

# HOUSE BILL No. 6026

May 17, 2018, Introduced by Rep. Barrett and referred to the Committee on Judiciary.

A bill to create the forensic science commission; to prescribe its powers and duties; to regulate forensic laboratories, forensic science service providers, and forensic medical service providers; and to prescribe the powers and duties of certain state agencies and offices.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) This act shall be known and may be cited as the  
2 "forensic science commission act".

3           (2) As used in this act:

4           (a) "Commission" means the forensic science commission created  
5 in section 3.

6           (b) "Corrective action" means an action taken to control and  
7 correct issues of and address the consequences of nonconformance.

8           (c) "Forensic medical service provider" means a forensic

1 medicine agency or forensic medicine practitioner providing  
2 forensic medicine services.

3 (d) "Forensic medicine" means the application of medical  
4 knowledge and practices to the investigation of the medicolegal  
5 aspects of death, injury, neglect, or behavior.

6 (e) "Forensic medicine agency" means an entity, or an agency  
7 of this state, that employs forensic medicine practitioners and  
8 issues reports prepared by forensic medicine practitioners.

9 (f) "Forensic science" means the application of scientific or  
10 technical practices to the recognition, collection, analysis, and  
11 interpretation of evidence for criminal and civil law or regulatory  
12 issues.

13 (g) "Forensic science agency" means an entity, or an agency of  
14 this state, that employs forensic science practitioners and issues  
15 reports prepared by forensic science practitioners.

16 (h) "Forensic science service provider" means a forensic  
17 science agency or forensic science practitioner providing forensic  
18 science services.

19 (i) "Nonconformance" means a mistake in the course of the  
20 forensic science process that has affected the accuracy and  
21 reliability of the work of forensic science or forensic medical  
22 service providers.

23 Sec. 3. (1) The forensic science commission is created in the  
24 legislative council.

25 (2) The commission consists of the following 10 members  
26 appointed by the governor:

27 (a) One individual who has experience as a forensic scientist

1 in a supervisory role in the forensic science division of the  
2 department of state police.

3 (b) One physician who is board certified as a pathologist and  
4 has experience in forensic pathology.

5 (c) One individual who has experience as a forensic science  
6 practitioner.

7 (d) One professor from a university in this state who has  
8 research expertise in cognitive bias.

9 (e) One professor from a university in this state who has  
10 expertise in statistics.

11 (f) Three professors from a university in this state, each of  
12 whom has research expertise in a distinct field relevant to  
13 forensic science.

14 (g) One individual selected from a list of 10 individuals  
15 submitted by the Prosecuting Attorneys Association of Michigan.

16 (h) One individual selected from a list of 10 individuals  
17 submitted by the Criminal Defense Attorneys of Michigan.

18 (3) The members first appointed to the commission must be  
19 appointed within 90 days after the effective date of this act.

20 (4) Except as otherwise provided in this subsection, members  
21 of the commission serve for terms of 4 years or until a successor  
22 is appointed, whichever is later. Of the members first appointed,  
23 the 2 members appointed under subsection (1)(g) and (h) shall serve  
24 for 2 years, the 3 members appointed under subsection (1)(a), (b),  
25 and (c) shall serve for 3 years, and the 5 members appointed under  
26 subsection (1)(d), (e), and (f) shall serve for 4 years. The  
27 governor may reappoint an individual who has previously served as a

1 member of the commission.

2 (5) If a vacancy occurs on the commission, the governor shall  
3 make an appointment for the unexpired term in the same manner as  
4 the original appointment.

5 (6) The governor may remove a member of the commission for  
6 incompetence, dereliction of duty, malfeasance, misfeasance, or  
7 nonfeasance in office, or any other good cause.

8 (7) The first meeting of the commission shall be called not  
9 later than 180 days after the effective date of this act. At the  
10 first meeting, the commission shall elect from among its members a  
11 chairperson and other officers as it considers necessary or  
12 appropriate. After the first meeting, the commission shall meet at  
13 least quarterly, or more frequently if requested by 6 or more  
14 members.

15 (8) Six of the members of the commission constitute a quorum  
16 for the transaction of business at a meeting of the commission. At  
17 least 6 of the members present and serving are required for  
18 official action of the commission. A commission member may not vote  
19 by proxy.

20 (9) The business that the commission may perform shall be  
21 conducted at a public meeting of the commission held in compliance  
22 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

23 (10) A writing prepared, owned, used, in the possession of, or  
24 retained by the commission in the performance of an official  
25 function is subject to the freedom of information act, 1976 PA 442,  
26 MCL 15.231 to 15.246.

27 (11) Members of the commission shall serve without

1 compensation. However, members of the commission may be reimbursed  
2 for their actual and necessary expenses incurred in the performance  
3 of their official duties as members of the commission.

4 (12) The commission shall do all of the following:

5 (a) Establish and update policies and procedures to implement  
6 this act.

7 (b) Engage criminal justice stakeholders and coordinate  
8 resources within this state.

9 (c) On or before December 1 of each year, submit a report to  
10 the legislature evaluating the needs and performance of the  
11 forensic science division of the department of state police, the  
12 forensic science service providers, and the forensic medical  
13 service providers, and describing the work of the commission for  
14 that year.

15 (13) The legislative council shall provide the commission with  
16 suitable office space, staff, and necessary equipment.

17 Sec. 5. (1) The commission shall develop and implement a  
18 system for the reporting of professional negligence, misconduct, or  
19 nonconformance by or in a forensic laboratory that affects the  
20 integrity of the forensic science or forensic medicine results.

21 (2) If an employee of a forensic laboratory or any other  
22 individual has discovered, has suspicion, or has reason to believe  
23 an act of professional negligence, misconduct, or nonconformance  
24 has affected the integrity of forensic science or forensic medicine  
25 results, that employee or individual may report that act in the  
26 manner required by the commission.

27 (3) A forensic laboratory shall report an act of professional

1 negligence, misconduct, or nonconformance that has affected the  
2 integrity of the forensic science or forensic medicine results in  
3 the manner required by the commission.

4       Sec. 7. (1) The commission shall investigate the conduct and  
5 operation of a forensic science or forensic medicine method,  
6 technique, or analysis used in a criminal case if the commission  
7 receives a report from any source alleging professional negligence,  
8 misconduct, or nonconformance by or in a forensic laboratory and 6  
9 or more members of the commission concur in the commission  
10 investigating the conduct. An investigation under this subsection  
11 is limited to the allegations in the report.

12       (2) The commission may investigate a forensic laboratory or  
13 the use of a forensic discipline on its own initiative if 6 or more  
14 members of the commission concur that an investigation of the  
15 forensic laboratory or the use of a forensic discipline is  
16 necessary to advance the integrity and reliability of forensic  
17 science and forensic medicine in this state.

18       (3) The commission may examine or copy records or papers of  
19 any forensic laboratory relating to any requirement under this act  
20 while conducting an investigation under this section. A member of  
21 the commission may issue a subpoena requiring a person to produce  
22 any evidence pertaining to the question involved in the  
23 investigation being conducted by the commission.

24       (4) The commission may create a committee of the following  
25 members, who must not be individuals employed at the forensic  
26 laboratory subject to the investigation, to assist the commission  
27 in an investigation under this section:

1 (a) A member of the commission, who will serve as the  
2 chairperson of the committee.

3 (b) An equal number of individuals from each of the following  
4 groups:

5 (i) Criminal defense attorneys.

6 (ii) Prosecuting attorneys.

7 (iii) Law enforcement officers.

8 (c) An individual who is a forensic science practitioner with  
9 knowledge of the laboratory system under investigation or of a  
10 change in science that affects the integrity of the results of the  
11 forensic analysis.

12 (d) An individual who is an independent forensic science  
13 practitioner with subject matter expertise.

14 (e) An individual who is a statistician.

15 (f) An individual who is a researcher in the relevant  
16 scientific discipline.

17 (5) After the completion of an investigation under this  
18 section, the commission shall create a report that contains all of  
19 the following:

20 (a) A description of the allegation in the report received  
21 under subsection (1) or the basis for an investigation initiated by  
22 the commission under subsection (2).

23 (b) The name and location of the forensic laboratory and the  
24 name of any analyst that is the subject of the investigation.

25 (c) The disposition of the investigation.

26 (d) If corrective action was taken by the forensic laboratory,  
27 a description of that action.

1 (e) Findings regarding the integrity and reliability of the  
2 conduct or operation of a forensic science or forensic medicine  
3 method, technique, or analysis and recommendations for best  
4 practices.

5 (6) The commission shall make a report created under  
6 subsection (5) available to the public on the internet and shall  
7 submit that report to the supreme court, the standing committees of  
8 the senate and house of representatives concerning the judiciary,  
9 the attorney general, the Prosecuting Attorneys Association of  
10 Michigan, the appellate defender office, and the Criminal Defense  
11 Attorneys of Michigan.

12 (7) The commission shall develop and implement a defendant  
13 notification procedure for investigations conducted under this  
14 section that includes all of the following:

15 (a) Notification to institutional stakeholders, the defendant  
16 in the criminal case, and that defendant's attorney, if applicable,  
17 the disposition, if that disposition includes a finding that an act  
18 of professional negligence, misconduct, nonconformance, or a change  
19 in science affected the integrity of the results of a forensic  
20 analysis.

21 (b) A requirement that the defendant in the criminal case  
22 acknowledge receipt of the information described under this  
23 subsection and a method for the commission to receive the  
24 acknowledgment.

25 (c) A description of the technical issue and a written summary  
26 of the facts.

27 (d) A referral to relevant resources, including, but not



1 limited to, public defenders.

2 (e) A protocol for the commission to provide potentially  
3 affected defendants with information regarding relevant resources.

4 (8) The commission may create a committee of members from the  
5 following groups to assist the commission in developing the  
6 notification procedure under subsection (7):

7 (a) Forensic science division of the department of state  
8 police.

9 (b) Forensic medical service providers.

10 (c) Prosecutors.

11 (d) Defense attorneys.

12 (e) Judges.

13 Sec. 9. The commission may not issue a finding related to the  
14 guilt or innocence of a party in an underlying trial or any pending  
15 case involving conduct investigated by the commission.

16 Sec. 11. (1) Beginning January 1, 2020, a forensic laboratory  
17 in this state that conducts forensic analysis must be accredited by  
18 an accrediting body that requires conformance to the appropriate  
19 quality assurance standards required by the Federal Bureau of  
20 Investigation and to forensic-specific requirements, and that is a  
21 signatory to the International Laboratory Accreditation Cooperation  
22 Mutual Recognition Arrangements for Testing Laboratories.

23 (2) Beginning January 1, 2020, forensic science service  
24 providers that provide forensic science services in this state and  
25 forensic medical service providers that provide forensic medicine  
26 services in this state must be accredited by an accrediting body  
27 that requires conformance to forensic-specific requirements and

1 that is a signatory to the International Laboratory Accreditation  
2 Cooperation Mutual Recognition Arrangements for Testing  
3 Laboratories.

4 Enacting section 1. This act takes effect 90 days after the  
5 date it is enacted into law.