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Forensic Science Oversight Board (FSOB)
Meeting Minutes

Scheduled: November 19, 2021 10:00am-2:00pm, Microsoft Teams

Members in Attendance:

Chairwoman Kerry Collins (Undersecretary for Forensic Science)
Sabra Botch-Jones (Forensic Science Expertise)
Dr. Robin Cotton (Forensic Laboratory Management 1)
Lucy A. Davis (Clinical Quality Management Expertise)
Anne Goldbach, Esq. (Committee for Public Counsel Services)
Clifford Goodband (Expertise in Statistics 2)
Lisa Kavanaugh, Esq. (MA Association of Criminal Defense Lawyers)
Adrienne Lynch, Esq. (MA District Attorneys Association)
Dr. Ann Marie Mires (Academia, Research Involving Forensic Science)
Professor Timothy Palmbach (Forensic Laboratory Management 2)
Gina Papagiorgakis (Expertise in Statistics 1)
Nancy Rothstein (Nominee from Attorney General's Office)

Members Not in Attendance:

Judge Nancy Gertner (New England Innocence Project)
Vacant seat (Cognitive Bias Expertise)

The chair called the meeting to order at 10:00 AM. A quorum was present.

1. Minutes Approval

- i. Approved.

2. Legislation

- i. L. Davis discussed *Bill H2472 An Act relative to the expansion of the state DNA database*. She informed the FSOB that although she agrees with the concept of the bill, she has concerns regarding sections 3 and 4 of the bill. She encouraged legislators to consider the overall operations of the laboratory. She expressed that it will be a burden for the Massachusetts State Police Crime Laboratory in regards to workload and cost. An added issue is that it is a huge burden to the Massachusetts State Police Crime Laboratory to monitor the courts and follow-up on every arrestee sample which would need to happen due to the language in the legislation that requires the mandatory expungement of an arrestee that is not convicted. She reminded the FSOB that the board was concerned about three things during their audit of the Massachusetts State Police Crime Laboratory; budget, equipment, and personnel, and all three of these would be

negatively impacted by the bill. The bill cites grant funding but the Massachusetts State Police Crime Laboratory has maxed out its grant funding.

1. K. Collins provided the FSOB with additional background and informed them that the bill was first put forward in 2015 or 2016 and the Massachusetts State Police Crime Laboratory expressed the same concerns that L. Davis discussed. The bill did not move forward and has now been refiled.
 2. K. Kosiorek asked if the bill specifies the Massachusetts State Police Crime Laboratory director and if Boston Police Department Laboratory would be responsible for the undertaking as well. L. Davis responded that the bill does not specify Massachusetts State Police Crime Laboratory but it is implied.
 3. L. Kavanaugh expressed that there is nothing about the bill that she would support because it would exacerbate issues of equity and concerns of the overrepresentation of persons of color in databasing. She added that it would be more problematic if automatic expungements are not in place and that the bill has not historically gotten any traction but if it did, the FSOB should weigh in on it. EOPSS will continue following the bill to let the FSOB know if this bill has moved forward or is projected to move forward.
 4. T. Palmbach motioned for the FSOB to issue a statement expressing that the board does not endorse the bill. L. Davis seconded the motion.
 - a. A. Lynch stated that the FSOB is not informed enough to take a position. A. Lynch requested that the FSOB take no position until the pros and cons are explored. L. Davis agreed with A. Lynch and is not opposed to an arrestee database but she is opposed to how the bill is proposing implementation. She agreed with A. Lynch on generating a brief document with pros and cons for the legislature's consideration.
 - b. R. Cotton asked if the FSOB can say that the board does not support the bill as written.
 - c. T. Palmbach withdrew his motion so that the FSOB can review the bill further.
 5. A. Lynch asked why EOPSS did not bring this bill to the FSOB's attention earlier. K. Collins responded that moving forward, the legislative director will be keeping the board apprised. L. Kavanaugh expressed that it would be valuable for the FSOB to be apprised of legislative efforts but it may be unrealistic for the FSOB to weigh in on every single bill due to the high volume of bills that are proposed each year. It makes more sense to reserve comments for bills that have traction.
- ii. S. Botch-Jones asked about *Bill S1565 An Act relative to the membership of the forensic science oversight board* which had a hearing on November 16th. The bill would amend Chapter 6 Section 184A(a) to strike the following words: "and 13 members who shall be appointed by the governor" and replace it with the following: "and 15 members who shall be appointed by the governor, 1 of whom shall be nominated by the president of the Massachusetts Organization of State Engineers and Scientists (MOSES), 1 of whom shall be nominated by the president of the union representing the Boston Police Department Forensic Group". This bill was brought to the FSOB when it was originally filed and the FSOB weighed in on the bill (see March 2020 minutes). A. Mires was a member of MOSES when she worked at the Office of Chief Medical Examiner and it was important to have representation. She added that the bill also had a hearing on November 1st.
 - i. L. Davis discussed *Bill H2524 An Act relative to missing persons*. She highlighted sections that would require the hiring of more Massachusetts State Police Crime Laboratory personnel and expressed that the 5-day timeline specified in the bill is impossible. She expressed that the bill is a great concept but it has to be revised to consider how it will be implemented.

1. A. Mires expressed that the bill has been resubmitted several times. The bill is supported by Representatives Smola and Gobi and the bill intersects with the missing persons task force. She suggested that the FSOB review it the same way the familial DNA bill was reviewed. She expressed that the real crime is that there is not a unified reporting system for reporting.
2. L. Davis expressed the importance of separating the familial DNA bills and the missing persons bill when discussing the bills because the familial DNA bill is related to criminal acts and not missing persons. A. Mires explained that although the bills are separate, the familial DNA bill would help with missing persons cases.
- ii. This agenda item will be placed on December meeting and if reviewing pending legislation would fall under subsection (f) *The board shall actively engage stakeholders in the criminal justice system in forensic development initiatives and shall recommend ways to improve education and training in forensic science and the law, and identify measures to improve the quality of forensic analysis performed in laboratories.*

3. Subsection Discussions

i. Subsection (e)

1. The working group (G. Papagiorgakis, S. Botch-Jones, and N. Rothstein) reviewed the edits and feedback submitted by the FSOB and other stakeholders.
 - a. The working group asked the Massachusetts State Police Crime Laboratory for clarification about the union requirement for disciplinary matters getting removed from an employee's file after periods of time and if misconduct and negligence would fall under these requirements. The Massachusetts State Police Crime Laboratory will provide the FSOB with contract language.
2. EOPSS will review the open meeting law's records retention requirements to ensure that the subsection (e) document aligns with statutory requirements in regards to the documents reviewed during an investigation of allegations of misconduct.
 - a. G. Papagiorgakis stated that the documents would be reviewed under executive session and may not fall under the public records law or open meeting law.
 - b. A. Lynch asked if the concern is that by setting up the FSOB would be the holder of records and it would be a repository that may be discoverable; people would be able to find out about complaints about individual witnesses. This is something that the working group will consider this perspective.
 - c. The working group
3. The working group discussed the FSOB's authority to investigate allegations of misconduct and negligence.
 - a. The document may need to be rewritten as a recommendation for reviewing and handling allegations instead of being the sanctioning body. The document was written with the consideration that the FSOB may become a commission in the future and would have the resources and authority to conduct an investigation.
 - i. T. Palmbach expressed that the FSOB's scope is systemic and how the laboratory responds to allegations.
 1. A. Lynch responded that this is true for negligence but not intentional misconduct.
 - ii. A. Goldbach stated that if the FSOB had been around during the drug laboratory scandals, it would have served as an advisory board and provided guidance on the provision of notice to the public and those affected. Both laboratories were DPH labs and were not accredited. L.

Davis informed the FSOB that when a laboratory is accredited, the laboratory is required to report issues including those of misconduct to the accrediting body but the accrediting body does not tell laboratories how to handle the situation.

1. R. Cotton expressed that any reports that are submitted to the accrediting body should be received by the FSOB for awareness even if the FSOB does not have the capacity to investigate.
2. L. Kavanaugh expressed that the FSOB, as currently constituted, may not have the resources or time to conduct an investigation.

A. Lynch expressed that the FSOB is trying to fulfill their mandate but the statute would need to be amended or portions of it rescinded to fulfill their mandates.

 - a. L. Kavanaugh agreed that the FSOB should draft a report to the proponents of the FSOB legislation to inform them of the work of the FSOB and the board's limitations that do not make it feasible for the FSOB to completely fulfill its mandate.

ii. Subsection (c): BPD Audit

1. C. Goodband provided an update. The working group (C. Goodband, S. Botch-Jones, G. Papagiorgakis, and L. Davis) had a virtual meeting where they discussed the group's next steps and will work to gather information. The group will be using the previous audits as templates.

iii. Subsection (f)

1. Marna McLendon, former Arizona Attorney General, is part of the advisory committee in Arizona under the Arizona Attorney General's Office. She reached out to N. Rothstein regarding Massachusetts' offerings of forensic science trainings and asked if the FSOB conducts or oversees trainings. Board members offered information on trainings offered to judicial personnel and prosecutors.
2. Subsection (f), *the board shall actively engage stakeholders in the criminal justice system in forensic development initiatives and shall recommend ways to improve education and training in forensic science and the law, and identify measures to improve the quality of forensic analysis performed in laboratories*, is assigned to R. Cotton, A. Goldbach, and A. Mires.
 - a. L. Kavanaugh flagged that the FSOB has discussed organizing a training symposium for stakeholders.
 - b. A. Lynch added that the Fletcher Institute is a resource that has worked to expand the understanding of the judiciary

4. Topics Not Reasonably Anticipated Within 48 Hours of the Meeting

- i. A. Goldbach informed the FSOB that Judge Brennan has suspended the use of breathalyzers in Massachusetts due to three pending issues: some tests went through even though the breath test operator was not certified to conduct the test, improper cleaning of the mouthpieces, and tests going through with blank fields. She encouraged the FSOB to keep the matter on their radar and will be presenting on the matter in a future meeting.
 1. A. Goldbach to provide pleadings to EOPSS to circulate to the FSOB.

2. Massachusetts State Police Crime Laboratory presented on the RMV notification issue related to the breathalyzer litigation at the FSOB June 2020 meeting. EOPSS will recirculate their presentation and the meeting minutes.

5. Public Comments

- i. No comments.

6. Executive Session: Subsection (j)

- i. An executive session is a way for a convening body to discuss sensitive information in a private setting without violating the open meeting law. A matter was brought to the chair in September that needs to be presented to the FSOB in executive session. There will be materials that the board will be reviewing but they will be displayed and not disseminated. A separate meeting link will be sent.
- ii. Pursuant to the open meeting law, the FSOB votes to enter into executive session to comply with, or act under the authority of, the FSOB statute section (j). This section states that the board shall receive and review reports that include facility and employee records, qualifications, and incident reports that could affect the integrity or results of forensic analysis. L. Davis motioned and S. Botch-Jones seconded.
- iii. The Massachusetts State Police Crime Laboratory presented the matter to the FSOB. The FSOB provided feedback.