



2018 SEP 18 AM 10:50  
OFFICE OF THE  
MAYOR

MURIEL BOWSER  
MAYOR

SEP 18 2018

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W., Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council is the "Department of Forensic Sciences Science Advisory Board Rulemaking Approval Resolution of 2018." The purpose of the resolution is to approve the issuance by the Department of Forensic Sciences (DFS) of rules applicable to the Science Advisory Board (SAB), specifically to define the roles and responsibilities of the SAB and establish the reporting requirements and complaint process for DFS.

The Proposed Rulemaking was promulgated pursuant to the authority set forth in the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.01 et seq.) (2012 Repl. and 2016 Supp.), and Mayor's Order 2017-132.


DFS's mission is to provide high-quality, timely, accurate, and reliable forensic science services with the use of best practices and best available technology, a focus on unbiased science and transparency, and the goal of enhancing public safety. The SAB's primary function is to review all reports of allegations of professional negligence, misconduct, or misidentification or other testing errors that occurred in the provision of forensic science services at DFS. The SAB is composed of five scientists with experience in scientific research and methodology, who have published in peer-reviewed scientific journals, and who are not currently employed by DFS or by a law enforcement laboratory or agency, including at least one statistician and one member with expertise in quality assurance. Having a fully functional SAB supports the DFS's mission and lends credence to the independence of the laboratory.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

  
Chairman Phil Mendelson  
at the request of the Mayor

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6 A PROPOSED RESOLUTION  
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10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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14 To approve proposed rules adopted by the Department of Forensic Sciences to define the  
15 roles and responsibilities of the Department of Forensic Sciences' Science  
16 Advisory Board and establish the reporting requirements and complaint process  
17 for the Department of Forensic Sciences.  
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19 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That  
20 this resolution may be cited as the "Department of Forensic Sciences Science Advisory  
21 Board Rulemaking Approval Resolution of 2018".

22 Sec. 2. Pursuant to section 16(b) of the Department of Forensic Sciences  
23 Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official  
24 Code § 5-1501.15(b)), the Council approves the proposed rulemaking adopted by the  
25 Department of Forensic Sciences and published in the D.C. Register on October 6, 2017,  
26 at 64 DCR 009898, adding a new Chapter 40 (Department of Forensic Sciences) to Title  
27 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal  
28 Regulations.

29 Sec. 3. Transmittal.

30 The Council shall transmit a copy of this resolution, upon its adoption, to the  
31 Mayor, the Director of the Department of Forensic Sciences, and the Administrator of the  
32 Office of Documents and Administrative Issuances.

33           **Sec. 4. Fiscal impact.**

34           The Council adopts the fiscal impact statement of the Chief Financial Officer as  
35 the fiscal impact statement required by section 4a of the General Legislative Procedures  
36 Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-  
37 301.47a).

38           **Sec. 5. Effective date.**

39           This resolution shall take effect immediately.

**DEPARTMENT OF FORENSIC SCIENCES**

**NOTICE OF PROPOSED RULEMAKING**

Pursuant to the authority set forth in the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011(D.C. Law 19-18; D.C. Official Code § 5-1501.01 *et seq.*) (2012 Repl. and 2016 Supp.) (“DFS Establishment Act”), and Mayor’s Order 2017-132, the Director of the Department of Forensic Sciences hereby gives notice under Section 15 of the DFS Establishment Act of her intent to adopt a new Chapter 40 (Department of Forensic Sciences) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This proposed rulemaking defines the roles and responsibilities of the Department of Forensic Sciences’ Science Advisory Board and establishes the reporting requirements and complaint process for the Department of Forensic Sciences.

Pursuant to section 16 of the DFS Establishment Act (D.C. Law 19-18; D.C. Official Code § 5-1501.15 *et seq.*) (2012 Repl. and 2016 Supp.), these proposed rules will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the proposed rules.

**A new Chapter 40, DEPARTMENT OF FORENSIC SCIENCES, is added to Title 28, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, of the DCMR, to read as follows:**

**CHAPTER 40            DEPARTMENT OF FORENSIC SCIENCES**

<b>Sec.</b>	
<b>4000</b>	<b>General Provisions</b>
<b>4001</b>	<b>Annual Report</b>
<b>4002</b>	<b>Complaint Process</b>
<b>4003</b>	<b>Functions of the Science Advisory Board</b>
<b>4004</b>	<b>Duties of the Science Advisory Board</b>
<b>4005</b>	<b>Appointment to the Science Advisory Board</b>
<b>4099</b>	<b>Definitions</b>
<b>4000</b>	<b>GENERAL PROVISIONS</b>
4000.1	The Department of Forensic Sciences (Department) was established pursuant to section 3 of the Department of Forensic Sciences Establishment Act of 2011 (DFS Establishment Act), effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.02).
4000.2	The Department’s mission is to provide high-quality, timely, accurate, and reliable forensic science services with the use of best practices and best available

technology, a focus on unbiased science and transparency, and the goal of enhancing public safety.

4000.3 The Department's Science Advisory Board (Board) was established pursuant to section 12 of the DFS Establishment Act (D.C. Official Code § 5-1501.11) to perform the functions set out in section 13 of the DFS Establishment Act (D.C. Official Code § 5-1501.12).

4000.4 An obligation of a Department employee under this chapter may be delegated to another Department employee with the approval of the Director. A Department employee is any person employed by the Department, including contractors, consultants, volunteers, and interns.

#### **4001 ANNUAL REPORT**

4001.1 The Director shall prepare an annual report on the activities of the Department as required by section 5(a)(5) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(a)(5)) and shall provide the report to the Mayor, the Council of the District of Columbia, and the Board. The report shall also be published on the Department's website.

4001.2 The report shall include descriptions of strategic developments, operational developments, outreach developments, and planned future actions for the Department.

#### **4002 COMPLAINT PROCESS**

4002.1 A complaint that involves an allegation of professional negligence, misconduct, or erroneous identification of a person or other testing error that occurred in the provision of forensic science services at the Department may be made by any individual or entity.

- 4002.2
- (a) A complaint shall be filed with the Department using the Department's Complaint/Inquiry Form, which is available on the Open Government page of the Department's website ([dfs.dc.gov](http://dfs.dc.gov)).
  - (b) The form shall be completed by the person making the complaint or by a person acting on behalf of the person making the complaint.
  - (c) If the Department receives an oral complaint, the Department shall request that the complainant file the complaint using the Department's Complaint/Inquiry Form. If the complainant refuses to do so, the Department shall reduce the oral complaint to writing by filling out the Department's Complaint/Inquiry Form.
  - (d) If the Department receives a written complaint that is not provided on the Department's Complaint/Inquiry Form, the Department shall transfer the complaint to the Department's Complaint/Inquiry Form.

4002.3 Upon receipt of a complaint by the Department, the following actions shall be taken:

- (a) The Department shall forward the complaint to the Deputy Director and General Counsel.
- (b) The Department shall acknowledge the complaint within two (2) business days of receipt, if contact information is provided for the complainant;
- (c) The Deputy Director and General Counsel shall, within five (5) business days after the complaint is received, complete an investigation of the complaint and determine whether further action is necessary.
- (d) If the complaint requires further action, the Department shall address the complaint through a Quality Corrective Action Report (QCAR), a Quality Preventative Action Report (QPAR), an employee investigation, or any other means deemed appropriate by the Deputy Director and General Counsel.
- (e)
  - (1) If a complaint results in a QCAR, the Department shall notify the Board within five (5) business days. The notification shall include a copy of the complaint, a written description of the investigation of the investigation of the complaint, and a copy of the QCAR.
  - (2) The Department is not required to send to the Board a complaint that does not result in a QCAR.
- (f) At each Board meeting, the Director shall report to the Board on all completed investigations. With respect to each completed investigation, the report shall include a summary of the underlying complaint conclusions from the investigation, and recommendations for any further action, if any.

**4003 MISSION OF THE SCIENCE ADVISORY BOARD; MEETINGS**

4003.1 The Science Advisory Board (Board) shall be responsible for assisting and advising the Department on providing high-quality, timely, accurate, and reliable forensic science services.

4003.2 Pursuant to section 13 of the DFS Establishment Act (D.C. Official Code § 5-1501.12), the Board is responsible for:

- (a) Reviewing reports of allegations of professional negligence, misconduct, or misidentification or other testing error that occurred in the provision of forensic science services at the Department;

- (b) Periodically reviewing certain Department program standards, protocols, manuals, and procedures;
  - (c) Reviewing certain matters and making recommendations to the Director regarding such matters; and
  - (d) Advising the Director or the Mayor and Council, when it considers appropriate, on matters relating to the Department or forensic science.
- 4003.3
- (a) The Board shall hold at least four (4) regular meetings per year, as required by section 12(f) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(f)).
  - (b) Additional meetings shall be held by the order of the Chairperson, or at the written request of the Director or of three (3) Board members, in accordance with section 12(f) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(f)).
  - (c) An additional meeting may be held for any reason.
- 4003.4
- The presence of a majority of the voting members of the Board shall constitute a quorum.
- 4003.5
- (a) The Board may create subcommittees as needed to assist in the performance of its duties.
  - (b) Subcommittees may be formed at the recommendation of the Director of the Department or the Chairperson of the Board.
  - (c) Each subcommittee shall elect a subcommittee leader, whose responsibility shall be to liaise between the Board and the subcommittee.
  - (d) Subcommittees are not subject to District Open Meetings Act requirements unless a quorum of members of the Board participates in the meeting or teleconference.
  - (e) The Board shall review each recommendation made by a subcommittee, and upon review of the recommendation, may adopt (in whole or in part, and with or without amendments) or reject the recommendation.
- 4003.6
- (a) The Board may appoint an advisor(s) to provide specialized or technical assistance if the Board determines that such expertise is appropriate to perform its functions. The advisor's service shall be voluntary and unpaid.
  - (b) Any member of the Board may request that an advisor be appointed. The advisor must be approved by a majority vote of the Board before the advisor is appointed.

- (c) The advisor must be qualified to provide the requested assistance. An advisor is deemed qualified if a majority of the Board deems the advisor qualified to provide assistance in the requested field.
- 4003.7
  - (a) Board members may communicate with each other on matters relating to the Department outside of Board meetings.
  - (b) Board members may communicate in person, via teleconference, by electronic communication, or in any other fashion as deemed appropriate by the Board.
  - (c) The Board must comply with the District Open Meetings Act if a quorum of its members communicates on matters relating to the Department in person or via teleconference outside of a Board meeting.
  - (d) Written correspondence as contemplated in this section is not subject to District Open Meetings Act requirements, but shall be subject to the District's freedom of information act.
- 4003.8
  - (a) Minutes shall be prepared for each meeting of the Board, as required by the Open Meetings Act.
  - (b) Draft minutes shall be made available to the public three (3) business days after the conclusion of a meeting. Final minutes approved by the Board shall be made available within seven (7) business days after the meeting at which the minutes were approved. The Department or Board may redact the minutes where permitted by District or federal law.

**4004 SPECIFIC DUTIES OF THE SCIENTIFIC ADVISORY BOARD**

- 4004.1 If the Board receives a QCAR from the Department pursuant to section 4002.3(d), the following actions shall be taken:
  - (a) The Board shall complete its review of the QCAR within twenty (20) business days after it is received by the Board; provided, that if the Board determines that it needs additional time to complete its review, it may request that the Director approve such additional time. The Board's request shall specify the additional time requested and the reason for the need for additional time, and the Director shall not unreasonably withhold approval of the request.
  - (b) As part of its review, the Board shall determine whether it will make any recommendations to the Department on the QCAR or the matters that gave rise to the QCAR. The Board shall provide its recommendations or advice, if any, to the Department within the twenty (20) day period



described in paragraph (a) of this subsection (or such longer period as may be approved by the Director pursuant to paragraph (a) of this subsection).

- (c) The Director shall review all recommendations made by the Board. If the Board provides recommendations to the Director within the twenty (20) day period (or such longer period of time as may be approved by the Director pursuant to paragraph (b) of this subsection), the Director may direct the QCAR to be modified to reflect the Board's recommendations.
- (d) The Board may provide recommendations on the complaint or the Department's investigation into the complaint at any point.
- (e) The Board is not required to comment on a complaint.
- (f) The Department shall keep a record of all QCARs and complaints submitted to the Board. The record shall be available to the Board upon request.

4004.2

- (a) The Board shall review and make recommendations, as necessary, to the Director on the topics enumerated in section 13(4) of the DFS Establishment Act (D.C. Official Code § 5-1501.12(4)).
- (b) Individual Board members may also make recommendations to the Director, but such recommendations shall be considered to be made in the Board member's individual capacity not on behalf of the Board.
- (c) The Director shall review each recommendation of the Board and shall determine whether the recommendation will be adopted (in whole or in part, and with or without amendments), rejected, or further investigated by the Department.
- (d) At the first quarterly Board meeting that occurs at least ninety (90) days after the Board transmits a recommendation to the Director, the Director shall discuss the recommendation and the outcome of his or her review.

4004.3

- (a) The Board shall review program standards and protocols related to the Department's operations.
- (b) In performing such reviews, the Board may make recommendations regarding new scientific programs, protocols, and methods of testing; plans for the implementation of new program standards or protocols, continuing existing programs, improving existing programs, and eliminating unnecessary programs; and qualification standards and training requirements for scientific staff.
- (c) Upon request by the Director, the Board shall review specific program standards or protocols.

- (d) The Board shall review the program standards and protocols requested by the Director within ninety (90) days after the Director's request. The Board may make written recommendations to the Director based on the Board's review.
- 4004.4 (a) At least once every three (3) years, the Board shall review all manuals and procedures referenced in section 5(b) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(b)) to determine whether modification of the manuals or procedures is desirable. In performing its review, the Board shall conduct a review of relevant scientific literature.
- (b) The chairperson of the Board shall be responsible for ensuring the Board performs such reviews.
- (c) At the first Board meeting of each three (3) year review period, and at the first Board meeting for the second and third year of each three (3) year review period, the Board shall determine what manuals and procedures it will review during the year.
- (d) At the end of each year in a review period, the Board shall hold an extra meeting specifically to discuss the results of its review and any modifications to the manuals or procedures that the Board may propose based on its review. The Board shall not be required to hold an extra meeting in a review year to discuss its review and modifications if it submits to the Director a report describing its review and recommendations (if any) no later than three (3) months before the end of the review year.
- (e) If the Department makes a substantial change to a manual or procedure during a three (3) year review period, the Department shall promptly notify the Board of the substantial change. For the purposes of this provision, a substantial change is a significant modification, expansion, or reduction in the nature or scope of a manual or procedure
- (f) This section does not prohibit the Board from reviewing any of the manuals and procedures referenced in Section 5(b) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(b)) multiple times within a three (3) year period.
- (g) The first three (3) year review period shall be from March 2016 to March 2019. Every three (3) years following the first three (3) year review period shall be deemed a review period.
- 4004.5 (a) The Board shall advise the Mayor and Council of the District of Columbia on matters relating to the Department or forensic science where the Board deems it appropriate.

- (b) The Board may advise the Mayor and Council either in writing or orally.
- (c) The Board, prior to submitting a written report to the Mayor or Council, shall deliver a copy of a draft of the report to the Director who shall have forty-five (45) days to review, comment on, or respond to the draft report.

**4005 MEMBERSHIP ON THE SCIENCE ADVISORY BOARD; ELECTION OF CHAIRPERSON**

4005.1 As provided in section 12(a) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(a)), the Board is composed of nine (9) voting members, as well as the Director and Deputy Director of the Department as *ex officio*, non-voting members.

4005.2 The Board shall elect a chairperson from among its voting members, who shall serve for a term of one (1) year.

(a) A chairperson may be re-elected by the Board to serve consecutive one (1) year terms.

(b) No chairperson shall be permitted to serve for more than three (3) terms.

**4099 DEFINITIONS**

4099.1 For the purposes of this chapter, the following terms shall have the following meanings:

**Chairperson** – the Chairperson of the Board.

**DFS Establishment Act** – the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.01 *et seq.*)

**Director** – the Director of the Department of Forensic Sciences.

**Misconduct** – an unacceptable or improper behavior that leads to a failure to meet expected standards of practice.

**Open Meetings Act** – the Open Meetings Act, effective March 9, 2016 (D.C. Law 18-350; D.C. Official Code §§ 2-571 - 2-580).

**Professional negligence** – the breach of professional duty through a violation of the standards of care.

**QCAR** – a Quality Corrective Action Report, which stems from a recommendation to correct a prior action on any function that has an analytical value that affected laboratory or work value.

**QPAR** – a Quality Preventative Action Report, which stems from a recommendation for improvement on any function that has an analytical value that affects laboratory or work value.

**Testing error** –a technical result or interpretation that is incorrect and which may have resulted in inaccurate conclusions being reported.

All persons interested in commenting on this proposed rulemaking action may submit comments in writing to Rashee Raj, Department of Forensic Sciences, 401 E Street, SW, 4th Floor, Washington, D.C. 20024 or by email to [Rashee.Raj@dc.gov](mailto:Rashee.Raj@dc.gov). Comments must be received no later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the above address.

Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** August 30, 2018

**SUBJECT:** Fiscal Impact Statement – Department of Forensic Sciences Science  
Advisory Board Rulemaking Approval Resolution of 2018

**REFERENCE:** Draft Proposed Resolution as shared with the Office of Revenue  
Analysis on July 24, 2018

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**Conclusion**

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution.

**Background**

The Department of Forensic Sciences (DFS) leads the District's collection, examination, and reporting activities for physical evidence from criminal investigations and testing of toxins, organisms, and other public health threats. DFS can perform these activities for both District and Federal agencies. An established Science Advisory Board<sup>1</sup> provides guidance and feedback to DFS on its practices and complaint reviews.<sup>2</sup>

The proposed resolution approves rules that detail DFS' annual reporting requirements, the composition and role of the Science Advisory Board, and the process DFS will follow to accept and respond to complaints leveled against the agency.

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<sup>1</sup> Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.12).

<sup>2</sup> If the DFS director issues a Quality Corrective Action Report in response to a complaint, that must be submitted to the Science Advisory Board which can choose to do a further review.

The Honorable Phil Mendelson

FIS: "Department of Forensic Sciences Science Advisory Board Rulemaking Approval Resolution of 2018,"  
Draft Proposed Resolution as shared with the Office of Revenue Analysis on July 24, 2018

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution. The Science Advisory Board is established, meets four times annually, and receives administrative and technical support from DFS. DFS has already developed an online complaint form and can meet the prescribed timeframes for addressing complaints. DFS also produces an annual report. DFS can implement the underlying regulations within its existing budget.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

**MEMORANDUM**

**TO:** Alana Intriери  
Executive Director  
Office of Policy and Legislative Affairs

**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** July 23, 2018

**SUBJECT:** Legal Sufficiency Review of Approval Resolution, the "Department of Forensic Sciences' Science Advisory Board Rulemaking Approval Resolution of 2018"  
(AR-17-215D)

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**This is to Certify that** this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

  
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Janet M. Robins