subcommittee is reviewing materials in terms of whether the rules of evidence ought to require that testimony be couched in terms of error rates or likelihood and to whether experts are allowed to comment about conclusiveness or matches as opposed to statistical likelihood testimony.
 - No questions or comments followed the update.
 - Mr. Nye shared additional information: Mr. Nye attended a National Conference for ASCLD, which is the American Society of Crime Laboratory Directors, where he had a chance to listen to a presentation by Dr. John Morgan. Dr. Morgan has an NIJ (National Institute of Justice) grant to go in and do some further evaluation of the wrongful convictions that are flagged with faulty or misleading forensic science, and he gave a very preliminary overview of his research. His research is not complete, and it certainly has not been published yet, but Mr. Nye wanted to make sure the Task Force was aware, so as these presentation occur, or Mr. Morgan publishes his work, the information is out there. Mr. Nye's generalized summary is the number of cases identified as wrong or misleading forensic science may be trending down, but obviously there will be a number of cases that will be identified that still have faulty forensic label out there. One example would be where he identified 130 cases, or wrongful convictions, that occurred as a result of controlled substances testing. When he did further analysis of it, 129 of them were done by a roadside test by officer and one was done by a forensic laboratory. Mr. Nye does not think it is going to necessarily change what we are doing as a Task Force and what our recommendations will be, but he wanted to make sure everyone knew the research is out there being conducted and to watch out for it when it ultimately does get published.

X. Next Meeting

- DATE: Tuesday, July 19, 2022
- TIME: 9:30 a.m. – 12 p.m.
- LOCATION: TBD – Remote or in-person at Michigan State Police Headquarters,
7150 Harris Drive, Dimondale, MI

XI. Adjournment

- Meeting was adjourned by Chief Justice Bridget M. McCormack at 11:18 a.m.