

Legislative Analysis



FORENSIC SCIENCE COMMISSION ACT

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House Bill 6026 as introduced
Sponsor: Rep. Tom Barrett
Committee: Judiciary
Complete to 11-26-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6026 proposes a new act, the Forensic Science Commission Act, which would create a forensic science commission and prescribe its powers and duties; regulate forensic laboratories, forensic science service providers, and forensic medical service providers; and require all forensic laboratories and forensic science service providers to be accredited.

Definitions

For purposes of the act:

Forensic medicine would mean the application of medical knowledge and practices to the investigation of the medicolegal aspects of death, injury, neglect, or behavior.

Forensic science would mean the application of scientific or technical practices to the recognition, collection, analysis, and interpretation of evidence for criminal and civil law or regulatory issues.

Commission members and procedures

The bill would create a 10-member Forensic Science Commission in the Legislative Council. Commission membership would consist of the following individuals appointed by the governor:

- One individual who has experience as a forensic scientist in a supervisory role in the Forensic Science Division of the Department of State Police (MSP).
- One physician who is board-certified as a pathologist and has experience in forensic pathology.
- One individual who has experience as a forensic science practitioner.
- One professor from a Michigan university who has research expertise in cognitive bias.
- One professor from a Michigan university who has expertise in statistics.
- Three professors from Michigan universities, each of whom has research expertise in a distinct field relevant to forensic science.
- One individual selected from a list of 10 names submitted by the Prosecuting Attorneys Association of Michigan (PAAM).
- One individual selected from a list of 10 names submitted by the Criminal Defense Attorneys of Michigan (CDAM).

Commission members would be appointed within 90 days of the bill's effective date and would serve four-year terms, with the initial appointees serving staggered terms as prescribed in the bill. Members could be reappointed. The governor could fill vacancies in the same manner as the original appointment and could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for good cause. The first meeting would

have to be called within 180 days after the bill's effective date and at least quarterly after that. A chairperson and other officers would be elected by commission members at the commission's first meeting.

Six members would constitute a quorum, and at least six of the members present and serving would be required for official action of the commission. A member could not vote by proxy. Commission business would be conducted at a public meeting held in compliance with the Open Meetings Act, and the commission's writings and records would be subject to the Freedom of Information Act. Members would serve without compensation but could be reimbursed for actual and necessary expenses incurred in performing their official duties.

Negligence reports

The commission would have to develop and implement a system for the reporting of professional negligence, misconduct, or *nonconformance* by or in a forensic laboratory that affects the integrity of the forensic science or forensic medicine results.

Nonconformance would mean a mistake in the course of the forensic science process that has affected the accuracy and reliability of the work of forensic science service providers or forensic medical service providers.

An individual who discovered, suspected, or had reason to believe that an act of professional negligence, misconduct, or nonconformance had affected the integrity of forensic science or forensic medicine results could report that act in the manner required by the commission. A forensic laboratory would be required to report such an act.

Commission investigations

The commission would have to investigate the conduct and operation of a forensic science or forensic medicine method, technique, or analysis used in a criminal case if the commission received a report alleging professional negligence, misconduct, or nonconformance by or in a forensic laboratory and at least six members of the commission concurred in the commission's investigating the conduct. The investigation would be limited to the allegations in the report.

The commission also could investigate a forensic laboratory or the use of a forensic discipline on its own initiative if six or more members of the commission found the investigation necessary to advance the integrity and reliability of forensic science and forensic medicine in the state.

While conducting an investigation, the commission could examine or copy records or papers of any forensic laboratory relating to any requirement under the act. A commission member could issue a subpoena requiring a person to produce any evidence pertaining to the question involved in the investigation.

The commission could create a committee to assist in an investigation. An employee of the forensic laboratory subject to the investigation could not serve on the committee. The committee would consist of the following members:

- A member of the commission, who would serve as chairperson of the committee.
- A forensic science practitioner with knowledge of the laboratory system under investigation or of a change in science that affects the integrity of the results of the forensic analysis.

- A statistician.
- An independent forensic science practitioner with subject matter expertise.
- A researcher in the relevant scientific discipline.
- An equal number of criminal defense attorneys, prosecuting attorneys, and law enforcement officers.

Investigation reports

After completing an investigation, the commission would have to create a report containing all of the following:

- A description of the allegation or basis for initiating an investigation.
- The name and location of the forensic laboratory and the name of any analyst that is the subject of the investigation.
- The disposition of the investigation.
- A description of any corrective action taken by the forensic laboratory.
- Findings regarding the integrity and reliability of the conduct or operation of a forensic science or forensic medicine method, technique, or analysis and recommendations for best practices.

The commission could not issue a finding related to the guilt or innocence of a party in an underlying trial or any pending case involving conduct investigated by the commission.

The commission would have to make the report available to the public on the Internet and also submit it to the Michigan Supreme Court, the House and Senate standing committees concerning the judiciary, the attorney general, the Appellate Defender Office, PAAM, and CDAM.

Defendant notification procedure

The commission would have to develop and implement a defendant notification procedure for investigations that includes all of the following:

- Notification of the disposition to institutional stakeholders, the defendant in the criminal case, and the defendant's attorney, if applicable, if the disposition includes a finding that the integrity of forensic analysis results were affected by an act of professional negligence, misconduct, nonconformance, or a change in science.
- A requirement that the defendant acknowledge receipt of the information described by the defendant notification procedure and a method for the commission to receive that acknowledgment.
- A description of the technical issue and written summary of the facts.
- A referral to relevant resources, including public defenders.
- A protocol for the commission to provide potentially affected defendants with information regarding relevant resources.

The commission could create a committee to assist the commission in developing the notification procedure described above, with members selected from the MSP Forensic Science Division, forensic medical service providers, prosecutors, defense attorneys, and judges.

Accreditation

Beginning January 1, 2020, a forensic laboratory that conducts forensic analysis would be required to be accredited by an accrediting body that requires conformance to the appropriate

quality assurance standards required by the Federal Bureau of Investigation, and to forensic-specific requirements, and that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories.

Similarly, and also beginning January 1, 2020, forensic science service providers and forensic medical service providers that provide, respectively, forensic science services and forensic medicine services in the state would be required to be accredited by an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories.

Miscellaneous provisions

The commission would also have to do all of the following:

- Establish and update policies and procedures to implement the new act.
- Engage criminal justice stakeholders and coordinate resources within the state.
- On or before December 1 of each year, submit to the legislature a report that describes the work of the commission for that year and evaluates the needs and performance of the MSP Forensic Science Division, forensic science service providers, and forensic medical service providers.

The Legislative Council would have to provide the commission with suitable office space, staff, and necessary equipment.

The bill would take effect 90 days after its enactment.

FISCAL IMPACT:

The bill would increase costs for the Legislative Council by an indeterminate amount. The magnitude of the increased costs would be directly related to reimbursements for actual and necessary expenses for commissioners and any necessary office space, staff, and equipment costs for the operation of the commission. Without additional legislative appropriations, the Legislative Council would be required to use existing appropriations for costs associated with the commission. A \$100 placeholder is included in the FY 2018-19 Department of Treasury budget for the Forensic Science Commission. However, any appropriations to support the commission would need to be included in a supplemental appropriations act due to the inclusion of the commission in the Legislative Council in the provisions of the bill.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.