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Lt. Governor

THOMAS A. TURCO, III  
Secretary

**Forensic Science Oversight Board Meeting**  
Meeting Minutes

**Time:** December 3, 2020 10:00am-2:00pm

**Place:** WebEx

**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)  
Judge Nancy Gertner (New England Innocence Project)  
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:**

Vacant seat (Cognitive Bias Expertise)

The chair called the meeting to order at 10:01 AM. A quorum was present.

**1. Minutes approval for the October meeting**

- The minutes were approved unanimously.

**2. Familial DNA**

- The Familial DNA Bill has been tabled and will be reintroduced in January. It may be a new bill or an addendum of the existing bill
  - The bill expired and has to be reintroduced
  - A. Mires met with Heather Bish and Representatives Gobi and Smola to get their feedback. They expressed appreciation that the Board has considered the bill in its totality because they feel uneducated about the science and legal implications.

- L. Kavanaugh, A. Lynch, N. Gertner, A. Mires presented a draft outline of the familial DNA report that will be submitted to the legislature
  - The report will contain research and will link to resources
  - The report will also present current technology and discuss scientific problems
  - The report includes a comprehensive and annotated bibliography included in report with over 100 sources
- Members consulted with Sidney Collins regarding concerns. Sidney Collins oversees the state's centralized database
  - Sidney Collins informed the Board that the FBI does not do familial searching but have given the states guidance on how to perform this search using CODIS because the FBI feels these searches are more appropriate on a state level instead of a national level and can only be done with legislative authority
    - MA can look to other exemplary states that have scientifically sound familial searching programs, like California, as guides
      - California's familial searching program is allowed under their Attorney General's Office's policy and not through legislation. The MA FSOB has adopted a lot of what is in the California policy such as language, recommendations, identifying the need for training and composition of the board
        - A. Lynch will get information to T. Palmbach of the composition of board in California and other states
  - Opportunity to strengthen 22E and add protection in database. Sidney Collins informed the Board that 22E is general and gives the illusion that data can be given to law enforcement upon request
- One concern is that the statute as currently worded creates room for the creation of local databases
  - EOPSS to send out a survey to police department to check who has participated in a local database (will be sent on a later date post January)
  - The Board noted that there are law enforcement agencies (LEA) that are seeking to develop local databases
  - The Board indicated the need to add language in the legislation about the state owning databases and owning profiles.
    - The Board noted the concern for the MA State Police Crime Lab (MSPCL) to be able to control its own data which is comprised if local LEA want to use MSPCL data to create their own database
      - L. Davis noted that FBI guidance regarding profile ownership may be in the DNA Identification Act and it speaks to confidentiality but is not specific
      - There is a mention in section 3.3.2 of the NDIS Procedures Manual pursuant to Privacy Act of NDIS
        - *"A DNA record entered into CODIS shall be considered the property and responsibility of the NDIS participating laboratory that entered the information into CODIS"*

- FBI only has control over CODIS information
  - The Board noted that sound science cannot be guaranteed with local databases
  - Local LEA have access to MSPCL profiles because profiles for years have been in the report and have had requests from district attorneys for data.
    - The Board noted that some of these agencies are the Bristol District Attorney's office with the former Secretary of EOPSS, Daniel Bennet, and the Plymouth County District Attorney's office
    - A. Lynch informed the Board that the MDAA is in support of familial DNA but would like to weigh in if local databases are brought up
- The Board expressed the need to invite stakeholders to comment
  - The Board to let EOPSS know if there are specific stakeholders that should be invited
  - The Board feels that the MSPCL should weigh in because if they do not get extra funding to do this, they will not be able to do this efficiently
  - A. Mires suggested inviting Dan Bennet because he is involved in the Bristol project
  - A. Lynch to reach out to MDAA and the Plymouth and Bristol County District Attorneys' offices
- The Board tabled a discussion about rapid DNA
- R. Cotton discussed the science of familial searching (presentation attached)
  - Genealogy searches are more specific because they use DNA data first and then use genealogy data
  - She indicated that calculating a likelihood ratio is a better assessment tool
    - False positive and negatives happen even with newer tests therefore the familial DNA searching requires expertise and validation
    - Ratio is powerful because it weighs the frequency of alleles
    - L. Davis noted that there are allele differences across ethnicities and the FBI suggests comparisons across ethnicities
  - Sidney Collins indicated that California is looking to use the CODIS software
  - Sidney Collins also indicated that you can combine the two approaches (likelihood ratio and allele counting)
  - Some labs validate familial DNA matches by performing YSTR testing. There are privacy issues when YSTR testing is added. There is validation by looking into matches to women through mitochondria DNA
    - Sidney Collins stated that a YSTR profile without an autosomal profile is a serious problem because this is needed for final comparison to allow you to include or exclude
- L. Davis provided an informative presentation to the Board that reinforces R. Cotton's presentation (presentation attached)

- Presentation slides reference the FBI guidelines and recommendations related to the NIST and CODIS approach
- Eight recommendations are listed
  - Provide statistical calculations that give an estimate of the probability of a favorable outcome

### 3. Updates

- Subsection (i)
  - N. Rothstein and A. Lynch presented an updated draft of the document addressing subsection (i).
    - The team will be enlisting the help of a co-op intern to condense the lengthy document
      - The Board suggested keeping the document thorough and adding an executive summary
      - Include references to best practices
      - The Board cautioned that there are many forensic disciplines and it may not be beneficial to develop a detailed document but instead refer or link readers to resources such as OSAC or NIST
    - The document not only addresses the tracking and lifecycle of evidence from the time it is collected to storage but also preservation of evidence
      - Recommendations to be reviewed by an evidence management personnel at a crime lab for technical correctness
      - The most important recommendation found in the document is the development of a centralized storage location
        - EOPSS to follow-up with Legislative Director about the Evidence Commission
    - Can be a protocol for chain of custody/evidence management and preservation
    - EOPSS will send to Boston Police Crime Lab and MSPCL to provide feedback to EOPSS and invite them to comment
- Subsection (e)
  - S. Botch-Jones and G. Papagiorgakis presented an updated draft of the document addressing subsection (e).
    - The team reached out to the Texas Forensic Science Commission to gather further information
    - The document adopts the Code of Conduct from the Texas Forensic Science Commission
    - Includes a link of what the certification form looks like
    - Texas has a specific committee that does the initial preliminary hearings and do own research
      - All dispositions are made public
- Springfield PD visit (report attached)
  - T. Palmbach and R. Cotton discussed their insightful visit with the Springfield Police Department Crime Lab and their conversations with Captain Duda and Sgt. McCoy

- A report summarizing the visit will be made available
- Sgt. McCoy agreed to provide the Board with case reports for latent print examinations and one that resulted in an elimination, one that resulted in an inconclusive finding and one that resulted in identification.
- Board to think about which labs to do this with next.
  - Some members suggested starting with mid-level labs and then smaller towns or a combination of larger and smaller providers. Other members suggested focusing on LEAs that are testifying.

#### **4. 2021 Discussion**

- The next meeting is scheduled for January 27<sup>th</sup>, 2020
- N. Rothstein and A. Lynch to present in February
- The Board discussed the FSOB website as a means of disseminating information.
  - EOPSS to follow-up with communications department regarding the creation of an FSOB website
  - Information can also be disseminated through distribution lists or with the aid of the media
  - The BBA can also sponsor a conference
  - Legislators to be invited and engaged at future board meetings
  - Reach out to entities like the Fletcher Institute
- FSOB given a huge statutory mandate with no enforcement power, in a position of advising and reporting
  - The Board to add an item on the next agenda to discuss a recommendation to amend the statute.
  - The Board expressed that the statute is broad and the Board should create a strategic plan/to-do list

#### **5. Public Comment**

- There were no public comments apart from those made by Sidney Collins and Sgt. McCoy.