



California Association of Criminalists

Office of the President

320 N. Flower St.

Santa Ana, CA 92703

Position Statement on AB239

The primary professional association representing forensic scientists in California, the California Association of Criminalists (CAC), performed an exhaustive review of AB 239 to determine the impact passage of the legislation, as written, would have on the delivery of forensic science services to the people of the State of California. The CAC disagrees with the recommendations for the duties of a statewide forensic science oversight body delineated in AB239 and with the limitations placed on the Crime Lab Review Task Force (Task Force) mandate if AB239 is adopted as issued.

The November 2009 Task Force report recommended establishing a statewide body to consider issues related to forensic science, however, it also recommended further study regarding the functions and composition of this body. The Task Force chose to suspend activity on an additional report until such time as pending Federal legislation had been resolved. AB 239 directs the Task Force to issue a supplemental report regarding statewide forensic science oversight, but this legislation limits the Task Force to considering only the composition of the oversight body without the ability to recommend its functions. In addition, the six tasks of an oversight body mandated by AB239 are not all appropriate functions for such an entity. For example, one of the tasks, determining the root causes of crime, does not even relate to the duties of crime labs in California.

Therefore, the CAC recommends that AB239 be amended to allow the Task Force to make recommendations regarding both the functions and the composition of a statewide body dealing with forensic science issues.

Analysis

The California Association of Criminalists is a professional association of public and private criminalists with a history of over 55 years. Although the overwhelming majority of members are from California, our membership includes scientists in 21 states and three countries. The CAC supports research, training, and continuing education through its A. Reed and Virginia McLaughlin Endowment. Our members include educators who have been instrumental in setting curricula and providing instruction at undergraduate and graduate programs in forensic science at California public and private universities and colleges. The CAC supports certification of criminalists and was the first group in the nation to create a certification test for criminalists, an effort which led to the present American Board of Criminalistics certification. The CAC has a code of ethics that has served as a model for other professional associations in forensic science.

The California Crime Laboratory Review Task Force (Task Force) made recommendations in the four key areas embodied by AB1079: organization and management of crime laboratory services, staff and training, funding, and performance standards and equipment. It is clear that these issues need further attention, but the legislature has done little to address these

recommendations. In many areas, funds for equipment, training and staff have been cut and accesses to forensic services in the state have become further limited with a decrease or reallocation of funding in a manner that doesn't fit with the recommendations of the Task Force. In addition, much of the forensic services in California are funded by federal grants that may expire in the near future, which will lead to a greater strain on crime laboratories in California. The CAC would like to see the legislature put a priority on addressing the recommendations in these four areas prior to requesting the Task Force to make additional recommendations. Instead, a bill has been introduced, AB239, that would reconvene the Task Force for the sole purpose of recommending the composition of a statewide forensic science oversight body.

The Assembly Committee on Public Safety's analysis of AB239, posted on May 10, 2011, states that

"The original report prepared by the CLRTF in Chapter 6 describes in detail the functions an oversight body could undertake in order to improve the functioning of crime labs in this state. Thus, there is truly no need for further discussions by the CLRTF regarding the functions and role an oversight body would play. The original report provides the Legislature with the necessary information on the issue of functions.

"However, while the report provides a comprehensive description of the functions a state-wide oversight body would provide should such a body be established, it does not make a recommendation regarding how such an oversight body would be configured. It is essential the Legislature have all the necessary information prior to drafting legislation that would establish a state-wide crime laboratory oversight. Thus, the Legislature should be provided information regarding the optimum number of individuals who should serve on this entity as well as the backgrounds and qualifications of those who should sit.

"There is however, no reason for the CLRTF to make an additional recommendation regarding the role of an oversight body as all the necessary information is available in the original report prepared by the CLRTF. The report sets out all possible functions, as well as the reasons the CLRTF identified each function listed." (pg. 4)

The CAC respectfully disagrees with this analysis. Chapter 6 of the Task Force report discusses both the strengths and weaknesses of various aspects of an oversight or advisory body. It specifically recommends further study on the actual functions of such an entity. For example:

"In devising a state forensic science body, a fundamental question to be answered is whether a body will be authorized to assert independent regulatory control—from a fiscal, scientific, or operational perspective—over laboratories, or whether the body's mission will be advisory in nature."(pg. 89)

If this fundamental question, regulatory vs. advisory, has not been addressed, how can the legislature make an informed decision on any proposal? The original report of the Task Force does not recommend specific functions of an oversight body, but rather enumerates and discusses

many possible functions. The Task Force *recommended further study* to address six possible functions of a potential crime laboratory advisory or oversight body:

- Establishing and promoting best practices;
- Establishing priorities for education, training, and research;
- Moving toward standardization of terminology and reporting of results;
- Improving the allocation of forensic science resources;
- Protecting the independence of crime laboratories;
- Investigating allegations of serious negligence and misconduct.

With respect to the first three of these potential functions, the National Academy of Science stated in their 2009 report, *Strengthening Forensic Science in the United States: A Path Forward* (page 70), that “In the course of its deliberations and review of the forensic science community, it became obvious to the committee that truly meaningful advances will not come without significant leadership from the federal government.” These are being addressed by efforts by the Criminal Justice and Forensic Science Reform Act of 2011 introduced by U.S. Senator Leahy (S. 132) and the White House’s Subcommittee on Forensic Science (www.forensicscience.gov). Establishing best practices, priorities for education, training and research, and standardization of terminology should be performed on a national level to minimize the “fractured” nature of the forensic sciences and are glad to see that these do not appear as proposed functions upon which the task force is requested to consider. The CAC does have several concerns regarding the proposed responsibilities for the oversight body as listed in AB239:

“(A) Implement federal legislation or guidelines imposed directly on crime laboratories or imposed indirectly as a requirement for receiving a grant.”

Existing Federal guidelines are already regulated at a Federal level. For example, access to the Combined DNA Index System (CODIS) requires that a laboratory comply with Federal Bureau of Investigation DNA Guidelines, and participating crime laboratories are audited to ensure this compliance. It is likely that implementation of any new federal guidelines will also be performed by a federal entity and that discussion of the creation of a body to oversee this at the state level would be more appropriate after the guidelines or federal legislation exist in a more concrete form. The Task Force elected to suspend further discussions on the functions and composition of any state forensic science body specifically to allow time for Federal legislation and policy, as mentioned above, to be crafted.

“(B) Oversee investigations into acts of misconduct or negligence committed by any employee or contractor of a crime laboratory.”

The CAC notes that past issues of misconduct or negligence have been of a criminal nature or have occurred on an administrative level within the agency. We are concerned that oversight by a state body might compromise criminal investigations into misconduct or may not provide adequate protections to the rights of those accused. The legislature should also consider that this proposed oversight could conflict with existing civil service rules. A more appropriate role for an advisory body would be to make recommendations to law enforcement agencies regarding

actions to take during such an investigation. However, it may be beneficial to have a state level entity to receive and track allegations of misconduct. Even if the advisory body did not perform the actual investigations, a central clearinghouse for complaints could ensure that issues are not “swept under the rug” and forgotten.

“(C) Collect data generated by investigations in order to determine the root causes of crimes.”

Determining the root causes of crime is an issue for criminologists, not forensic scientists. Researchers at universities and colleges around the world have been studying this very issue and have not been able to come to agreement on the nature of crime. Statistical data on crime is collected and analyzed by various existing State and Federal entities. The CAC does not believe that an oversight body for crime laboratories, which primarily analyze physical evidence, would be the appropriate entity to make an assessment of this issue. We strongly recommend this task be removed from the legislation. However, we note that on page 5 of the Assembly Committee on Public Safety’s analysis, the phrase “of crimes” was omitted from this passage, implying the proposed task is to actually determine the causes of acts of misconduct or negligence committed by crime laboratory employees. This may be an appropriate task for a state forensic science advisory board. It is precisely to avoid confusion such as this that we again strongly recommend that the Task Force be allowed to make recommendations on the functions of any state forensic science entity.

“(D) Identify systemic failures and make recommendations for preventing future problems.”

The Crime Laboratory Review Task Force was implemented to address this very issue, and it may be of value to have a permanent advisory body to continue this work. We hope that if such a system to put into place, it does not add a layer of unnecessary bureaucracy. Accredited crime laboratories are already subject to a number of necessary audits and proficiency tests to ensure quality service, and we encourage the Legislature to be aware that adding additional inspection requirements could have a negative impact on laboratory productivity if not implemented with extreme care.

“(E) Study methods to facilitate communication between laboratories and stakeholders and draft guidelines for disclosure and discovery of crime laboratory documents.”

Communication between laboratories and stakeholders is important, and methods to improve this bridge should be encouraged. Disclosure and discovery are controlled by CA Penal Code Section 1054 and US Supreme Court decisions such as Brady vs. Maryland. Therefore, while issuing advice on how crime labs can comply with discovery laws would be appropriate for an advisory body, creating enforcement rules may be beyond the scope of a regulatory body. Again, this emphasizes the need for further study of the issue of statewide crime lab oversight before asking the Task Force to recommend the composition of any oversight body.

“(F) Make recommendations to the Legislature and local governmental entities regarding the allocation of resources to crime laboratories throughout the state to ensure that taxpayers’ funds are maximized and distributed in a more equitable manner.”

More funding for crime laboratories is needed, but previous recommendations to the Legislature by the Crime Laboratory Review Task Force regarding increased funding have not been heeded. Redistribution of scarce funds from one laboratory to another is not a solution to this problem. Increased funding of existing statewide resources, such as the California Criminalistics Institute, would be much more effective. If the intent here is to encourage the Legislature and local governmental entities to fully fund their crime laboratories at a level appropriate to the services they are expected to provide, then we wholeheartedly agree.

Conclusion

It is the opinion of the California Association of Criminalists that if the California Crime Laboratory Review Task Force is reconvened, it should be allowed to offer advice on both the functions and composition of any permanent statewide body dealing with issues related to forensic science. AB239, as written, sets out tasks for such an entity without the necessity of those tasks having been fully researched.

Approved June 8, 2011 by the California Association of Criminalists Board of Directors.