

The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133

Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eopss

MAURA T. HEALEY
Governor

TERRENCE M. REIDY
Secretary

KIMBERLEY DRISCOLL
Lieutenant Governor

Members	Present
Kerry Collins, Undersecretary	X
Dr. Sabra Botch - Jones	X
Dr. Robin Cotton	X
Professor Timothy Palmbach	X
Professor Richard Lempert	X
Gina Papagiorgakis	X
Cliff Goodband	X
Dr. Ann Maire Mires	X
Lucy A. Davis	X
Adrienne Lynch, Esq	X
Assistant AG Gabriel Thornton	
Ira Gant	X
Lisa Kavanaugh, Esq	X
Judge Nancy Gertner	X

Forensic Science Oversight Board Meeting Minutes

When: March 1st, 2024

Time: 10:00am – 1:00pm

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 Friday March 1st from 10:00am – 1:00pm.

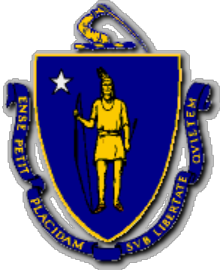
1. Meeting Minutes Approval
 - a. November, December and January to approve
2. Executive Session: 10:05am – 11:00am
 - i. An executive session is a way for a convening body to discuss sensitive information in a private setting without violating the open

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.

3. BPD Lab Director Update

- a. U/S Collins sent the request to Kevin Larade. Kevin forwarded the request and on Feb. 27th, 2024 from Deputy Superintendent of Bureau of Investigative services. The Crime lab unit director is on leave, and this is an internal complaint and is not in any way related to his scientific work or quality. A timeline of the investigation would not be appropriate to share but this is in the final stages.
- b. Robin Cotton – Given that the department is accustomed to investigations this seems like an inordinate amount of time. And to think that this is not impacting the lab as a whole is naive on this board
- c. U/S asks the BPD audit team to if they were aware of this issue at the time of drafting the report.
 - i. Gina P. recalls that she was made aware during a board meeting and there was no information shared with the audit team prior.
 - ii. This board was not notified; if the board wishes to develop a memo for active notification in changes of lab leadership they may do so.
 - iii. Dr. Sabra Botch – Jones, are the individuals stepping in as lab director do they have a scientific background?
 1. U/S Collins– We do not know at this time. We are aware that Boston Lab members are on this call but we will not have them answer this question. U/S Collins will reach out to the Deputy Superintendent regarding this question.
 2. Lucy Davis – If the accredited lab is in a situation where they need to report to the accreditation body that we also include that they notify us as well.
 3. Lisa Kavanaugh – as a part of our oversight this was a matter that I brought up for the lab to be professionally notified. If we have an oversight responsibility, then we can



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eopss

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

TERRENCE M. REIDY
Secretary

make the request in articulating some sort of request. In the event of a major leadership change. We should be the default in being alerted.

4. Lucy Davis – This is why I mention that we are notified in tandem with the accreditation requirements.
5. U/S Collins give the opportunity to Boston to respond if they would like.
 - a. Kevin K. to address he was not out of his position when the report was written. We were limited to what we are able to address other than it does not impact the quality of work. There are three Directors – Latent Prints, Firearms, and Crime Lab. We did disclose to ANAB. The accrediting body is aware and the leadership is being reworked. If the board would like to have an executive session, we can do that and answer more questions.

4. NAFSB Update

- a. Membership opportunities are now open and the website is live. This connects all boards to each other and is a resource for this board and all around the country. There is another state that has reached out to MA to develop a board of their own. The NAFSB ensures that advocacy is left at the door and sound scientific evidence is at the forefront.

5. Massachusetts Complaint Update

- a. U/S Collins had reached out the members and thank you to Ms. Roy for presenting to the board and alerting that TX is looking at a similar matter. Lynn Garcia was able to provide us with the complaint that was provided by Ms. Roy. Lynn hopes to have a report on this complaint in April. The

suggestion is to review the materials and table this discussion until Texas has released their complaint. We then place this on the agenda for May and vote on whether the board wants to take up an investigation on this matter. It is up to the board to decide this is a suggestion.

- i. Ira Gant – The YouTube video link you can fast forward to the 31 min portion. It also has testimony from the analyst.
- ii. Lucy Davis – I appreciate the fact that Texas is looking into a similar complaint. We are not Texas and do not believe that we should base our response on what they are doing. Uncomfortable on whether we are going to investigate something based on another board. We will take longer, and we can use their document as a resource.
- iii. Robin Cotton – The complaints are different instances, and I am not sure how similar they are. I have not looked at the video yet. I have looked at the documents and this is a complicated issue.
- iv. Lisa Kavanaugh – Second what Lucy has stated. It is important for us to address this in reviewing a complaint that was received from an outside individual. This is also an opportunity for us to establish a procedure. We can use the Texas information as a roadmap. There might be some value in thinking that the Texas model is a model and not a binding model. If we do vote to initiate a investigation, we should commit to reviewing all available materials.
- v. Lucy Davis – If we do go forward, I do ask that the scientific articles that were referenced also be shared.
 1. Kerry Collins – If the board votes to investigate and you notice documents that are missing, please email Amy and she can provide the request to Ms. Roy.
- vi. Ira Gant – What has been brought to Texas is the same topic that has been submitted to us. This is an opportunity to discuss and establish guidelines and processes.
- vii. Robin Cotton – If there is anything that Amy cannot find – I have access to a library and can assist.
- viii. Rick Lempert – I do want to second Ira's statement. Even without a complaint we should look into this as a matter of complaint and trend.
- ix. Tiffany Roy – The complaints are similar but not related. This is a matter of how the DNA ended up in the place that it did. It is loosely related to how



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eopss

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

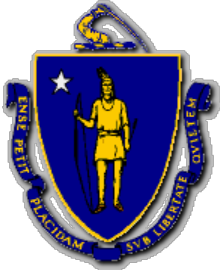
TERRENCE M. REIDY
Secretary

the DNA ended up on the items. The TX commission did vote to investigate. It would be very helpful – the TX has been working with Ms. Roy and the *HumanFactor*. We have worked on what is accepted science and what is not. Lynn Garica herself did vote to investigate.

- x. Kerry Collins – This is under subsection D. A motion is needed in order to take up this investigation.
 - 1. Lucy Davis made a motion under subsection D
 - 2. Adrienne Lynch – Without discussion we should not motion to take a vote. In this case there was a hearing before a superior court judge. There are multiple opinions one had an opposite opinion and another that no conclusion has been drawn. What are the parameters surrounding transfers. What is troubling is the lack of ethics surrounding the. This is trying to litigate something that the Superior Court Judge has taken up. To do a specific review of each case with appropriate knowledge. This is not a forensic technique this is an interpretation of a technique.
 - 3. Ira Gant – I agree with most of what Adrienne said. This is not within the scope of the board to review individual cases and decisions. This is more for an informative decision in a case that is also happening elsewhere.
 - 4. Rick Lempert – Agrees with what Ira Stated. It is the larger issue of what is testimony and is it scientifically accurate. I think that falls under both of those clauses. The specific case we are not to try to influence a

court decision. I feel that I have enough information to vote for an investigation. Subject that we were given a lot of information and if many members of the board did not have sufficient time to review that material than I feel we should wait to vote on this matter.

5. Lisa Kavanaugh – this gets to the bottom of why our board is here. There is tension when we leave judges to determine what is and what is not scientifically acceptable. It is difficult when the case we have been given is a pending case. One way to mitigate this is to perform the investigation and not issue a decision until the case has concluded or seek more materials of like cases.
6. Judge Gertner – Another thing is the issue at the back end – the presentation of the scientific validity is important. We can look at the additional testimony that this individual submitted. Or we take up a field and research that.
7. Lucy Davis – The wording of the complaint is a compliant of the testimony. Our mandate is to technology and not to a personal or ethical issue. Looking at that this is a different aspect and not our mandate.
8. Adrienne Lynch – This is the point that I was trying to make before. Voting whether or not an individual made a testimony that is ethical or not. Our standard is that the subject matter of secondary transfers or specific scientific matter is the matter. I am not suggesting that we don't look into the topic on what are limits of the testimony. I object to the form of the complaint at being targeted at individuals. If we look at the individuals, then this is a wide range of opinions that have been presented.
9. Judge Gertner – When the FBI began to do an investigation on hair and focused on the transcripts to make the determination. Talking about the presentation of evidence is within our scope. Audits will mean nothing if someone can stand up and say it is a match without the backing of science.



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eopss

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

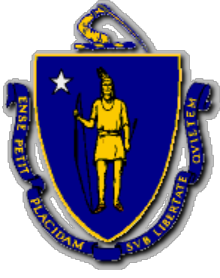
TERRENCE M. REIDY
Secretary

This opens up a wider discussion regarding technology and how it is used to make an evidentiary presentation. An investigation should be opened on the subject matter.

10. Rick Lempert – This is a broad issue on what activity level testimony and what is not scientific. There are some things that are supported by a scientific activity level conclusion. There are instances where the testifier does not have more information than the jury to make that statement. We should look at that is the knowledge and background needed what are the foundations that are involved that enable someone to make an expert testimony.
11. Ira Gant – We are all in agreement that the concerns are broader than just the case. We are still building what to do with these complaints and say that we have a broader issue. And the hair comparison is a fantastic comparison. They started that they are going to talk about what they can speak on based on what the science says. I see this exact question in multiple cases and ask if there are standards. This is an opportunity for this board and should be broader than this case.
12. Lisa Kavanaugh – We initiated a state version of the federal hair analysis review using federal grant money. At the end of the year, I will invite that team to provide a review to the board. This was a collaborative grant. If there are questions on whether we have funding, we should look at pursuing funding. Tiffany should not

be at fault due to the fact the at the board has not established.

13. Adrienne Lynch – I would ask that any vote on this investigation at least give an opportunity to frame what the parameters of the investigation is.
 14. Tiffany Roy – Draw the attention to a larger problem – there is no oversight on testimony. Science has limits and there is no one checking on the testimony compared to what the science can support. This is not a matter of the individuals it is a matter of speaking to a matter that science does not support. We are asking the judges to do something that they can not do. Scientific oversight is needed. It is needed to establish what science can support. I understand wanting to wait for the legal process to end. The legal process will not end – We need to focus on the error of the science and this body needs to be proactive and overstatements in testimony are on the rise. This is new territory for everyone – it is the overstatements of the testifiers that is the core of the complaint.
 15. Judge Gertner – I would like to table this discussion and create a scope of what this investigation could be. Nancy, Ira, Lisa, Adrienne, Lucy to be apart of a group to develop this.
 16. Ann Marie seconds – all in favor
6. FSOB Complaint form discussion and approval
 - a. Will be discussed at a later meeting in the interest of time.
 7. Bristol District Attorney DNA Database
 - a. Lisa Kavanaugh – The subcommittee met once and is flagging issues. Ira developed a list of questions.
 - b. Outreach to State police crime lab – Ira drafted proposed questions – Amy will circulate. Are we permitted as a subcommittee to send out these questions to the lab?
 - i. Yes, this does not need the board approval.
 1. The items will be circulated and if you could respond by next Wednesday.
 - c. Renewing and finding a sponsor to purse legislative change to the CODIS law. Review at the next meeting and there are no proposed changes.
 - d. Develop questions that would go to the Bristol DA's Office for clarification.



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133

Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eopss

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

TERRENCE M. REIDY
Secretary

- e. Another option is to turn to a member that was originally a part of establishing our legislation.
 - i. Legislative fixes
- 8. Essex Case Discussion
 - a. Adrienne Lynch is unsure whether getting into specific issues is appropriate to discuss here. This is a pending case – it had a hung jury and will be tried again.
 - b. Ira Gant – We are not discussing any facts of the case all documents that have been shared have been redacted. There will be one update. This is not a conversation regarding specifically this case but rather genealogy. To frame it for the next meeting this was a cold case from the 80s and Y-STR
- 9. Last week of March meeting for Bristol and second meeting for essex
- 10. Subsection Updates
 - a. Will be discussed at a later meeting in the interest of time.
- 11. Topics not reasonably anticipated within 48 hours
- 12. Public Comment
 - a. No Public Comment was entered at this time.