



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
TASK FORCE ON FORENSIC SCIENCE  
LANSING

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

Task Force on Forensic Science  
December 13, 2022

Virtual only via Zoom

Meeting Minutes

<b>Voting Members</b>	<b>Representing</b>
Col. Joe Gasper, Director	Michigan Department of State Police
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. Laurie Montgomery, Attorney General Dana Nessel's designee	The Michigan Attorney General's Office
<b>Non-Voting Members</b>	
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 9:33 a.m.
- Col. Joseph M. Gasper stated that what is being presented is a series of recommendations and they are solely recommendations. There are any number of future processes that the recommendations will have to go through in order to be enacted. I think we have done a really good job thus far in being able to put a very thorough process in place with some quality recommendations and we will see where future processes take us and what kind of results we get down the road.

- Justice Bridget M. McCormack acknowledged and thanked everybody for all their work along the way, it's been a long process. You've all put in a lot of work and where the recommendations have landed probably don't go far enough for some of us and go too far for others of us and that usually means we've probably landed in about the right place to the extent we can speak with a unanimous voice at the end of this process. To the extent we can't, you will have the opportunity to express that. We are committed to getting something to the governor within the next couple of weeks, and we're grateful for all of your work. In particular, our subcommittee chairs, who really have put in hours and hours and hours. Jeff and Jonathan and Judge Shelton, thank you very much for your hard work throughout this process.

**II. Roll Call**

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

<b>Attendance Roll Call</b>	<b>Present Yes</b>	<b>Present No</b>	<b>Location, City, County, &amp; State</b>
<b>Voting Members</b>			
Col. Joe Gasper, Co-Chair	X		Virtual via Zoom
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		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		Virtual via Zoom
Judge Paul J. Denefeld	X		Virtual via Zoom
Ms. Laurie Montgomery, Attorney General designee	X		Virtual via Zoom
<b>Non-Voting Members</b>			
Senator John Bizon		X	Dave Biswas from Senator Bizon's office attended the Zoom
Senator Stephanie Chang	X		Virtual via Zoom
Representative Robert Bezotte		X	
Representative Laurie Pohutsky		X	

**III. Approval Vote of the November 01, 2022, Meeting Minutes**

- A motion to approve the November 01, 2022, meeting minutes was given by Mr. Jonathan Sacks and seconded by Honorable Dr. Shelton.
- With no discussion, the November 01, 2022, meeting minutes were approved with 14 Yeas, 0 Nays, and 0 Abstained.

**IV. Subcommittee Revisions to Recommendations**

- Subcommittee 1: Forensic Science Statewide Body, Speaker: Mr. Jonathan Sacks
  - Mr. Jonathan Sacks acknowledged and thanked the chairs and the members of the subcommittee. He thinks what we have is a really good compromise document that is the result of collaboration and a series of compromises and opportunities to offer feedback over a year. We compromised over the scope, over the complaints and investigation process, and over the composition of this forensic science body.

- Part I: Composition
  - We specified that one practitioner must be from the Michigan State Police Forensic Science Division and one from a city, county, or private forensic science agency, and we clarified that the director of the MSP would nominate the Forensic Science Division person. There was some should vs shall word changes during the editing process, but it's clear that this is not a discretionary position.
  - We added the Attorney General or designee as a non-voting member.
  - We reworked the academic section based on language from Dr. Smith and Dr. O'Brien, and we clarified Higher Learning Commission.
  - We reworked the forensic pathologist member based on language from Dr. Jentzen.
  - We clarified how the Governor appointment process would work.
  - We listed a justice involved individual as an example of a member for the public position.
  - I think that lands us at a good place for the members of the forensic science body.
- Part II: Scope and Process
  - I adopted the suggestion from Jeff Nye to shift the definitions. We basically, across the board, adopted definitions from the National Commission on Forensic Science (NCFS). It is a narrower scope.
  - We specified that social science evidence and other expert witnesses beyond that scope are just for the registration and education sections.
- Part III: Mandate
  - We added all those definitions up front from the NCFS and then throughout the document put those terms where they belong: whether it is forensic science agency, forensic science service provider, or practitioner. And that clarified a lot of the document and which sections applied to which folks or agencies.
  - We defined forensic medicine and forensic medicine practitioners and made it clear that certain sections, such as complaints and investigations, apply to those folks under the definition of forensic science.
  - We clarified in their accreditation section that this applies to forensic science and forensic medicine agencies, not particular providers.
  - We explicitly connected their accreditation requirement and their registration as well, to the investigation piece. The reason we did this is we removed subpoena power. That was our latest and very significant compromise here. In order to keep an incentive, we linked it up instead to accreditation and registration.
  - The definition of forensic science practitioners is now up front, but we made it clear that someone who just evaluates data and examinations is not included here. It must be someone who actually does the testing.
  - We put forensic science agency here.
  - We clarified the medical examiner section per Dr. Jentzen's suggestions.
- Part IV: Registration
  - We clarified that this applies to all experts, including social science experts who are not otherwise impacted by the duties of the forensic science body.
  - We, per Jeff Nye's suggestion, required the forensic science body to evaluate removing misconduct reports after a certain period. We connected this to the investigation and complaints piece and supplying information there.
- Part V: Complaints, Reports, and Investigations
  - I clarified the description of complaints that could come from media reporting or a criminal legal systems stakeholder, so their definition is there.

- I clarified, per Col. Gasper's suggestion at the last meeting, the need for a timeline for forensic science service provider response, forensic science statewide body investigation, and that different investigations could have different timelines.
- We removed subpoena power. I mentioned that before, which again, is an example of compromise and collaboration to get here.
- We added a provision for non-criminal investigations. This came from an Attorney General suggestion. It's for instances like the drug testing scandal with the company Averhealth a couple of years ago that impacted a lot of child custody decisions where there were incorrect results on drug testing. So, we added that in exceptional circumstances, where there's a demonstrated and significant harm, and again, if there was a super majority vote by the forensic science body, that it could apply to non-criminal areas in those very exceptional situations.
- Finally, to resolve the issue of initial review and investigation by the provider we adopted Judge Denenfeld's suggestion and clarified that the staff would contact the forensic science service providers to review actions already taken. And the presumption is no investigation unless there's a high severity and high risk of recurrence.
- Part VI: Education and Information
  - We clarified that the criminal legal system stakeholders could comment on anything in here as to educational opportunities and the way those would work.
  - We clarified that the mandate here does include social science expertise; that's not otherwise in the definition of forensic science. And we shifted what had been educational investigations - because that was more just educational information - to that section.
- Subcommittee 2: Forensic Science Practice, Speaker: Mr. Jeff Nye
  - Mr. Jeff Nye stated that the vast majority of the work over the past month or so has been with Mr. Jonathan Sack's subcommittee.
  - Most of our conversations have been around independence from law enforcement under Objective II, which was independence within law enforcement agencies, which is really where the root of the change existed. Instead of moving to try and create a recommendation around independence from law enforcement, it's more about independence within law enforcement, understanding the significance, the struggles, and the significant amount of effort it would take to remove forensic science from law enforcement. So, we really worked a lot and had a lot of discussions around how to create better independence but staying within law enforcement.
  - Some of those objectives under there we've talked about in the past, but it's really more about having case managers, eliminating the bias, and creating more separation between the investigative side of submitting evidence versus the analysis of evidence. That really has been the root of a lot of our discussions and the rest is pretty much intact from when we met last, roughly a month ago, so I can be pretty brief in my comments.
- Subcommittee 3: Criminal Legal System, Speaker: Hon. (ret.) Dr. Donald Shelton
  - Our committee made just a couple of minor changes since our last recommendation.
  - First, our recommendation for continuing legal education for attorneys. I previously stated that Michigan was one of only four jurisdictions that did not require continuing legal education. We discovered that the District of Columbia does not have a requirement. So, we are one of only five jurisdictions in the country that doesn't have continuing legal education.
  - Secondly, at the suggestion of Dr. Smith, we revised our educational recommendation regarding universities to indicate that they should be accredited by Forensic Science Education Programs Accreditation Commission (FEPAC), an organization under the American Academy of Forensic Sciences.
  - Finally, in regard to the recommendation for revisions to Michigan Rule of Evidence (MRE) 702: since the last meeting, the Michigan State Bar study group completed its study and the Board of Commissioners for the State Bar has forwarded a recommendation to the Michigan Supreme Court to amend MRE 702 very similarly to our prior recommendation. There's one difference and that is that the State Bar group did not have the latest recommendation that had gone to the United States Supreme Court, which substituted the phrase, "more likely than not" for the phrase, "preponderance of

the evidence". So, their recommendation still says the preponderance of the evidence. It is our recommendation that MRE 702 follow the recommended amendments of the Federal Rule of Evidence 702 which is going to the Supreme Court of United States for potential adoption.

- Other than that, our recommendations are unchanged.
- Comments from Task Force members related to the three subcommittee updates.
  - There were no comments from the Task Force members.

#### V. Public Comments

- No public comments expressed.

#### VI. Discussion of and Voting on Report and Recommendations

- Col. Joseph M. Gasper recommends to polling each task force member and have them vote on the question: Do you support the recommendations as written? If you do not support them, each task force member is to briefly explain the point(s) in the recommendations you disagree with and then we ask that you have a written dissent prepared by 5 pm on Friday to be included in the final report. Then we will put the dissents into the report and make sure the report is put together from a standpoint of review and send it back out for a final vote via email. Any concerns or objections?
  - Mr. Christopher R. Bommarito comment: I thought we would have an opportunity to discuss some of the actual write up because there are some issues with those. I don't know if I would personally be comfortable voting yay or nay at this point because we really got the final draft, and not even the final draft, just yesterday.
  - Hon. (ret.) Dr. Donald Shelton comment: I would just like to add on our portion of the recommendations where there was dissent, we did indicate the dissents and they are in the report.
  - Col. Gasper question: Mr. Bommarito, do you have a specific area that you would like to discuss before we go to a vote?
  - Mr. Bommarito response: I had a number of changes that I submitted to Amy, but unfortunately it didn't get to her until this morning. I guess my number one concern is the independence area as discussed before. I think that in one paragraph we are talking about best practice and then the next paragraph we are talking about that MSP should hire the best person, regardless of their enlisted status. I think those are conflicting views. It is not best practice to have cops in lab coats. I was pleased that later on in that section that there was a comment added basically addressing that. But then I think that conflicts within that section.
    - Justice Bridget M. McCormack question: Mr. Bommarito, is there a way you would propose changing it or resolving it that we could put to a vote?
    - Mr. Bommarito: Yes, I can if I can actually find that section in the document. So, Recommendation 7 is about best practice. Recommendation 8 is promote independence. And it says:
      - (C) Law enforcement agencies evaluate their hiring practices to ensure the most qualified and competent individuals hired for any given position within a forensic science laboratory without special consideration for enlisted member status.
      - (E) Phase out through attrition enlisted personnel within public forensic science agencies. I am glad (E) was added, but I think it somewhat conflicts with (C).
    - Col. Gasper response: We can't, from a hiring standpoint, from a civil service standpoint, qualify or disqualify people based on law enforcement experience. That's really not going to be something, in my opinion, we would be able to include in recommendations if that is what your suggestion is.
    - Mr. Bommarito response: I guess I would remove (C) as long as (E) is in there. We are making recommendations. Some of these are likely not to be implemented but we can and should recommend best practice and best practice is not, in my opinion and I think of most in the field, to have police doing lab work.
    - Col. Gasper question: What recommendation number was that?
    - Mr. Bommarito response: Recommendation 8.
    - Ms. Lori Montgomery question: Mr. Bommarito, couldn't you footnote, with a dissent there, saying that it is of some members' opinions that this would go against best practices for the reasons you just stated?
    - Mr. Bommarito response: That is one way, but doesn't (C) conflict with (E)?

- Col. Gasper response: Seeing as we are talking about the State Police as being the bulk of the focus here, at this point, we do not have the ability by labor contract to fully implement (E). So that would be something that would have to be worked out probably from a couple of different angles in some type of future process for us to be able to do anything with that.
- Judge Paul J. Denenfeld comment: It seems to me that they can be read in harmony. The first reference, I think was intended, and my recollection is that a lot of this was compromised to simply say that there are lots of reasons why people may be biased. One of those reasons may be because of a law enforcement background but there are lots of other reasons. Which, I think, was an effort to try to acknowledge that we shouldn't only be picking on one particular bias, but that there are other biases as well. But this specific recommendation about ultimately trying to deal with the issue through attrition is just that, it's a specific recommendation. I'm not a labor lawyer, but what I do know is that union contracts are negotiated all the time and renegotiated all the time, and I guess I don't understand what the impediment is if the next time around, when a contract is being renegotiated, that that be an emphasis to deal with that issue. At least that would be the Task Force, or now actually the Commission, recommendation. So, I am ok with dropping a footnote. I don't see them as being in direct conflict, but that's just my view.
- Mr. Sacks comment: I also think this can be handled in a footnote; I think it is an important point to make. I will likely send a footnote over on Independence, as well, on some of the larger-scale issues that for the sake of collaboration and compromise we have shifted away from. But I think for the purpose of moving forward on a good compromise collaboration document, I agree it can work together and it is a good thing to handle in a footnote.
- Justice McCormack comment: As a matter of process, Col. Gasper, may I suggest that maybe, Mr. Sacks and Mr. Bommarito: huddle about your independence footnotes and if you can work together on those. That might be helpful for us in putting it all together.
- Mr. Bommarito: Fine with me.
- Col. Gasper recommends with no more comments then we will go ahead and call the vote. Again, the question will be, "Do you support the recommendations as written?" If you don't, if you could briefly identify your areas of concern and then also keep in mind that we will be asking for your written dissent by 5 o'clock on Friday so that we can prepare the final report and then disseminate that for a final email vote.

**Voting Topic: Do you Support the recommendations as written?**

All in favor? 14 , Any opposed? 0 .

Voting Members	Yes	No	Comments
Col. Joseph M. Gasper, Co-Chair	X		Does not support independence. Hopeful, in the future processes, that more specifically be able to define the scope. Specifically, to identify the bench sciences that we currently have in our lab systems. But I will not be writing a dissent on either one of those.
Justice Bridget M. McCormack, Co-Chair	X		I know there have been compromises made, but I appreciate everyone's work to make them, and so I approve of the recommendations as written.
Mr. Jeff Nye	X		Still have concerns about a Commission versus an Advisory Panel. Still have concerns about the investigation and complaint process. Although I will very much recognize that there has been a fair amount of compromising, I just still find it to be very redundant. There are multiple ways in which individuals or groups

			can file complaints and investigations. I concur with Col. Gasper's comments about independence and scope as well.
Mr. Jonathan Sacks	X		I think we should all be very proud of this product. We've worked really hard to get here over two years and it's an extraordinary piece of comprise and collaboration that allows for a real independent body to have an impact. I will write a footnote on independence as well, but I absolutely approve as written.
Mr. Matthew J. Wiese	X		Mostly concurring with what Mr. Nye and the Colonel had to say, I would prefer an Advisory Board rather than a Commission. I have problems with the complaints and investigations aspects, and I would like to reserve the right to submit something in writing at this time. Judge Shelton, I appreciate you incorporating my positions on our work on your committee. I think it's appropriately noted with the footnote. So, thank you for that.
Dr. Jeffrey M. Jentzen, M.D., Ph.D.	X		I support and approve with similar concerns as Jeff and I discussed.
Mr. Kent Gardner	X		Approve as written with the stipulation that the Commission is purely an Advisory body and I will be submitting a letter for justification.
Mr. Christopher R. Bommarito	X		I approve with some dissent, in particular, Recommendation 8 which I have already discussed. Recommendation 10, in the area where it discusses blind proficiency testing, I don't feel that we should be recommending this because it's not actually practicable in a lot of disciplines. I am kind of against putting in things that just cannot happen. For example, my laboratory, when we're getting cases from all over the country, all over the world, actually, we are not dealing with a specific customer that we can have a working arrangement to do blind submissions. Some trace materials and others that Jeff and I discussed in an earlier meeting, probably not workable. Also, in that section, it says, evaluating each discipline and method. Even if you are able to do blind testing on a discipline, it would be difficult to do that as a method

		<p>because, for example, in drug analysis, the analyst would choose the methods that they use in any particular case, so it wouldn't necessarily cover every method. Then Recommendation 16, I just had an issue on page 33: in Michigan there's "one supposed unpublished Court of Appeals case where the trial judge..." So I don't necessarily think we should be putting unpublished supposed things that we can't verify in the report.</p> <p>Hon. (ret.) Dr. Donald Shelton commented: The reason that "supposed" is in there is that there are "unpublished opinions" that are published and available. And the one that is cited there is certainly available, although it's designated by the Court of Appeals as "unpublished." So that's the reason that is in there, just by explanation.</p>
Mr. Brandon N. Giroux	X	<p>I do agree that the Commission should work as an Advisory Board, and I also agree that independence from law enforcement doesn't really make sense to me. I do think that it is a good consensus document. I don't think everybody got everything they wanted but I think everybody has worked together to come up with a good compromise.</p>
Honorable Dr. Donald Shelton, Ph.D.	X	<p>This reflects a number of compromises, and I am, as with any compromise, swallowing hard and voting yes.</p>
Dr. Ruth Smith, Ph.D.	X	<p>Overall, I think this is a good consensus document. I do have some concerns on recommendations for the complaint process and redundancy in that complaint process. Overall, I do think it's a good consensus document and I do approve it.</p>
Dr. Barbara O'Brien, Ph.D.	X	<p>I think it is a great compromise document. I love the independence of the Commission as opposed to an Advisory Board. I wish we could have done more for independence in a perfect world. I think, given the situation that we are in, the landscape as it exists now, that this is a good document.</p>
Judge Paul J. Denenfeld	X	<p>I didn't get everything I wanted. I fully support and approve.</p>



<p>Ms. Lori Montgomery,          Attorney General Dana Nessel's designee</p>	<p>X</p>	<p>As a reminder, I am speaking on behalf of A.G. Nessel. She approved with some comments, more regarding some concerns that a future Commission needs to address in regard to registration, so I will make some comments there on the document. Additionally, she had some concerns regarding MRE 702 rule amendment. Given there's already a working group that's addressing this, she feels they're a little bit better equipped to make those recommendations as they spent a lot more time than we have. Additionally, the other two rules regarding the anti-CSI instruction and removing the expert jury instruction: she doesn't have a position on it; she just feels that we need a working group to actually study it and its effects in Michigan before taking a position on it. I just want to be clear, most of these are saying that we just need more information.</p>
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- Col. Gasper: We are definitely moving in the right direction. I lost track of the dissents or comments but what I have down is we will be looking for dissents from Mr. Sacks, Mr. Wiese, Mr. Gardner, Mr. Bommarito and Ms. Montgomery, possibly not all inclusive, by 5 o'clock on Friday to Amy (Lindholm). Then we will go ahead and get everything together and proofed, then send out a final document that will serve as the formal document that we will send to the Governor's Office. We will ask for a final vote. I would not anticipate it would be different than what we have here but in the interest of making sure that everyone knows what is being sent, we will go ahead and do that as a matter of formality then we will go from there. I would like to thank everybody for all their efforts. This has been a long process and as has been stated, no one is overly happy, nor overly sad, so we've probably hit just about as perfect as it should be hit. Again, these are just recommendations, and we have additional processes to go through and plenty more conversations and opportunities for people to be heard.
- Hon. (ret.) Dr. Donald Shelton comments: I wanted to take this opportunity to thank Justice McCormack. She has one foot out the door and this may be her last official act, I'm not sure, but your contributions to this task force and really your impetus in getting us started and with Col. Gasper shepherding this motley crew through this process is remarkable. On behalf of everybody, I'd just like to thank you for your service, not just to this committee, but to the court. So, thanks.
- Justice McCormack comments: I want to quickly reiterate on the process. Gratitude to Amy (Lindholm) for the work on the report. The reason why Col. Gasper and I think Friday at 5 p.m. makes sense is so that we give ourselves an extra couple of days. The sooner we get the comments the better. When I heard everyone's comments, some of you specifically have recommendations you dissent to, and as you know from Judge Shelton's subsection of this report, he has already provided an example of how that dissent can be reflected in a footnote to a recommendation. Others of you had what sounded more like comments or cautions about a particular recommendation. For example, if the Attorney General thinks there should be more study, that doesn't necessarily sound to me like a dissent but that too, in my view, could and should be noted in a footnote. So, if you could just make clear whether the added text that you want dropped into a footnote is a dissent or more of a comment or caution, that would be really helpful. The clearer you can be when you send us those comments, the easier it will be for us to incorporate them. I hope that makes sense and nobody has trouble with that.
- Dr. Jentzen asked in the chat, "Can that final report be disseminated to our organizations?"
  - Justice McCormack answered: I think the final report will be a public report, right Col. Gasper? I think it can be disseminated anywhere. It will be on a public website unless I am missing something.

- Col. Gasper answered: Yes, it definitely will be, and we will email copies out before we submit it. That will be your copy to do with what you choose. So, if there's some place specific that it should be emailed or sent, please feel free to do that.
- Col. Gasper comments: I would just like to extend my appreciation to the group and to my co-chair Justice McCormack. It's been a pleasure working alongside of you and working with the group. I am excited to see where this is going to go, and we'll go from there.

**VII. Adjournment**

- Col. Gasper at 10:26 a.m.: I don't think we need a motion to close, I will just go ahead as executive privilege to say that the meeting is adjourned and hope everybody has a good remainder of the week. Thank you.