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Council of the District of Columbia
Committee on the Judiciary & Public Safety
Councilmember Charles Allen, Chair

Comments for Public Hearing on B24-0838, the “Restoring Trust and Credibility to Forensic Sciences Act of 2022”



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Good [morning].

My name is Peter Stout. I am the head nerd of the Houston Forensic Science Center, which is the crime laboratory that serves Houston. We are often framed in the same narrative with the DC lab as experiments in forensic laboratory independence. HFSC took over responsibility for forensic science operations in April of 2014 from the notoriously troubled HPD crime laboratory. I can offer some perspective of the arduous, painful and aching long path it is to attempt to remediate a “failed” forensic laboratory.

Rather than discuss the structure and history of HFSC, if you will indulge me a cautionary wish list I would pose to help your laboratory on its path. I will then offer some of the framework I think has been essential for HFSC and lastly I have a couple suggestions for the language of the bill.

I am happy to answer any questions during or after. Anyone with any experience with me knows, I rant and I can waste the rest of your day if you let me. I am at your disposal to provide you any information that may be helpful to you. I do not have any financial relationship with the DC lab or the City of DC. HFSC does not do any case work for DC or have any relation with the City of DC. I have spoken with numerous stakeholders of the criminal justice system in DC.

To me, my interest is to see forensic laboratories anywhere excel and succeed. I am a survivor of too many violent tragedies and had family murdered. I am a survivor of sexual violence. My family was at least complicit in a wrongful conviction. In short, my life has forever been altered by failings in forensic science. To me forensic science is a cornerstone of how those touched by the criminal justice system can find justice.

My wish list for decision makers thinking about forensic labs.

- Understand that the arc of remediating a laboratory is measured in years and decades. Laboratories are a repository of legacy results in the justice system and it is routine and will *always* be a part of a lab to be revisiting years old cases. Like a supernova of a distant star, it often takes years for destruction from a laboratory issue to be visible. It is easy to view these issues as reflecting current practice when in fact the issue represents the state years ago. But this makes rebuilding trust that much more difficult.
- Understand in forensics, no news is bad news. The indicator of a healthy laboratory is that there are routinely disclosures, and failed controls. Long stretches of silence are a sign of something

unhealthy. If no system control fails, you are not controlling the system tightly enough. You wish to avoid mass disclosure events, but a steady pace of disclosures that affect small numbers of cases is what a healthy lab looks like.

- Lastly, understand forensics for all the attention and publicity it gets is a vanishingly small industry. There are roughly 400 publicly funded crime labs in the country. Most have less than 30 people. The only disciplines that can be outsourced are DNA and toxicology and even there only a small portion of the work product can be outsourced. I say that because every laboratory in the nation struggles to find experienced qualified people. It takes years for an analyst to become proficient and productive in a specific lab and jurisdiction. These analysts take a very real personal risk with every report they sign out. Whenever one fails, their career is at risk to be destroyed and cases they worked for the past years are in jeopardy so much so, you may as well add them to the backlog. These people are necessarily expensive and there is no AI or robot that can substitute. For as long as any of us are doing this, labor will be 75-80% of any lab's budget and if you do not plan around the multi-year process of replacing personnel, you will never get out of the hole. Please adjust your understanding of what it costs to run a lab up by about an additional zero.

HFSC has not accomplished what it has by itself. We have not magically fixed issues. We still have plenty. As I have contemplated what the conditions in Texas are that have allowed HFSC to succeed these are the things I keep coming back to.

- Texas Forensic Science Commission. This was formed in 2005 so has been in place now approaching 20 years. TFSC has become an essential backstop to conversations about best practices and an even more essential forum that all players have come to trust as a public arbiter of issues. It has not always been this and has had its own growing pains. I would very much encourage the revised review board to spend as much time as it can learning from TFSC and how they interact with all the various stakeholders.
- Texas Code of Criminal Procedure 39.14 also known as the Michael Morton Act. Enacted in response to the wrongful conviction of Michael Morton the component of this law that expands Brady requirements and makes the obligation a proactive disclosure obligation, I find a key help to HFSC. While it may seem on its face to be an onerous requirement, my experience has been that it actually makes the life of the laboratory easier. This is coupled with a disciplinary decision in Texas called the Schultz decision in which a prosecutor was disciplined for not disclosing information properly. While I think most prosecutors take Brady obligations pretty seriously, what I have seen over the years in many places in the country is that disclosure is often treated as a tactical decision. This leaves the lab often sandwiched between various tactical interests in cases and vulnerable to then being perceived as biased to a particular view. When the laboratory is free to release information more completely and without questions of discovery orders, this makes the role of the laboratory much more clear and actually easier.
- Partnership with prosecution, law enforcement and defense as a PARTNER not subsidiary. I find myself discussing the concept of "independence" by trying to shift the frame to the concept of parity. We have had our challenges of the laboratory being framed as independent as being heard by stakeholders as "unaccountable". Clearly something that makes many uncomfortable. All the stakeholders in the system need to view the lab as an equal with its own unique role in the system and responsibilities. But this relationship cannot be that the lab just "does its own

thing". The lab is and should be accountable to ALL the stakeholders including media and citizens. HFSC only works because of the support of HPD and Harris County DA and the city of Houston and the defense community and TFSC. We are all interdependent and the whole system fails if any part fails. This relationship is so important that everyone needs to make the time to maintain the relationship.

Reading through the language of B24-0838, I think you are creating a framework of analogs of TFSC and Michael Morton Act. Please resist the very natural temptation to view passing this bill as solving everything. It will help in setting the framework for a healthy working relationship of the lab with other stakeholders, but that is an ongoing, constant maintenance effort. That maintenance is a permanent condition.

I am NOT a lawyer or legislator, I am not in a position to comment on all of the nuance of the legislation. Two areas present to me as places to consider revision:

- On p9 line 234 a new (b-2) "...the laboratory shall make efforts to ensure that extraneous. . ." This is a noble intention and one that I think we certainly strive for. WE still have plenty of places we have been unable to work this out to the degree we would like because of complexities of information on evidence packaging materials and the ongoing tendency of investigators to seek out analysts contact information and insist on contacting them directly. I can easily see this change as being concerning for stakeholders who may read this as license to be obstructionist. While I am certain this is not the intent or what will actually happen. It may help this bill to indicate here that it is explicitly in partnership with submitting agencies and users of laboratory results.
- On page 14 line 342 in the makeup of the Advisory and Review Board. As the laboratory does toxicology analysis, and DUI/DUID is usually one of the most litigated types of analysis nationwide, the Board should include a named position for a toxicologist. I would recommend keeping the 11 seat structure by replacing the human factor/statistical analysis seat with a toxicologist. I would then add under (i) "The laboratory shall provide funding..." a "(4) statistical and human factor consultation". My experience over the years has been that statistical expertise is essential but is not routinely needed. Providing for the expectation of statistical consultation is a good way to have this available when needed.

Thank you for your time. I hope the perspective of what we have seen in the 8 years of our adventure in Houston is helpful. I will offer as I have offered all the stakeholders I have talked with, HFSC is available and willing to help wherever, whenever and however we can. We are extraordinarily privileged as a laboratory and I view that then as an obligation to provide assistance anyplace we can.

I am happy to answer any questions.

Links to some potentially helpful articles about or involving HFSC:

[Crime lab in Texas reinvents how evidence is gathered - CSMonitor.com](#) cover story last spring about HFSC

[Why a High-Ranking FBI Attorney Is Pushing 'Unbelievable' Junk Science on Guns \(thedailybeast.com\)](https://www.thedailybeast.com)

HFSC quoted about research in firearms analysis

[Blind testing in firearms: Preliminary results from a blind quality control program - Neuman - 2022 - Journal of Forensic Sciences - Wiley Online Library](#) the data that Radley Balko cites.

[13 Investigates: Houston cases impacted by DNA analyst's 'false testimony' grows to 2,100 - ABC13](#)

[Houston](#) A very recent example of how a years old case that was not even an HFSC case can result in major consequences for the lab. Also, an example of how media now respond to HFSC compared to the old HPD lab.

[News – Houston Forensics Science Center \(houstonforensicsscience.org\)](https://www.houstonforensicsscience.org) a comprehensive collection of media stories involving HFSC.