

Testimony of Tiffany Roy
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Committee on the Judiciary and Public Safety
Public Hearing on the
Restoring Trust and Credibility to Forensic Sciences Amendment Act of 2022
June 23, 2022

Dear members of the Committee on the Judiciary and Public Safety,

Thank you for the opportunity to testify on the Restoring Trust and Credibility to Forensic Sciences Amendment Act of 2022.

For more than sixteen years, I have studied, taught, and specialized in forensic DNA interpretation, the effects of human factors in forensic science, and model practices for laboratories and expert witnesses in criminal cases. I provide counsel to prosecutors, defense attorneys, and private clients at the federal and state level in the United States and internationally. I hold degrees in law and science and have testified as an expert witness many times.

In addition to the remarks I shared during this year's Performance Oversight Hearing for D.C.'s Department of Forensic Science, the oral testimony I provided on June 23, 2022, and the written annotations to the proposed legislation I forwarded to Councilmember Allen's staff, I write to highlight a few key recommendations for improving this bill.

1. Hire a scientist with lab management experience.

During the hearing, councilmembers inquired about the most important qualifications for the Director of the lab. Peter Stout explained that laboratories are fantastically complex businesses and wickedly difficult to run. The District of Columbia should require that the person in charge of the department have (1) a strong educational background in science, (2) expertise in practice standards, and (3) experience managing a large institution. A scientist who has run a lab other than a forensic lab (such as a medical or pharmaceutical laboratory) would be preferable to a non-scientist specializing in law or business management.

2. Improve transparency.

"I would urge you all to try to aim for the highest level of transparency and error. We need to normalize it in forensics. We need to have the lawyers understand that human people are doing this work, and we expect them to make mistakes. And when we don't see evidence that they're investigating errors and that they're documenting their errors, that's when we should be concerned."

Improving transparency is critically important to avoiding a recurrence of [the problems that led to the lab's loss of accreditation](#). In regular intervals, the laboratory should be required to publish online: training manuals, quality manual standard operating procedures, internal validation studies, proficiency tests, internal and external audit results, corrective actions, incident reports, quality investigations, and complaints. Other laboratories are doing this, and we should be demanding this level of transparency from all of our forensic laboratories.

Disclosure of all potentially discoverable information to prosecutors and defense attorneys should be automatic. Peter Stout spoke to Texas' **Michael Morton Act**, which creates a positive obligation on the part of the state to proactively disclose materials that are exculpatory, mitigating, or potentially impeaching, protecting the rights of the accused under the Due Process Clause and *Brady v. Maryland*. As a result, the laboratory releases all information to the parties without a discovery order, unlike other jurisdictions (including D.C.), where the release of information becomes a tactical part of the case and the lab gets sandwiched between all of the various tactics of the defense and prosecution. Making early and complete disclosure an expectation for all parties makes it a lot easier for the lab. The District should adopt similar discovery reforms. Measures have previously been introduced by Councilmembers Cheh, Bonds, Mendelson, Grosso, and Silverman.¹ And, Councilmember McDuffie convened a working group to examine these issues in 2016.² However, each effort has expired in Committee.

3. Authorize expert depositions.

We propose adding a new D.C. Code § 23-2001 that reads:

- (a) At any time after the filing of an indictment or information in a criminal case, any party may take a discovery deposition upon oral examination of any expert witness who may be called by the other party to testify at trial.**
- (b) Nothing in this section shall be construed as limiting discovery depositions by agreement between the parties.**

Allowing attorneys to take the deposition of expert witnesses in advance of trial would help prosecutors and defense attorneys discover individual errors and systematic problems before they reach a jury. Oral depositions are permitted in criminal cases without leave of court in Florida, Indiana, Iowa, Missouri, New Hampshire, North Dakota, and Vermont.³

¹ B21-0189, The Police and Criminal Discovery Reform Amendment Act of 2015.

² The Working Group on Discovery included representatives from the Office of the United States Attorney for the District of Columbia, the Office of the Attorney General for the District of Columbia, and the Public Defender Service for the District of Columbia. It also included a member of the civil bar and a member of the defense bar (Patrice Sulton, who now serves as Executive Director of DC Justice Lab).

³ Fla. R. Crim. P. Rule 3.220 (all cases, all witnesses); IND. CODE § 35-37-4-3 (2021) (all cases, all witnesses); Iowa R. Crim. P. 2.13 (all cases, all witnesses); MO. REV. STAT. § 545.415 (2021) (prosecutors in all cases, all witnesses); N.H. REV. STAT. § 517:13 (2015) (experts in felony cases); N.D. R. Crim. P. Rule 15 (all cases, all witnesses); VT. R. Crim. P. 15 (felony cases, all witnesses).

4. Give the oversight body adequate authority to act.

During the hearing, witnesses disagreed about the appropriate role of an independent oversight body. Some advocated for substantial authority to hold the laboratory accountable, while others cautioned about the important distinction between an oversight role and a managerial one. While the advisory board should not be tasked with dictating to the Department how to do its job in every case, it is important that it be able to take action when serious concerns are raised. In those instances, the board must be able to investigate, compel documents independently, and to have some real oversight and regulatory ability.

For these reasons, we express our support for the Restoring Trust and Credibility to Forensic Sciences Amendment Act of 2022 and urge the Council to amend the bill as described herein.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

DC Justice Lab is a team of law and policy experts researching, organizing, and advocating for large-scale changes to the District's criminal legal system. We develop smarter safety solutions that are evidence-driven, community-rooted, and racially just. We aim to fully transform the District's approach to public safety and make it a national leader in justice reform.