

OFFICE OF FORENSIC SCIENCE IMPROVEMENT AND SUPPORT

LEGISLATIVE OUTLINE

Office of Forensic Science Improvement and Support (OFSIS)

OFSIS will be established in the Department of Commerce, and it will be responsible for the direction, coordination, administration, and oversight of all of the provisions of this Act

OFSIS will direct forensic science-related research and standard-setting to be conducted within agencies with a primary capacity for scientific review and research, standard-setting, and grant-making, such as the National Institute of Standards and Technology (NIST) and the National Science Foundation (NSF), and within other appropriate existing federal agencies

The Department of Justice (DOJ), in consultation with OFSIS and using OFSIS-established standards, will direct accreditation, certification and compliance enforcement

Definitions

Forensic Science Provider: A public or private laboratory, entity, or unit that processes forensic evidence for criminal proceedings

Forensic Science Practitioner: An individual who conducts and documents the results of forensic analyses for use in criminal proceedings

Title I: Organization

Director

Appointed by the President with Senate Confirmation

Forensic Science Commission

The Director, in consultation with the National Academy of Sciences (NAS), will appoint members to the Commission

Commission members will include the following:

- Persons who together possess relevant and diverse expertise including, but not limited to, statistics, research design, judgment and decision-making, organizational effectiveness, physics, chemistry, biology, criminology, cognition, computer science, genetics, and forensic science and examination, including those who conduct basic and applied research

The Commission's roles will be to set broad agency research priorities and to promulgate forensic scientific standards

The Commission will retain all ultimate authority for all decisions made by the OFSIS

Advisory Committee

The Director, in consultation with NAS, NIST, and DOJ, will appoint members to an Advisory Committee

Committee members will include the following:

- Judges, prosecutors, representatives from Federal, State, and local law enforcement, federal and state defense attorneys in public and private practice, public and private laboratories, and scientists and other scholars or experts whose work has addressed forensic science issues, and who will consult with affected stakeholders

The Advisory Committee's role will be to assist and provide input to the Commission with respect to their responsibilities as they relate to the priorities of criminal justice, including ensuring that standards are phased in and enacted in a practical and feasible manner

Title II: Research and Standard-Setting

Basic and Applied Research

The Commission shall:

In consultation with DOJ and the Advisory Committee, develop a research agenda beginning with the categories that the Commission determines to be of highest priority

Establish a multi-year research plan to identify and answer basic and applied scientific questions in the forensic science arena

Direct a review of the existing body of forensic science information for the purposes of identifying peer-reviewed scientific research and existing forensic science standards

Oversee a determination of which statistical methods are currently used to provide weight to forensic conclusions, determine qualitative strength of conclusions,

Direct an evaluation of the strengths and weaknesses of the existing body of forensic science, including the validity, reliability, and interoperability of existing assays and devices, and protocols and procedures; and develop the necessary tools to improve or replace assays and devices lacking scientific rigor

Direct an evaluation of the strengths and weaknesses of Forensic Science Providers, including their practices and methodologies

Direct an evaluation of the strengths and weaknesses of existing database system interoperability, including software development, database management, and interoperability among federal, state, and local databases

Direct the identification of and the conduct research into new and emerging technologies and devices

Establish Standards

In the order that it, in consultation with DOJ and the Advisory Committee, determines to be of highest priority, the Commission shall direct the:

Devising of standards to ensure the reliability of forensic assays, devices, and techniques

Devising of standards for technology and database interoperability

Devising of accreditation standards for Forensic Science Providers, which shall include criteria to ensure:

- The reliable use of devices/assays
- Quality assurance and quality control
- Proper data reporting, evidence preservation, record keeping, and report writing requirements
- The conduct of Forensic Science Practitioners and the results of forensic testing are free from undue pressure or influence from within or outside of the Forensic Science Provider
- Periodic audits, reviews, and remedial actions

Devising of standards for the certification of Forensic Science Practitioners, which include the following:

- Training requirements
- Proficiency standards
- Testing standards to ensure proficiency
- Requirements for written reports
- Testimony parameters

Consideration and identification of appropriate means to address differences among the operation of large and small public and private Forensic Science Providers when setting standards

Periodic review and revise the standards that it sets forth, all of which will be established by OFSIS after notice of proposed rulemaking (defined by 5 U.S.C. 553)

Title III: Technology Innovation Grant Program

New Technology Promotion Grants

A competitive, merit-reviewed grant program will be established within the Department of Commerce to support and promote, among public and private entities, the research, development, testing, and evaluation of assays, devices, technologies, and behavior and decision-making procedures and protocols; the grant program will also encourage partnerships between businesses and institutions of higher learning

Title IV: Accreditation and Certification

Assay/Device/Technology Approval

OFSIS will establish a program to certify and decertify, based on their validation and reliability, existing assays, devices, technologies, and techniques, as well as new assays, devices, technologies, and techniques as they come on-line

Accreditation of Institutional Forensic Science Providers

DOJ, in consultation with OFSIS and using OFSIS-established standards, will establish a program for the initial and ongoing accreditation of Federal, State, and local Forensic Science Providers, including both public and private entities

Accreditation will be conducted by appropriate Federal and State agencies, or by independent, non-profit and non-partisan professional organizations, using OFSIS standards

To be accredited, a Forensic Science Provider must use certified assays, devices, and technologies, and employ certified practitioners

Grants will be awarded to States and small independent Forensic Science Providers to assist with bringing laboratories to compliance

Certification of Individual Forensic Science Practitioners

DOJ, in consultation with OFSIS and using OFSIS-established standards, will establish a program for the certification and recertification of Federal, State, and local Forensic Science Practitioners, including both public and private practitioners

At the direction of DOJ and in consultation with OFSIS and using OFSIS-established standards, certification will be conducted by appropriate Federal and State agencies, or by an independent, non-profit and non-partisan organization, using OFSIS standards

To receive initial certification a Forensic Science Practitioner must pass appropriate proficiency exams

Ongoing proficiency testing, continuing education, use of validated assays, devices, and technologies, and documentation that the Forensic Science Practitioner meets OFSIS standards for report writing and testimony, will be required to renew certification

Grants will be awarded to States and small independent Forensic Science Providers to assist with bringing certification of practitioners to compliance

Database

DOJ will create and constantly update a database to list:

- certified and decertified assays, devices, and technologies
- accredited Forensic Science Providers and those who have lost accreditation
- certified and decertified practitioners

Title V: Compliance and Enforcement

Compliance

Federal law enforcement will be required to use OFSIS standards, including the use of accredited Forensic Science Providers and of certified Forensic Science Practitioners, and OFSIS approved assays, devices, and technologies

As a condition for the receipt of certain federal grants, States must require that State and local law enforcement use of the OFSIS standards, including the use of accredited Forensic Science Providers and of certified Forensic Science Practitioners, and OFSIS-approved assays, devices, and technologies

DOJ, in consultation with OFSIS and using OFSIS-established standards, will establish a program to ensure State compliance with the use of OFSIS standards, including the mandated use of accredited Forensic Science Providers and of certified Forensic Science Practitioners, assays, devices, and technologies

On an ongoing basis, the implementation of the new forensic scientific standards will be identified, tracked, and evaluated by DOJ

Nothing in this Act will preclude a non-certified practitioner from testifying to the relative strengths or weaknesses of a given forensic assay, device, technique, or technology, either in general or as applied to the specific case

Training and Education

A grant program will be established by DOJ to assist State and local Forensic Science Providers with in-service training and continuing science education; other grants will be awarded to provide training for law enforcement, the courts, and prosecutorial and defense services

Funding will be provided to assist Federal Forensic Science Providers with in-service training; other funding will be awarded to provide training for Federal law enforcement, Federal courts, and Federal prosecutorial and defense services

Title VI: Post-Secondary Education Promotion

The Department of Education, in consultation with OFSIS, will establish a program to promote forensic sciences education, including educational grant and scholarship programs, federally-subsidized loans with fixed interest rates, and loan forgiveness or deferment programs

Title VII: Reports to Congress

Periodic Reports

On a periodic basis, OFSIS will issue a report to the House and Senate Committees on Judiciary; the House Science and Technology Committee and the Senate Commerce, Transportation, and Science Committee; and the House and Senate Commerce, Justice, Science Appropriations Subcommittee regarding the implementation of this act

Funding Estimation

The report will include an estimation of the funding needs of the forensic science community, including but not limited to: funding needed for validation studies, Forensic Science Provider accreditation and operating needs and projected costs; Forensic Science Practitioner certification, training, and testing needs and projected costs; the existence of various specific forensic backlogs and the projected costs of eliminating them; database operation, upgrade, and interoperability improvement needs and projected costs; judicial, law enforcement, and prosecutorial and defense attorney resource needs and projected costs; and other miscellaneous compliance and enforcement needs and projected costs

Title VIII: Oversight

Inspectors General will provide oversight over the OFSIS and over compliance programs

Inspectors General powers will be limited to investigate allegations of fraud, conflicts of interest, undue pressure, et al.; not to the scientific product that OFSIS develops

Title IX: Authorization of Appropriations

Such funds as may be necessary will be authorized to enact this legislation