

SENATE BILL NO. 276

April 18, 2019, Introduced by Senators BARRETT and CHANG and referred to the Committee on Judiciary and Public Safety.

A bill to create the forensic science commission; to prescribe its powers and duties; to regulate forensic laboratories, forensic science service providers, and forensic medical service providers; and to prescribe the powers and duties of certain state agencies and offices.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "forensic science commission act".

3 Sec. 3. (1) The forensic science commission is created in the

1 legislative council.

2 (2) The commission consists of the following 11 members
3 appointed by the governor:

4 (a) One individual who has experience as a forensic scientist
5 in a supervisory role in the forensic science division of the
6 department of state police.

7 (b) One physician who is board certified as a pathologist and
8 has experience in forensic pathology.

9 (c) One individual who has experience as a forensic science
10 practitioner.

11 (d) One individual from the private sector or a university in
12 this state who has earned a doctor of philosophy in psychology or a
13 related field and who has published scholarship related to
14 cognitive bias in a peer-reviewed journal.

15 (e) One individual from the private sector or a university in
16 this state who has earned a doctor of philosophy in statistics or a
17 related field and who has published scholarship related to
18 statistics in a peer-reviewed journal.

19 (f) Three individuals from the private sector or a university
20 in this state, each of whom has earned a doctor of philosophy in a
21 distinct field relevant to forensic science and who has published
22 scholarship related to the field in a peer-reviewed journal.

23 (g) One individual selected from a list of 10 individuals
24 submitted by the Prosecuting Attorneys Association of Michigan.

25 (h) One individual selected from a list of 10 individuals
26 submitted by the Criminal Defense Attorneys of Michigan.

27 (i) One individual from an accrediting body for an industry
28 that is not a forensic science industry and that is a signatory to
29 the International Laboratory Accreditation Cooperation Mutual

1 Recognition Arrangements for Testing Laboratories.

2 (3) The members first appointed to the commission must be
3 appointed within 90 days after the effective date of this act.

4 (4) Except as otherwise provided in this subsection, members
5 of the commission serve for terms of 4 years or until a successor
6 is appointed, whichever is later. Of the members first appointed,
7 the 2 members appointed under subsection (2)(g) and (h) shall serve
8 for 2 years, the 4 members appointed under subsection (2)(a), (b),
9 (c), and (i) shall serve for 3 years, and the 5 members appointed
10 under subsection (2)(d), (e), and (f) shall serve for 4 years. The
11 governor may reappoint an individual who has previously served as a
12 member of the commission.

13 (5) If a vacancy occurs on the commission, the governor shall
14 make an appointment for the unexpired term in the same manner as
15 the original appointment.

16 (6) The governor may remove a member of the commission for
17 incompetence, dereliction of duty, malfeasance, misfeasance, or
18 nonfeasance in office, or any other good cause.

19 (7) The first meeting of the commission must be called not
20 later than 180 days after the effective date of this act. At the
21 first meeting, the commission shall elect from among its members a
22 chairperson and other officers as it considers necessary or
23 appropriate. After the first meeting, the commission must meet at
24 least quarterly, or more frequently if requested by 6 or more
25 members.

26 (8) Six of the members of the commission constitute a quorum
27 for the transaction of business at a meeting of the commission. At
28 least 6 of the members present and serving are required for
29 official action of the commission. A commission member may not vote

1 by proxy.

2 (9) The business that the commission may perform must be
3 conducted at a public meeting of the commission held in compliance
4 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

5 (10) A writing prepared, owned, used, in the possession of, or
6 retained by the commission in the performance of an official
7 function is subject to the freedom of information act, 1976 PA 442,
8 MCL 15.231 to 15.246.

9 (11) Members of the commission must serve without
10 compensation. However, members of the commission may be reimbursed
11 for their actual and necessary expenses incurred in the performance
12 of their official duties as members of the commission.

13 (12) The commission shall do all of the following:

14 (a) Establish and update policies and procedures to implement
15 this act.

16 (b) Engage criminal justice stakeholders and coordinate
17 resources within this state.

18 (c) On or before December 1 of each year, submit a report to
19 the legislature evaluating the needs and performance of the
20 forensic science division of the department of state police, the
21 forensic science service providers, and the forensic medical
22 service providers and describing the work of the commission for
23 that year.

24 (13) The legislative council shall provide the commission with
25 suitable office space, staff, and necessary equipment.

26 Sec. 5. (1) The commission shall develop and implement a
27 system for the reporting of professional negligence, misconduct, or
28 nonconformance by or in a forensic laboratory that affects the
29 integrity of the forensic science or forensic medicine results.

1 (2) If an employee of a forensic laboratory or any other
2 individual has discovered, has suspicion, or has reason to believe
3 an act of professional negligence, misconduct, or nonconformance
4 has affected the integrity of the forensic science or forensic
5 medicine results, that employee or individual may report that act
6 in the manner required by the commission.

7 (3) A forensic laboratory shall report an act of professional
8 negligence, misconduct, or nonconformance that has affected the
9 integrity of the forensic science or forensic medicine results in
10 the manner required by the commission.

11 Sec. 7. (1) The commission shall investigate the conduct and
12 operation of a forensic science or forensic medicine method,
13 technique, or analysis used in a criminal case if the commission
14 receives a report from any source alleging professional negligence,
15 misconduct, or nonconformance by or in a forensic laboratory and 6
16 or more members of the commission concur in the commission
17 investigating the conduct. An investigation under this subsection
18 is limited to the allegations in the report.

19 (2) The commission may investigate a forensic laboratory or
20 the use of a forensic discipline on its own initiative if 6 or more
21 members of the commission concur that an investigation of the
22 forensic laboratory or the use of a forensic discipline is
23 necessary to advance the integrity and reliability of forensic
24 science and forensic medicine in this state.

25 (3) The commission may examine or copy records or papers of
26 any forensic laboratory relating to any requirement under this act
27 while conducting an investigation under this section. The
28 commission may issue a subpoena requiring a person to produce any
29 evidence pertaining to the question involved in the investigation

1 being conducted by the commission.

2 (4) The commission may create a committee of the following
3 members, who must not be individuals employed at the forensic
4 laboratory subject to the investigation, to assist the commission
5 in an investigation under this section:

6 (a) A member of the commission, who will serve as the
7 chairperson of the committee.

8 (b) An equal number of individuals from each of the following
9 groups:

10 (i) Criminal defense attorneys.

11 (ii) Prosecuting attorneys.

12 (iii) Law enforcement officers.

13 (c) An individual who is a forensic science practitioner with
14 knowledge of the laboratory system under investigation or of a
15 change in science that affects the integrity of the results of the
16 forensic analysis.

17 (d) An individual who is an independent forensic science
18 practitioner with subject matter expertise.

19 (e) An individual who is a statistician.

20 (f) An individual who is a researcher in the relevant
21 scientific discipline.

22 (5) After the completion of an investigation under this
23 section, the commission shall create a report that contains all of
24 the following:

25 (a) A description of the allegation in the report received
26 under subsection (1) or the basis for an investigation initiated by
27 the commission under subsection (2).

28 (b) The name and location of the forensic laboratory that, and
29 the name of any forensic analyst who, is the subject of the

1 investigation.

2 (c) The disposition of the investigation.

3 (d) If corrective action was taken by the forensic laboratory,
4 a description of that action.

5 (e) Findings regarding the integrity and reliability of the
6 conduct or operation of a forensic science or forensic medicine
7 method, technique, or analysis and recommendations for best
8 practices.

9 (6) The commission shall make a report created under
10 subsection (5) available to the public on the internet and shall
11 submit that report to the supreme court, the standing committees of
12 the senate and house of representatives concerning the judiciary,
13 the attorney general, the Prosecuting Attorneys Association of
14 Michigan, the appellate defender office, and the Criminal Defense
15 Attorneys of Michigan.

16 (7) The commission shall develop and implement a defendant
17 notification procedure for investigations conducted under this
18 section that includes all of the following:

19 (a) Notification to institutional stakeholders, the defendant
20 in the criminal case, and that defendant's attorney, if applicable,
21 the disposition, if that disposition includes a finding that an act
22 of professional negligence, misconduct, nonconformance, or a change
23 in science affected the integrity of the results of a forensic
24 analysis.

25 (b) A requirement that the defendant in the criminal case
26 acknowledge receipt of the information described under this
27 subsection and a method for the commission to receive the
28 acknowledgment.

29 (c) A description of the technical issue and a written summary

1 of the facts.

2 (d) A referral to relevant resources, including, but not
3 limited to, public defenders.

4 (e) A protocol for the commission to provide potentially
5 affected defendants with information regarding relevant resources.

6 (8) The commission may create a committee of members from the
7 following groups to assist the commission in developing the
8 notification procedure under subsection (7):

9 (a) Forensic science division of the department of state
10 police.

11 (b) Prosecuting attorneys.

12 (c) Defense attorneys.

13 (d) Judges.

14 (e) Forensic medical service providers.

15 Sec. 9. The commission may not issue a finding related to the
16 guilt or innocence of a party in an underlying trial or any pending
17 case involving conduct investigated by the commission.

18 Sec. 11. (1) Beginning January 1, 2020, a forensic laboratory
19 in this state that conducts forensic analysis must be accredited by
20 an accrediting body that requires conformance to the appropriate
21 quality assurance standards required by the Federal Bureau of
22 Investigation and to forensic-specific requirements, and that is a
23 signatory to the International Laboratory Accreditation Cooperation
24 Mutual Recognition Arrangements for Testing Laboratories. The
25 commission shall verify that forensic laboratories have obtained
26 the accreditation required under this subsection.

27 (2) Beginning January 1, 2020, a forensic science service
28 provider that provides forensic analyses in this state must be
29 accredited by an accrediting body that requires conformance to

1 forensic-specific requirements and that is a signatory to the
2 International Laboratory Accreditation Cooperation Mutual
3 Recognition Arrangements for Testing Laboratories. The commission
4 shall verify that forensic science service providers have obtained
5 the accreditation required under this subsection.

6 Enacting section 1. This act takes effect 90 days after the
7 date it is enacted into law.

8 Enacting section 2. This act does not take effect unless
9 Senate Bill No. 277 of the 100th Legislature is enacted into law.