



## The Commonwealth of Massachusetts Executive Office of Public Safety and Security

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**MAURA HEALEY**  
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Secretary

**KIM DRISCOLL**  
Lt. Governor

### **Forensic Science Oversight Board Meeting Minutes**

**When: October 26<sup>th</sup>, 2023**

**Time: 10:00am – 2:00pm**

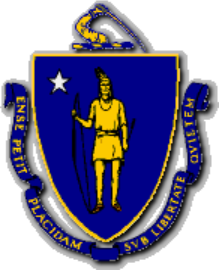
**Via Microsoft Teams**

Pursuant to the provisions of G.L.C. 30A and 940 CMR 29.00 et seq, notice is hereby given of a meeting of the **Forensic Science Oversight Board** to take place on Thursday December 1<sup>st</sup> from 10am – 2pm.

1. Minutes Approval
2. Subsection Updates
3. National Association of Forensic Science Conference Updates
  - a. Undersecretary Collins, Amy Putvinskas and Lisa Kavanaugh will be attending the conference and will provide the board with an update during the next meeting.
4. Education and Training Presentation
  - a. The presentation is delayed and items will be provided at a later time.
  - b. Rick: the anticipation what powers does the group think we need to have?
    - i. Subpoena power would be nice so we can receive information.
    - ii. Ira – discussing a situation where if someone wants to report something to the board no one is able to thoroughly provide oversight.
    - iii. Other boards have dedicated staff and here Kerry, Arielle, Amy; we rely on each other to aid to the board in accomplishing the mandate.
5. Bristol District Attorney's DNA Database
  - a. In 2021 the FSOB engaged into an investigation in a Y-STR database maintained by the Bristol District Attorney's Office. The database was populated with Y-STR profiles generated in connection with investigations and charged cases in the jurisdiction of the Bristol District Attorney's office and other District Attorneys' offices who voluntarily opted into the Bristol database project intended to provide leads for unsolved crimes. During the course of the FSOB's investigation of the Bristol database it was learned that in response to a grand jury subpoena for DNA records in the custody of the MSP Crime Laboratory. The Crime Laboratory represented by the Massachusetts Attorney General's Office moved to quash the subpoena. A justice of the Superior Court denied

the motion to quash. No appeal was taken on behalf of the laboratory and the laboratory complied for the court order for the production of the requested records.

- b. As a result, the FSOB initiated an investigation and sought information from the Bristol District Attorney's office as well as the then-president of the Massachusetts District Attorneys Association. Limited information was provided by the Bristol District Attorney's Office to the FSOB. Additionally, the MDAA submitted a letter to the FSOB concerning the Bristol database.
- c. The FSOB adopted a report of its' investigation on October 2021 and the report and exhibits were attached. Copies of those documents are publicly posted on the FSOB website. At the time, a legislative fix of G.L. c. 28- related to DNA databases to explicitly prohibit the creation and implementation of unregulated databases such as the Bristol District Attorney's Office's Y-STR database was recommended to the legislature. Additionally, the FSOB noted that although authorized by statute to conduct investigations there is no mechanism for the FSOB to require submission of involved persons or entities to the investigative authority of the Board and to obtain testimony and necessary records for their investigative authority.
- d. The ACLU of Massachusetts made the FSOB aware that they had filed a FOIA request for the records pertaining to the Bristol Y-STR DNA database and provided copies of those records to the FSOB. It was noted that if there was a successful arrest from the database it would be public knowledge. Board Member Kavanaugh noted that what can be concluded from the Bristol District Attorney's response to the public records request as written is that the oversight and access to the data and security measures concerning that data are not and have not been in compliance with requirements of the FBI Quality Assurance Standards and the Crime Laboratory's accreditation and CODIS requirements. At least that is how it is written to the ACLU. Board Member Kavanaugh recommended that Board reopen the original investigation and utilize the public records statute to compel production of the records from the Bristol District Attorney's Office.
- e. Subsection D covers the authority to conduct an investigation if the board elects to do so.
- f. Board Member Gant supports reopening the investigation and noted that it is not known whether at the time of the original investigation the Bristol District Attorney's Office treated the FSOB's request as a public records request. The public records process would include the supervisor of public records requests at the Secretary of State's Office, if the Bristol District Attorney's Office does not comply.
- g. Board Member Lynch did not think revisiting the issue at this point was the best use of the Board's time given the breadth of our statutory charge and our limited resources to fulfill our mandate. It was noted that a judge of the Superior Court authorized the



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release of the records by the Laboratory and no appeal was taken. The FSOB recommended a statutory fix for the legislation to make explicit that an unregulated database such as the Bristol database is prohibited.

- h. Board Member Lempert, who was not on the Board at the time of the original investigation, said that it seemed worthwhile to re-open the investigation. Information that would help flush this out is information that is redacted in the response provided to the FSOB. If there is a prospect that would make it easier for better legislation, the Board could move into executive session to review the documents that may be of help.
- i. Board Member Gertner noted that If the Bristol DA's office isn't going to respond to the Board then it is worthwhile to document this and then it provides more support for further legislation to provide the Board with authority to gather evidence in its' investigation of forensic methods. Board Member Kavanaugh noted that the Bristol DAs office is engaging in provision of a forensic service. It is vital that the Board doesn't let the issue go or allow Bristol to essentially not respond to records requests. She suggested the possibility of getting more information from the defense bar concerning the database and its use.
- j. Board Member Lynch noted that many DAs have not opted into the database and that since our initial investigation several new District Attorneys have been elected. Board Member Lempert suggested at another reason to re-open this investigation that there has been 2 years experience and more information responsive to our original request is now available. Simple questions about usage would be helpful.
- k. Board Chair Collins noted that in order to reopen we need 5 members to vote to in favor of reopening.
- l. Board Member Cotton supports Member Kavanaugh's request to re-open this investigation. She noted that these databases are not powerful and they can identify family members and not be able to differentiate who is the source of the DNA evidence. Member Palmbach expressed that he is willing to support re-opening as long as we look at the absence of peer review and that lack of scientific validity where the

administrators of the database are not scientists, and lack training and standardization and are not qualified to engage in a scientific endeavor.

- m. The issue is that at the time this was approved by a judge of the Superior Court. Although we are a part of EOPSS, Board Chair Collins reiterated that she does not have voting power on the Board and the FSOB is an independent board over which EOPSS has no authority.
  - n. *Member Lempert said that the suggestion that this is limited to a scientific issue not sure that the limitation under our statute is accurate. We have responsibility to provide integrity to the forensic sciences.*
  - o. Member Gant added that the grand jury request referenced by Member Lynch was not merely limited to Bristol DA records but included requests from several DA's for production of their DNA records to the grand jury based on the statute which entitles them to the data in the cases they submit to the lab. Member Gant framed the question as what are they doing with this data? Is there a data base or is it an excel sheet?
  - p. The following members voted in favor of re-opening the investigation: Rick Lempert, Ira Gant, Lisa Kavanaugh, Judge Nancy Gertner, Robin Cotton. The vote carried and the investigation will be re-opened. Member Kavanaugh will take the lead. *Any steps that want to be made takes the entire board to vote. r. Lisa –With the initial investigation we identified the group that would be leading this. First order is to come up with a list of what we propose to the board to initiate. Hopefully it will be more streamlined.*
    - i. *Folks will reach out to Amy if they want to participate on the committee.*
    - ii. *Lisa can reach out to the ACLU to see if they are taking any further steps.*
6. Topics not reasonably anticipated within 48 hours
- a. Robin should we ask the BPD team to know what the deal is with the lab director
  - b. Does December 1<sup>st</sup> work for most folks? Amy will send out a poll to the board to confirm next meeting dates