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Senate Bill 276 (Substitute S-1)
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Sponsor: Senator Tom Barrett (S.B. 276)
Senator Stephanie Chang (S.B. 277)
Committee: Judiciary and Public Safety

Date Completed: 10-2-19

CONTENT

Senate Bill 276 (S-1) would enact the "Forensic Science Commission Act", which would do the following:

- Create the Forensic Science Commission within the Legislative Council.
- Prescribe the Commission's membership, and its powers and duties.
- Require the Commission to develop and implement a system for the reporting of professional negligence, misconduct, or nonconformance by or in a forensic laboratory that affected the integrity of forensic science or forensic medicine results.
- Require the Commission 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 from any source alleging professional negligence, misconduct, or nonconformance by or in a forensic laboratory.
- Require the Commission to submit a report detailing the investigation, once completed.
- Require the Commission to develop and implement a defendant notification procedure for investigations.
- Require the Commission to verify the accreditation of forensic laboratories and forensic science service providers, within two years of the bill's effective date.

Senate Bill 277 (S-1) would enact the "Forensic Science Commission Definitions Act" to provide definitions for the proposed Forensic Science Commission Act.

Each bill would take effect 90 days after its enactment. The bills are tie-barred.

Senate Bill 276 (S-1)

Appointments to the Commission

The Commission would be comprised of the following 11 members appointed by the Governor:

- One individual who had experience as a forensic scientist in a supervisory role in the forensic science division of the Department of State Police (MSP) who was selected from a list of 10 individuals submitted by the MSP.
- One physician who was board certified as a pathologist and had experience in forensic pathology.
- One individual who had experience as a forensic science practitioner.

- One individual from the private sector or a university in Michigan who had earned a doctor of philosophy in psychology or a related field and who had published scholarship related to cognitive bias in a peer-reviewed journal.
- One individual from the private sector or a university in Michigan who had earned a doctor of philosophy in statistics or a related field and who had published scholarship related to statistics in a peer-reviewed journal.
- Three individuals from the private sector or a university in Michigan, each of whom had earned a doctor of philosophy in a distinct field relevant to forensic science and who had published scholarship related to the field in a peer-reviewed journal.
- One individual selected from a list of 10 individuals submitted by the Prosecuting Attorneys Association of Michigan.
- One individual selected from a list of 10 individuals submitted by the Criminal Defense Attorneys of Michigan
- One individual from an accrediting body for an industry that is not a forensic science industry and that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories.

Except for certain Commission members first appointed, members would serve for terms of four years or until a successor was appointed, whichever was later. The Governor could reappoint an individual who had previously served as a member. A vacancy on the Commission would have to be filled in the same manner as the original appointment. The Governor could remove a Commission member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Commission Meetings

The Commission's first meeting would have to be called within 180 days after the bill's effective date. At this meeting, the Commission would have to elect a chairperson and other officers as it considered necessary or appropriate. The Commission then would have to meet at least quarterly, or more frequently if requested by six or more members.

A majority of the members would constitute a quorum. A majority of those present and serving would be required for official action, and members could not vote by proxy. The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

Commission members would serve without compensation; however, members could be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

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

Duties of the Commission

Under the bill, the Commission would have to do all of the following:

- Establish and update policies and procedures to implement the proposed Act.
- Engage criminal justice stakeholders.
- Submit to the Legislature, on or before December 1 of each year, a report evaluating the needs and performance of the forensic science division of MSP, as prescribed under the Act, and describing the work of the Commission for that year.

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 affected the integrity of the forensic science or forensic medicine results.

If an employee of a forensic laboratory or any other individual had discovered, had suspicion, or had reason to believe an act of professional negligence, misconduct, or nonconformance had affected the integrity of the forensic science or forensic medicine results, he or she could report that act in the manner the Commission required. A forensic laboratory would have to report such an act in the manner required.

Investigatory Powers

The bill would require the Commission to investigate the conduct and operation of a forensic science or forensic medicine method, technique, or analysis used in a criminal case if it received a report from any source alleging professional negligence, misconduct, or nonconformance by or in a forensic laboratory and six or more members concurred in the Commission's investigating the conduct. An investigation would be limited to the allegations in the report.

The Commission could investigate a forensic laboratory or the use of a forensic discipline on its own initiative if six or more members concurred that the investigation was necessary to advance the integrity and reliability of forensic science and forensic medicine in the State.

The Commission could examine or copy records or papers of any forensic laboratory relating to any requirement under the Act while conducting an investigation and could issue a subpoena requiring a person to produce any evidence pertaining to the question involved in the investigation.

The Commission could create a subcommittee of members, who could not be employed at the laboratory under investigation, to assist the Commission in an investigation. The committee, if created, would have to include a member of the commission, a forensic science practitioner, an independent forensic science practitioner, a statistician, and a researcher in the relevant scientific discipline. The committee also would have to include an equal number of criminal defense attorneys, prosecuting attorneys, and law enforcement officers.

Reporting Procedure

Under the bill, after completing an investigation, the Commission would have to create a report that contained all of the following:

- A description of the allegation or the basis for the investigation.
- The name and location of the forensic laboratory that, and the name of any forensic analyst who, was the subject of the investigation.
- The disposition of the investigation.
- If corrective action were taken by the forensic laboratory, a description of that action.
- 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 would have to make the report available to the public on the internet and submit it to: a) the State Court Administrative Office, b) the standing committees of the Senate and House of Representatives concerning the judiciary, c) the Attorney General, d) the Prosecuting Attorneys Association of Michigan, e) the State Appellate Defender Office, and f) the Criminal Defense Attorneys of Michigan.

Defendant Notification Procedure

The bill would require the Commission to develop and implement a defendant notification procedure for investigations that included all of the following:

- Notification to institutional stakeholders, the defendant in the criminal case, and that defendant's attorney, if applicable, the disposition, if that disposition included a finding of professional negligence, misconduct, nonconformance, or a change in science affected by the integrity of the analysis results.
- A description of the technical issue and a 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.
- A requirement that the defendant in the criminal case acknowledge receipt of the information described above and a method for the Commission to receive the acknowledgment.

The Commission could create a subcommittee of members, composed of members from the forensic science division of MSP, prosecuting attorneys, defense attorneys, judges, and forensic medical service providers, to assist in developing the notification procedure.

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. A written report prepared by the Commission would not be binding as an admission by the State in any civil or criminal action.

Accreditation of Laboratories

Within two years after the bill's effective date, a forensic laboratory located in the State that conducted forensic analysis or a forensic science service provider that provided forensic analysis in the State would have to be accredited by an accrediting body that required conformance to the appropriate quality assurance standards required by the Federal Bureau of Investigation (in the case of laboratories) and to forensic-specific requirements, and that was a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories. The Commission would have to verify that forensic laboratories and forensic science service providers had obtained the required accreditation. If a forensic laboratory or forensic science service provider would not meet the accreditation requirements within the time required and it submitted a petition to the Commission requesting an extension of time before the forensic laboratory was in violation of the bill, the Commission in its discretion could grant the extension for the laboratory or provider to meet the accreditation requirements.

The Commission would have to establish and maintain a publicly accessible record of forensic science service providers that were not accredited as required above.

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The bill would provide the following definitions for the Forensic Science Commission Act:

"Forensic analysis" would mean a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term would include an examination or test requested by a law enforcement agency, prosecuting attorney, criminal suspect or defendant, or court in a criminal action. The term would not include an expert examination or test, including a statistical or engineering analysis, conducted for the purpose of opining on a specific aspect of the forensic evidence or the type of forensic test utilized, or an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

"Forensic science" would mean the field of study of medical, chemical, toxicological, ballistic, or other expert examinations or tests performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action, except that forensic science does not include the study of the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

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

"Forensic medical service provider" would mean a forensic medicine agency or forensic medicine practitioner providing forensic medicine services. "Forensic medicine agency" would mean an entity, or an agency of this state, that employs forensic medicine practitioners and issues reports prepared by forensic medicine practitioners. "Forensic medicine" would mean the application of medical knowledge and practices to the investigation of the medicolegal aspects of death, injury, neglect, or behavior.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 276 (S-1)

The bill would have an indeterminate fiscal impact on the State's Legislative Council. The bill would create the Forensic Science Commission. Commission members would not receive a salary; however, they would be eligible for reimbursement for necessary expenses incurred in the performance of their duties. The bill would require the Legislative Council to provide the Commission with clerking staff. The bill does not specify the number of staff that would be needed; however, based on information from a similar former commission (the former Michigan Sentencing Commission), that entity was staffed with 2.0 FTE positions: an Administrator and an Administrative Assistant. The estimated annual cost for the proposed Commission is indeterminate, but could range between \$300,000 and \$400,000 annually, based on previous estimates. The previous appropriation covered the costs of the 2.0 FTE positions, office space and equipment, and the reimbursement to Commission members for necessary costs. The current estimated average annual cost for 1.0 FTE for a classified State employee is \$115,000 gross, \$60,700 General Fund/General Purpose for salary and benefits. These estimates could be higher or lower based on the classification level of the FTEs hired.

The bill's requirement that a forensic science laboratory or a forensic science service provider in the State be accredited would have no fiscal impact on larger, more sophisticated, well-funded, and accredited forensic operations in the State, such as the Michigan State Police Forensic Science laboratories and the Oakland County Forensic Science Laboratory, both of which have funds for the compliance processes and other accreditation costs. Smaller operations in the State, such as those associated with the police departments of Battle Creek, Wyoming, and other local governments, could face costs to achieve accreditation, the amount of which cannot be determined.

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The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.