

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1102**

03/04/2013 Authored by Zerwas, Schoen, Pugh, Mullery and Paymar
The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to public safety; modifying certain provisions regarding the Forensic
1.3 Laboratory Advisory Board; appropriating money; amending Minnesota Statutes
1.4 2012, section 299C.156.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 299C.156, is amended to read:

1.7 **299C.156 FORENSIC LABORATORY ADVISORY BOARD.**

1.8 Subdivision 1. **Membership.** (a) The Forensic Laboratory Advisory Board consists
1.9 of the following:

1.10 (1) the superintendent of the Bureau of Criminal Apprehension or the
1.11 superintendent's designee;

1.12 (2) the commissioner of public safety or the commissioner's designee;

1.13 (3) the commissioner of corrections or the commissioner's designee;

1.14 (4) an individual with expertise in the field of forensic science, selected by the
1.15 governor;

1.16 (5) an individual with expertise in the field of forensic science, selected by the
1.17 attorney general;

1.18 (6) a faculty member of the University of Minnesota, selected by the president of
1.19 the university;

1.20 (7) the state public defender or a designee;

1.21 (8) a prosecutor, selected by the Minnesota County Attorneys Association;

1.22 (9) a sheriff, selected by the Minnesota Sheriffs Association;

1.23 (10) a police chief, selected by the Minnesota Chiefs of Police Association;

(11) a judge or court administrator, selected by the chief justice of the Supreme Court; and

(12) a criminal defense attorney, selected by the Minnesota State Bar Association.

(b) The board shall select a chair from among its members.

(c) Board members serve four-year terms and may be reappointed.

(d) The board may employ staff necessary to carry out its duties.

Subd. 2. **Duties.** The board ~~may~~ shall:

(1) develop and implement a reporting system through which laboratories, ~~facilities,~~
~~or entities~~ that conduct forensic analyses report professional negligence or misconduct that substantially affects the integrity of the forensic results committed by employees or contractors;

(2) ~~encourage~~ require all laboratories, ~~facilities,~~ ~~or entities~~ that conduct forensic analyses to report professional negligence or misconduct that substantially affects the integrity of the forensic results committed by employees or contractors to the board;

(3) require all laboratories to investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a laboratory, ~~facility,~~ ~~or entity;~~ and

(4) ~~encourage~~ require all forensic laboratories, ~~facilities,~~ ~~and entities~~ that conduct forensic analyses to become accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or other ~~appropriate~~ accrediting body that requires conformance to standards for testing laboratories established by the International Organization for Standardization (ISO/IEC 17025) and develop and implement a process for ~~those entities~~ laboratories to report ~~their~~ accreditation status to the board; and

(5) develop and maintain a clearinghouse for information, resources, and best practices on forensic analysis and forensic laboratories.

Subd. 3. **Investigations.** (a) ~~An~~ A forensic laboratory investigation under subdivision 2, clause (3);₂

(1) ~~may~~ must include the preparation of a written report that identifies and describes the methods and procedures used to identify:

(i) (1) the alleged negligence or misconduct;

(ii) (2) whether negligence or misconduct occurred; and

(iii) (3) any corrective action required of the laboratory, ~~facility,~~ ~~or entity;~~ and

(2) ~~may include one or more;~~

(~~+~~) (4) retrospective reexaminations of other forensic analyses conducted by the laboratory, ~~facility, or entity~~ that may involve the same kind of negligence or misconduct; and

(~~ii~~) (5) follow-up evaluations of the laboratory, ~~facility, or entity~~ to review:

(~~A~~) (i) the implementation of any corrective action required under clause (~~1~~)(~~iii~~); ~~or (3), if any; and~~

(~~B~~) (ii) the conclusion of any retrospective reexamination under clause (~~2~~)(~~i~~) (4), if any.

(b) ~~The costs of an investigation under this section must be borne by the laboratory, facility, or entity being investigated. A report prepared under paragraph (a) must be submitted to the board in a form and manner provided by the board no later than ten days from the date the report is completed by the laboratory.~~

(c) A person or entity that manages, operates, or otherwise controls a forensic laboratory shall not retaliate or take adverse action against an employee or anyone else who, in good faith, alleges professional negligence or misconduct under subdivision 2.

Subd. 3a. **Accreditation of laboratories.** (a) As provided in subdivision 2, clause (4), a forensic laboratory shall report annually to the board, on a form and in a manner provided by the board:

(1) the laboratory's accreditation date or that the laboratory is working toward accreditation in a timely manner; and

(2) once accreditation is attained, the laboratory's maintenance of accreditation with an accrediting organization.

(b) The board shall maintain a record of accredited laboratories and laboratories working toward accreditation and make that record readily available to the public.

Subd. 3b. **Immunity.** Members, committees, subcommittees, task forces, delegates, and agents of the board are immune from liability in any civil, administrative, or criminal action for any act, omission, transaction, or publication in the execution of, or relating to, the board's duties under this section.

Subd. 4. **Delegation of duties.** ~~The board by contract may delegate the duties described in subdivision 2, clauses (1) and (3), to any person or entity that the board determines to be qualified to assume those duties.~~

Subd. 5. ~~Reviews and reports are public~~ **Data access and classification.** The board shall make all investigation reports completed under subdivision 3, paragraph (a), clause (1), available to the public. (a) The board is subject to the Government Data Practices Act, chapter 13, and must protect from unlawful disclosure data classified as not public. The board may access data of any classification necessary to conduct an

4.1 investigation as provided in this section except for data classified as confidential under
4.2 section 13.82, subdivision 7.

4.3 (b) Data, notes, and preliminary drafts of reports relating to an investigation
4.4 completed under subdivision 3, paragraph (a), clause (1), are protected nonpublic and
4.5 confidential until the final report of the investigation has been released or the investigation
4.6 is closed, such as no longer being actively pursued. Upon release of a final investigative
4.7 report, data relating to an investigation are public except data otherwise classified as not
4.8 public. A report completed under subdivision 3, paragraph (a), clause (1), in a subsequent
4.9 civil or criminal proceeding is not prima facie evidence of the information or findings
4.10 contained in the report.

4.11 (c) Data on an individual supplying information for an investigation that could
4.12 reasonably be used to determine the individual's identity are private data on individuals
4.13 if the information supplied was needed for an investigation and would not have been
4.14 provided to the person performing an investigation without an assurance to the individual
4.15 that the individual's identity would remain private.

4.16 (d) If, before releasing a report, the board provides a person with data relating to
4.17 the investigation for the purpose of review and verification of the data, the person must
4.18 protect the data from unlawful disclosure or be subject to the penalties and liabilities
4.19 provided in sections 13.08 and 13.09.

4.20 ~~Subd. 6. **Reports to legislature.** By January 15 of each year, the board shall submit~~
4.21 ~~any report prepared under subdivision 3, paragraph (a), clause (1), during the preceding~~
4.22 ~~calendar year to the governor and the legislature.~~

4.23 ~~Subd. 7. **Forensic analysis processing time period guidelines Report.** (a) By July~~
4.24 ~~1, 2007, the board shall recommend forensic analysis processing time period guidelines~~
4.25 ~~applicable to the Bureau of Criminal Apprehension and other laboratories, facilities, and~~
4.26 ~~entities that conduct forensic analyses. When adopting and recommending these guidelines~~
4.27 ~~and when making other related decisions, the board shall consider the goals and priorities~~
4.28 ~~identified by the presidential DNA initiative. The board shall consider the feasibility of~~
4.29 ~~the Bureau of Criminal Apprehension completing the processing of forensic evidence~~
4.30 ~~submitted to it by sheriffs, chiefs of police, or state or local corrections authorities.~~

4.31 ~~(b) The bureau shall provide information to the board in the time, form, and~~
4.32 ~~manner determined by the board and keep it informed of the most up-to-date data on~~
4.33 ~~the actual forensic analysis processing turnaround time periods. By January 15 of each~~
4.34 ~~year, the board shall report to the legislature on these issues governor and the house of~~
4.35 ~~representatives and senate committees having jurisdiction over criminal justice as to~~
4.36 ~~any report prepared under subdivision 3 and the status of services provided by forensic~~

laboratories, including the recommendations made by the board to improve turnaround times forensic science services.

~~Subd. 8. **Forensic evidence processing deadline.** The board may recommend reasonable standards and deadlines for the Bureau of Criminal Apprehension to test and catalog forensic evidence samples relating to alleged crimes committed, including DNA analysis, in their control and possession.~~

Subd. 9. **Office space.** The commissioner of public safety ~~may~~ shall provide adequate office space and administrative services to the board.

Subd. 10. **Expenses.** Section 15.059 applies to the board.

Subd. 11. ~~**Definition**~~ **Definitions.** As used in this section, "forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.:

(1) "forensic analysis" means the application of scientific knowledge and methodology by an individual who:

(i) has or should have specialized training and utilizes standardized procedures to conduct examinations on items of evidence;

(ii) forms an opinion or conclusion based on the outcome of the procedure under item (i) and the individual's training, experience, or both, and writes a report including the individual's conclusions; and

(iii) has the potential to offer expert testimony of the individual's analysis in a court of law; and

(2) "forensic laboratory" means a publicly financed laboratory within the state that conducts forensic analysis on items of evidence that are part of or have the potential to be used in a criminal investigation.

Subd. 12. **Expiration.** Notwithstanding section 15.059, the Forensic Laboratory Advisory Board shall not expire.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **APPROPRIATION.**

\$..... in fiscal year 2014 and \$..... in fiscal year 2015 are appropriated from the general fund to the Forensic Laboratory Advisory Board for the purposes of section 1.