



The New York State Commission on Forensic Science

The views expressed in this presentation are my own. Some views are based in part on observations provided in conversation with representatives of public forensic laboratories operating within New York State. This presentation has not been reviewed or approved by the NYS Division of Criminal Justice Services.

Article 49-b of the Executive Law

(enacted 1994)

- Authorized the state DNA Databank
- Established the Commission on Forensic Science and the DNA Subcommittee to set accreditation standards for public forensic labs and to regulate DNA Databank
- Requires accreditation of public forensic laboratories
- Sets criminal and civil sanctions for non-compliance
- Effectively created the Office of Forensic Services within the Division of Criminal Justice Services

The Mission of the Office of Forensic Services is to:

- provide staff support to the New York State (NYS) Commission on Forensic Science and its DNA Subcommittee with regard to the accreditation of public forensic laboratories operating in the state;
- administer the State DNA database in cooperation with the New York State Police Forensic Investigation Center;
- facilitate specialized technical training and other activities that enhance the efficiency, effectiveness and reliability of forensic testing services in NYS; and,
- promote coordination and information sharing among the laboratories pursuant to Executive Law section 995-b(2)

Article 49-b - Exceptions

- . . . the term "forensic laboratory" shall mean any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification **provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.**
- This article shall not apply to a forensic DNA laboratory operated by any agency of the federal government, or to any forensic DNA test performed by any such federal laboratory.

Areas of ambiguity:

Pathology; Digital Evidence; Bloodstain Pattern Interpretation; Bitemarks; Fire Scene Investigation; other(?) . . .

. . . when performed by entity other than a "forensic laboratory"

Commission on Forensic Science

14 Members - 12 “appointed by the Governor”

- Commissioner of Division of Criminal Justice Services (DCJS), Chair
- Commissioner, Department of Health (or designee) – ex-officio
- **The Director of the Office of Forensic Services within DCJS**
- **The Chair of the NYS Crime Laboratory Advisory Committee**
- **A director of a laboratory located in NYS**
- One member shall be a representative of a law enforcement agency appointed upon recommendation of the Commissioner, DCJS
- One member shall be a representative of prosecution services appointed upon recommendation of the Commissioner, DCJS

12 “appointed by the Governor”

- Two members shall be a scientist having experience in laboratory standards or quality assurance regulation & monitoring and appointed upon recommendation of the Commissioner of Health
- One member shall be a representative of the private criminal defense bar appointed upon recommendation of an organization of such bar
- One member shall be a representative of the public criminal defense bar appointed upon recommendation of an organization representing public defense services
- Two members-at-large, one appointed upon the nomination of the temporary president of the senate, and one of whom shall be appointed upon nomination of the speaker of the assembly
- One member who shall be an attorney or judge with a background in privacy issues or biomedical ethics and appointed upon recommendation of the chief judge of the court of appeals.

DNA Subcommittee - Members

The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, representing the disciplines of:

- molecular biology and be appointed upon the recommendation of the commissioner of the department of health
- population genetics and be appointed upon the recommendation of the commissioner of the department of health
- laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health
- forensic scientist and be appointed upon the recommendation of the commissioner of the department of health
- population genetics and be appointed upon the recommendation of the commissioner of criminal justice services
- forensic science and be appointed upon the recommendation of the commissioner of criminal justice services

NYS Accreditation Standards

(9 NYCRR 6190.3)

The Commission has determined that all forensic laboratories must meet the following standards to receive NYS accreditation:

(1) the laboratory must be accredited by ASCLD/LAB; or

(2) if the laboratory is performing only toxicology analysis, it must be accredited by either ASCLD/LAB or ABFT.

NYS DOH Laboratory Certification Program for “Clinical Laboratories”

- **§ 571. Definitions.** As used in this title:

1. "Clinical laboratory" means a facility for the microbiological, immunological, chemical, hematological, biophysical, cytological, pathological, genetic, or other examination of materials derived from the human body, or the purpose of obtaining information for the diagnosis, prevention, or treatment of disease or the assessment of a health condition **or for identification purposes**. Such examinations shall include procedures to determine, measure or otherwise describe the presence or absence of various substances, components or organisms in the human body. The term clinical laboratory shall not include any facility or activity specifically excluded by section five hundred seventy-nine of this title.

Requirement applies to commercial labs that do contract work for public agencies in NYS (but may also apply to programs such as NAMUS)

NYS DOH Regulation of Commercial DNA Labs

- **Forensic Identity**

This category is for laboratories that perform procedures for the determination of identity, or for the determination of parentage, for forensic purposes. At this time, the standards for this category are those based on the recommendations of the federal DNA Advisory Board and issued by the Director of the Federal Bureau of Investigation as the "Quality Assurance Standards for Forensic DNA Testing Laboratories" issued in October 1998 and the "Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories" issued in April 1999.

NY State Board of Medical Conduct

- . . . physician members shall be appointed by the commissioner at least eighty-five percent of whom shall be from among nominations submitted by the medical society of the state of New York, the New York state osteopathic society, the New York academy of medicine, county medical societies, statewide specialty societies recognized by the council of medical specialty societies, and the hospital association of New York state.
- Its lay members shall be appointed by the commissioner with the approval of the governor.
- The board of regents shall also appoint twenty percent of the members of the board. Not less than sixty-seven percent of the members appointed by the board of regents shall be physicians.
- . . . physician members appointed by the board of regents shall be from among nominations submitted by the medical society of the state of New York, the New York state osteopathic society, the New York academy of medicine, county medical societies, statewide medical societies recognized by the council of medical specialty societies, and the hospital association of New York state.

Commission on Forensic Science

Some Typical AGENDA items (from June 2, 2009 meeting)

5) New Business

- Outsourcing of firearm cases
- Discussion of Letter to the Editor of the Journal of Forensic Science entitled, “Sequential Unmasking: A Means of Minimizing Observer Effects in Forensic DNA Interpretation”, J. Forensic Sci., July 2008, Vol. 53, No. 4, pp 1006-1007, as requested by Mr. Barry Scheck and Mr. Peter Neufeld in letter dated May 4, 2009.
- Letter from Mr. Barry Scheck and Mr. Peter Neufeld dated May 8, 2009 re: Implementation of an Integrated Evidence Tracking System

6) Old Business

- Partial Match Policy
- Letter from FBI to Mr. Barry Scheck dated June 16, 2008 re: “Information Sharing between the Federal Bureau of Investigation and the Innocence Project”
- Chart of External Investigations
- Civil Rights Law §79-l
- NYCLAC Report: Evidence Handling in NYS Forensic Laboratories
- NAS report “Strengthening Forensic Science in the United States: A Path Forward
- Discussion of “Preliminary Report of the NYS Bar Association’s Task Force on Wrongful Convictions”

7) Laboratory Disclosure Items - Executive Session

Benefits

- The law and process has helped to guide the 22 state and local labs across New York to more uniform standards of practice.
- The NYS Commission on Forensic Science and NYS Department of Health officially recognize and adopt accreditation standards and DNA QA Standards put forth by the forensic community.
- The law and process has helped to raise awareness of legislative and other government officials to needs of forensic labs.
- Public meeting process assures a level of transparency.
- Executive agency oversight role (DCJS) helps to facilitate information exchange among laboratories and among various in-state TWGs and coordinated access to various specialized technical training activities for crime lab personnel.

Opportunities for Improvement

- Too many members of Commission with limited or no experience in forensic sciences or crime lab management
- Inordinate representation on the Commission by members from legal community
- There are no term limits for service on the Commission.
- Inordinate influence from DOH on DNA Subcommittee membership
- Law is not applicable to private practitioners
- Procedural delays can frustrate the implementation of technology or policy changes that may enhance the efficiency, effectiveness and economy of forensic processes

Troublesome Aspects

- Some Commission members appear to have less interest in sanctioning activities of labs as in publicly rebuking them (i.e., Coverdell provisions regarding independent investigating agency)
- Some Commission members do not seem to understand or fully appreciate accreditation process and quality management systems
- Some members use Commission as a platform for advocacy on personal or political causes or for access to information used for advocacy



Division of Criminal Justice Services

ENHANCING PUBLIC SAFETY AND IMPROVING CRIMINAL JUSTICE



David Paterson
Governor



Denise O'Donnell
Commissioner

- unity Resources
- R/Missing Child Alerts
- Victims Assistance
- n Trafficking
- et Safety
- ile Justice Reform
- lost Wanted
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- Meetings / Webcasts
- Releases
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- nal History Records
- nal Justice Directory
- Employment
- Resources
- ations
- gic Initiatives

- About
- DNA
- Missing Children
- Sex Offender Registry
- Statistics

About the Office of Forensic Services

The mission of the Office of Forensic Services is to:

- provide staff support to the New York State (NYS) Commission on Forensic Science and its DNA Subcommittee with regard to the accreditation of public forensic laboratories operating in the state;
- administer the State DNA database in cooperation with the New York State Police Forensic Investigation Center;
- facilitate specialized technical training and other activities that enhance the efficiency, effectiveness and reliability of forensic testing services in NYS; and,
- promote coordination and information sharing among the laboratories pursuant to Executive Law section 995-b(2)

Forensic Servi

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- About Forensic Se
- DNA Case Highlig
- DNA Databank
- DNA Databank St
- DNA FAQ
- Forensic Publicati
- Forensic Science
- Laboratory Accred
- Qualifying Offense
- Training Calendar
- Training / Funding

The Office of Forensic Services (OFS) was established to carry out the provisions of Article 49-B of the Executive Law (Section 995). The OFS is responsible for administrative oversight of the State ([NYS DNA Databank](#)) and for maintaining a [forensic laboratory accreditation](#) program for [public forensic laboratories](#) in New York State under the authority of the NYS Commission on Forensic Science. OFS functions include:

- providing staff support to the New York State Commission on Forensic Science and the DNA Subcommittee;
- monitoring forensic laboratory compliance with State accreditation standards;
- administration of the State's DNA database; and
- working with forensic laboratories, law enforcement and other criminal justice agencies to improve the quality and delivery of forensic services pursuant to Article 49-B.

OFS conduct forensic laboratory

www.criminaljustice.state.ny.us

(TWGs) of forensic experts from State ar

NYS Commission on Forensic Science

established by Article 49-B of the Executive Law. The Commission is empowered to develop minimum standards and a program of accreditation for all forensic laboratories in New York State. Accreditation of a forensic DNA laboratory is granted by the DNA Subcommittee. The Subcommittee also advises the Commission on any matter related to the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA analysis.

Technical Support to NYS Commission on Forensic Science. With general guidance from the NYS Crime Laboratory Advisory Committee (NYCLAC), technical working groups (TWGs) have been established for each forensic discipline and for quality control managers to promote uniform analytical protocols and quality assurance procedures, to identify technical training needs, and to provide technical consultation services to the Commission on Forensic Sciences in the evaluation of laboratories' performance on proficiency tests and conformance with accreditation standards.

Forensic Laboratory Compliance with New York State Accreditation Standards.

OFS monitors forensic laboratories' compliance with accreditation standards established by the Commission on Forensic Science. This involves review of all documentation between the laboratories and the [American Society of Crime Laboratory Directors/Laboratory Accreditation Board \(ASCLD/LAB\)](#).

DNA Subcommittee

- The DNA subcommittee shall assess and evaluate all DNA methodologies . . . and make reports and recommendations to the commission . . . addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results.
- The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology . . .
- The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing . . .
Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing.
- The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.

§ 995-b

- A laboratory director who knowingly operates a laboratory without obtaining the accreditation required by this article, or who, with the intent to mislead or deceive, misrepresents a material fact to the commission or DNA subcommittee, shall be subject to a civil penalty not to exceed seventy-five hundred dollars and such other penalties as are prescribed by the law.

NYS DNA Databank

