

Preliminary Outline of Draft Forensic Reform Legislation – 5/5/10

Accreditation

- All laboratories that receive federal funds or are funded by an organization that receives federal funding or performs services for the federal government must be accredited.
- The Forensic Science Commission (FSC) will set rigorous standards for accreditation, including educational, proficiency testing, and competency standards for laboratory practitioners, and will reassess these standards periodically. The process for setting and re-assessing these standards must be open and transparent. The FSC will determine what constitutes a laboratory for purposes of accreditation.
- Generally, the FSC will delegate the determining of standards for accreditation to a qualified professional organization. In those instances where this role is delegated, the FSC must perform regular and thorough oversight and reassess the decision to delegate periodically. The designated professional organization must be open and transparent in its process.
- The FSC, or the designated professional organization, will also determine testing, maintenance, and auditing requirements for accredited labs. The FSC will determine a fair fee structure for accreditation, in consultation with the professional organization as appropriate.
- The FSC shall administer the accreditation requirement, or at its discretion oversee the administering of accreditation by a qualified professional organization, shall determine an appropriate enforcement scheme, and shall oversee enforcement. The FSC or the designated professional organization shall develop and maintain a public list of those laboratories accredited, those denied accreditation, and those whose accreditation has been suspended, limited, or revoked.

Certification

- The Forensic Science Commission will determine which disciplines and which practitioners require certification and will periodically reassess this determination.
- In all laboratories and other entities that receive federal funds, are funded by an organization that receives federal funding, or perform services for the federal government, and in all laboratories wishing to be accredited or re-accredited, all individuals who perform forensic analysis in the disciplines requiring certification must be certified.
- The Subcommittees in each discipline will determine the standards for certification, in coordination with the FSC and those professional organizations to which the FSC delegates responsibility for setting accreditation standards. The FSC and Subcommittees shall reassess these certification standards periodically. The standards and the process for determining them must be open and transparent. The substantive Subcommittees will also determine the parameters of practitioners in their disciplines who must be certified.

- Where a Subcommittee determines that one or more qualified professional certifying organizations exist for a particular discipline, the Subcommittees will generally delegate the determining of standards for certification to those organizations. Should a Subcommittee decide to do so, it must perform regular and thorough oversight and reassess the decision to delegate periodically. The designated professional organization must be open and transparent in its process.
- The certification requirement will be implemented over time, giving current practitioners several years, as determined by the Subcommittee in each discipline, to become certified and giving laboratories several years to come into compliance. The FSC shall determine a deadline by which the certification requirements in all covered disciplines must be implemented.
- The FSC will determine a process for current practitioners to test in to certification, or become certified in a gradual multi-part process, with waiver of some or all degree and training requirements. The FSC will determine a process for new practitioners which requires education and training as part of the certification process. The FSC and Subcommittees will determine a fair fee structure for certification, in consultation with qualified professional organizations as appropriate.
- The FSC shall administer certification, or at its discretion oversee the administering of certification by qualified professional organizations in particular disciplines, shall determine an appropriate enforcement scheme, and shall oversee enforcement.
- NIJ shall administer a grant program and provide technical assistance to assist laboratories and other entities through the transition of continuing work while certifying personnel and seeking accreditation and to help them pay fees for the accreditation and certification process, as well as to assist qualified professional organizations in administering the certification and accreditation processes. Congress shall authorize \$ ____ to NIJ for this grant program and technical assistance.
- The FSC shall consider whether and in what form a new federal rule of evidence or procedure would be appropriate requiring that all those who testify in federal court as forensic experts be certified. The FSC must consider how any such rule would be implemented in a way that guarantees access by defense counsel to certified experts. The FSC shall also consider whether any other changes to the federal rules would be appropriate.

Research

- The Forensic Science Commission shall develop a comprehensive strategy for increasing and improving peer-reviewed scientific research related to the forensic science disciplines, including research addressing issues of accuracy, reliability, and validity in the various disciplines.
- The Forensic Science Commission, in consultation with the substantive Subcommittees, shall develop a set of priorities for research funding. This list of priorities will be reviewed and re-assessed periodically by the Forensic Science Commission.
- Each of the Subcommittees established by the Forensic Science Commission shall examine the research needs in its applicable forensic science discipline or disciplines, and

shall conduct a comprehensive survey of existing research pertaining to each discipline. As part of this survey, each Subcommittee shall identify key areas in which additional research is needed.

- The Forensic Science Commission and the Director of the Commission shall coordinate with the National Institute of Standards and Technology (NIST) to administer a program to award grants for peer-reviewed research in areas consistent with both the research priorities developed by the Forensic Science Commission and the research needs identified by the Subcommittees.
- NIST shall solicit proposals and competitively award grants for such peer-reviewed research, and shall, to the extent necessary and appropriate, consult and coordinate with the National Science Foundation (NSF) to ensure the integrity of the process for reviewing and funding these proposals.
- The Forensic Science Commission shall coordinate with the National Institute of Justice (NIJ) to solicit proposals and competitively award grants for peer-reviewed research related to the applicability of forensic science to civil and criminal legal systems, in accordance with priorities developed by the Forensic Science Commission. This program shall also encourage research aimed toward increasing the efficiency and effectiveness of forensic testing procedures, including the use of new technologies, and increasing the capacity of forensic testing that may be effectively processed by forensic labs. NIJ shall consult and coordinate with NSF to ensure the integrity of the process for reviewing and funding these proposals.
- NIST and NIJ shall each submit a report to the FSC annually detailing the application process, grants awarded, and as appropriate status and results of previously awarded grants. The FSC shall evaluate these reports and if appropriate redirect these grant programs in accordance with the FSC's priorities.
- Congress shall authorize \$ _____ annually for the research grants administered by NIST, and \$ _____ annually for the research grants administered by NIJ.

Standards/Best Practices

- The Forensic Science Commission shall, in consultation with the Subcommittees and NIST, establish standard protocols, methods, practices, quality assurance standards, and reporting terminology for each applicable forensic science discipline in order to ensure the quality and integrity of the data generated.
- The Subcommittees shall develop standard protocols, methods, practices, quality assurance standards, and reporting terminology for each applicable discipline, and transmit these to the Forensic Science Commission for approval. The Subcommittees shall periodically review these standards and recommend any necessary revisions.
- The Subcommittee in each discipline may alternatively at its discretion delegate to a qualified professional organization the task of determining standards, protocols, methods, practices, and reporting terminology. Should a Subcommittee decide to do so, it must perform regular and thorough oversight and reassess the decision to delegate periodically. The designated professional organization must be open and transparent in its process.

- The FSC shall promulgate and disseminate these standards, and shall develop and oversee a system for enforcing these standards.
- NIJ shall develop and disseminate a manual explaining the standards and best practices, and their use and applicability in the context of the justice system.

Oversight and Coordination

- The President shall appoint members to a Forensic Science Commission (FSC) after reviewing recommendations from the National Academy of Sciences and the American Academy of Forensic Sciences. The members of the FSC shall include scientists from a variety of disciplines including the forensic sciences, judges, representatives of the federal and state and local prosecution and law enforcement communities, representatives of the criminal defense community and post-conviction advocates, and other relevant stakeholder communities. A majority of FSC members must have comprehensive scientific backgrounds.
- The FSC shall operate out of the office of the Deputy Attorney General. The FSC shall be staffed by an Office of Forensic Science (OFS), which shall include a Director appointed by the Deputy Attorney General, a Deputy Director appointed by the Director of the National Institute of Standards and Technology and detailed to the OFS, and whatever other staff the FSC deems necessary. The FSC shall also consult regularly with the Directors of the National Science Foundation and the National Institute of Justice and senior officials from other relevant federal agencies.
- The OFS shall have the authority to implement recommendations of the FSC. Implementation of scientific recommendations made by the FSC shall be coordinated by the Deputy Director, in consultation with NIST. The FSC and OFS shall have interagency authority.
- The FSC shall determine a list of major forensic disciplines for which there shall be appointed substantive Subcommittees to examine research needs, promulgate standards and best practices, develop certification standards, and other appropriate duties. The FSC shall periodically revisit and update this list. In addition, the FSC shall consider what role, if any, should be played in this process by existing Scientific Working Groups.
- The FSC shall consider every field in which courts hear forensic testimony and shall come up with recommendations in any fields for which it determines no Subcommittee is necessary. Should the FSC determine that a Subcommittee is not necessary because a field has no scientific basis, the FSC must issue a public statement setting out and explaining this decision. Should the FSC determine that a field can appropriately be covered by a Subcommittee in a related field or is already sufficiently regulated by some other existing entity, it must clearly and publicly set out and explain this conclusion.
- Subcommittees shall be made up of scientists from a variety of scientific disciplines including the forensic sciences, all of whom have knowledge relevant to the individual discipline, though they need not be specialists in that particular discipline.
- The members of each Subcommittee shall be appointed by the FSC's Deputy Director in consultation with the members of the FSC.

- NIST shall provide support to the Subcommittees and shall perform periodic oversight to ensure that the Subcommittees are performing their duties appropriately. Any problems found by NIST shall be reported back to the FSC.
- In addition to the duties set out above with respect to accreditation, certification, research, and standards, the FSC shall, in coordination and consultation with qualified professional organizations, perform or oversee the following functions:
 - Determine steps to encourage research collaboration between universities, state and local forensic laboratories, and private laboratories and corporations with appropriate disclosure and safeguards, in order to ensure cost-effective and highly reliable research;
 - Determine requirements for education and degree programs in the forensic fields, and encourage the development of more and higher quality academic programs in the forensic fields;
 - Determine steps to encourage all jurisdiction to require the comprehensive use of medical examiners and to encourage more well-qualified individuals to become medical examiners;
 - Examine ways that the forensic sciences can be marshaled toward emergency preparedness, in coordination with the Department of Homeland Security;
 - Coordinate as appropriate with the National Science Foundation, the Department of Defense, the National Institute of Health, and any other relevant federal agencies, particularly in regard to making efficient and appropriate use of existing research expertise and funding;
 - Determine steps to encourage the education and training of law students, attorneys, and judges in forensic science and fundamental scientific principles, including the competent use and evaluation of forensic science evidence;
 - Determine effective ways to encourage inter-operability of databases and technologies in all forensic disciplines; and
 - Develop a Code of Ethics for the forensic sciences, and determine an appropriate system for encouraging its use and enforcement.
- Congress shall authorize \$_____ annually for the operation and staffing for the FSC and Subcommittees, \$_____ annually for the operation and staffing of OFS, and \$_____ annually for NIST for oversight and other duties connected with the Subcommittees.