

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 351

(Senator Kelley, *et al.*)

Finance

Health and Government Operations and Judiciary

Forensic Laboratories - Standards and Oversight

This bill requires the Secretary of Health and Mental Hygiene to license, set standards and requirements for, and inspect forensic laboratories in Maryland. Licensure is required after December 31, 2011 in order for a forensic laboratory to offer or perform forensic analysis in Maryland.

Fiscal Summary

State Effect: Department of Health and Mental Hygiene (DHMH) general fund expenditures would increase by \$50,800 in FY 2008 to staff the advisory committee. Future years reflect additional staff, inflation, and the cost of licensure. Department of State Police (DSP) federal fund expenditures would increase by \$4,500 annually beginning in FY 2012 as the department pays licensure fees from existing federal funds. Increase in general fund revenues of \$18,000 beginning in FY 2012 due to collection of licensure fees. Potential minimal additional increase in general fund revenues beginning in FY 2012 due to the bill's misdemeanor and civil penalty provisions. Potential increase in federal fund revenues in DHMH beginning in FY 2012.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	\$0	\$0	\$0	\$0	\$18,000
FF Revenue	0	0	0	0	-
GF Expenditure	50,800	63,200	190,600	265,500	268,000
FF Expenditure	0	0	0	0	4,500
Net Effect	(\$50,800)	(\$63,200)	(\$190,600)	(\$265,500)	(\$254,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Increase in expenditures for local forensic laboratories that would be required to be licensed beginning in FY 2012. Potential increase in grant awards from

the federal Coverdell program for local licensed forensic laboratories. Potential minimal increase in revenues beginning in FY 2012 due to the bill's misdemeanor penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary:

Forensic Laboratory Regulatory Requirements and Definitions

DHMH regulations must contain the standards and requirements to assure that forensic laboratories provide safe, reliable, and accurate services. The regulations must • require the laboratory director to establish and administer an ongoing quality assurance program using standards acceptable to the Secretary; • require the laboratory director to retain all case files for at least 10 years; • establish qualifications for forensic laboratory personnel; • establish procedures for verifying the background and education of forensic laboratory personnel; • require the Secretary of Health and Mental Hygiene to charge fees that may not exceed the actual direct and indirect costs to DHMH to carry out the bill; and • establish any additional standards the Secretary considers necessary to assure that the laboratories provide accurate and reliable services.

A forensic laboratory is a facility, entity, or site that offers or performs forensic analysis. This includes a laboratory owned or operated by the State, a county or municipal corporation in the State, or another governmental entity. A forensic laboratory does not include a forensic laboratory operated by the federal government or a laboratory licensed or certified by the Department of Agriculture.

Forensic analysis is a medical, chemical, toxicologic, firearms, or other expert examination or test performed on physical evidence, including DNA evidence, to determine the connection of the evidence to a criminal act. It does not include • a test of a specimen of breath or blood to determine alcohol concentration or controlled dangerous substance content; • forensic information technology; • a presumptive test performed at a crime scene; • a presumptive test to determine compliance with a term or condition of community supervision or parole and conducted by or under contract with a county department of corrections or the Department of Public Safety and Correctional Services; or • an expert examination or test conducted principally for scientific research, medical practice, civil or administrative litigation, or any other purpose unrelated to determining the connection of physical evidence to a criminal act.

The Secretary must adopt regulations that define satisfactory proficiency testing performance and set standards and requirements that a program must meet. DHMH must review a forensic laboratory's proficiency testing program.

Regulations implementing the bill, including licensing standards, must be adopted by the Secretary by December 31, 2010.

Laboratory Licensure, Inspections, and Compliance

A license expires on the date specified by the Secretary. However, the length of term for a license is not specified under the bill.

The Secretary must inspect each forensic laboratory applying for licensure and inspect each licensed laboratory, although no time period is specified for future inspections. The Secretary may conduct a complaint investigation and a validation survey of an accredited forensic laboratory.

If the Secretary receives a final report from an approved accreditation organization that the forensic laboratory is in substantial compliance with the organization's standards, DHMH must accept the report as evidence that the laboratory has met the State's licensure requirements and must grant the license.

The Secretary must issue a letter of exception to a laboratory that only performs limited forensic analysis and meets exception requirements adopted under regulations. The Secretary may grant an out-of-state forensic laboratory a waiver from licensure requirements with conditions.

The Secretary may deny a license to an applicant or suspend, revoke, or limit a license or the authority of a licensee to offer or perform tests if the laboratory (or associated staff) does not meet the established standards and requirements.

If the Secretary finds that a licensed forensic laboratory no longer meets the bill's requirements, the Secretary may revoke or suspend the license. If a deficiency exists, the Secretary may impose a directed plan of correction, regularly inspect the forensic laboratory to assure compliance with the plan, or limit the testing authorized by the license. If the Secretary finds that a forensic laboratory provided erroneous or questionable test results, the Secretary may order the laboratory to provide written notification to the person or agency that ordered the tests, the Office of the Public Defender or counsel of record, and the State's Attorney. A State's Attorney who receives notification of erroneous or questionable test results must notify the victim of the criminal act or the victim's representative.

A forensic laboratory that does not comply with the Secretary's order to take the above actions is subject to a civil penalty of up to \$1,000 per day of noncompliance after the deadline for compliance stated in the Secretary's order, up to a maximum penalty of \$50,000. Prior to the Secretary denying, suspending, or revoking a license or imposing a civil penalty, the Secretary must give the applicant for licensure or licensee notice and an opportunity for a hearing.

Forensic laboratory deficiency statements and plans of correction are public documents. A forensic laboratory must make discrepancy logs, contamination records, and test results available to the public within 30 days of a written request. Except for the deficiency statements and plans of correction, the proceedings, records, and files of an organization or State agency responsible for assuring compliance with the bill must be confidential and not discoverable or admissible in evidence in a civil or criminal action.

Laboratory Employee Notification and Protections

A forensic laboratory employee may disclose information to the Secretary that the employee believes evidences a violation of standards and requirements for forensic laboratories in Maryland. A forensic laboratory may not discriminate or retaliate against an employee for disclosing information or agreeing to cooperate with a laboratory investigation.

The Secretary must develop through regulation a document informing forensic laboratory employees of the procedures to report instances of noncompliance or other violations. The document must be distributed to forensic laboratories in Maryland and posted in a conspicuous place.

A laboratory employee who has been discriminated or retaliated against may initiate an action and, on prevailing, is entitled to reinstatement, reimbursement for lost wages, work benefits lost as a result of the unlawful acts of the employing laboratory, and reasonable attorney's fees and associated costs. No action may be brought more than two years after the discrimination or retaliation that is the basis for the action.

Criminal Penalties

A person that violates any provision of the bill is guilty of a misdemeanor and on conviction is subject to a maximum \$100 fine for the first offense and a maximum \$500 fine for each subsequent conviction for a violation of the same provision. Each day on which a violation occurs is a separate violation.

Forensic Laboratory Advisory Committee

The Governor must establish a Forensic Laboratory Advisory Committee to advise the Secretary of Health and Mental Hygiene on implementing the bill's provisions. DHMH must staff the committee. The Governor must make initial committee appointments by December 1, 2008.

Current Law: State law does not require the licensure, inspection, or regulation of forensic laboratories in Maryland. However, statute does require the licensure, inspection, and regulation of public health and clinical medical laboratories by the Secretary of Health and Mental Hygiene. These duties are performed by the Office of Health Care Quality (OHCQ.)

If the Secretary receives a final report from an approved accreditation organization that a health care facility is in substantial compliance with the organization's standards, DHMH must accept the report as evidence that the laboratory has met the State's licensure requirements and must grant the license.

An "accredited organization" is a private entity that inspects and surveys health care facilities based on nationally recognized and developed standards. A "health care facility" includes a hospital, an HMO, a freestanding ambulatory care facility, an assisted living facility, a laboratory, a home health agency, a residential treatment center, and a comprehensive rehabilitation facility.

Background: DHMH advises that 12 forensic laboratories operated by governmental entities in Maryland meet the definition under the bill. These laboratories include the Office of the Chief Medical Examiner within DHMH, three laboratories within DSP, and eight laboratories in the larger jurisdictions in Maryland.

Laboratory Oversight Report

In 2006, DSP studied the potential of establishing a forensic laboratory oversight body at the General Assembly's request. DSP recommended creating a Maryland Forensic Sciences Advisory Board as an independent external investigative body to monitor forensic laboratories. This board would fulfill a federal requirement for an external investigative entity that could investigate allegations of serious laboratory negligence or misconduct. The board, upon receiving an allegation of misconduct, would determine if an investigation is warranted. If the board found that an investigation into an allegation of misconduct was necessary, the board would submit its recommendation to the Attorney General's Office or State Prosecutor's Office to perform the investigation. To

conduct the investigation, each of the offices would need to be so empowered by Executive Order or State law.

Forensic Science Improvement Grants

The federal Paul Coverdell Forensic Science Improvement Grants Program awards grants to states and units of local government to improve the quality and timeliness of forensic science and medical examiner services and/or to eliminate backlogs in the analysis of forensic evidence, including controlled substances, firearms examination, forensic pathology, latent prints, questioned documents, toxicology, and trace evidence. States may apply for formula and competitive grants. Units of local government may apply for competitive grants.

To request a grant, an applicant must submit specific certifications, including:

- a certification that the state or unit of local government has developed a plan to improve the quality and timeliness of forensic science or medical examiner services in the state and how the grant will carry out that plan; and
- a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the state that will receive a portion of the grant.

The bill would satisfy the grant program's requirement for establishing a government entity and process that could independently investigate forensic laboratories.

The federal law establishing the program sets a minimum total amount an eligible state can receive for formula grants. For federal fiscal year 2006, the minimum formula grant to an eligible state is \$91,015. Grants are generally limited to a 12-month period. Approximately 75% of the grants are allocated among eligible states based on population. The estimated minimum amount for Maryland under the formula grant solicitation due May 16, 2006, was \$191,009. In addition, Maryland or local governments could qualify for up to \$95,000 in competitive grants.

A state or unit of local government that receives a grant must use the funds for one or more of three purposes: ● to carry out a substantial part of a program to improve the quality and timeliness of forensic science or medical examiner services in the state; ● to

eliminate a backlog in the analysis of forensic science evidence; and • to train, assist, and employ forensic laboratory personnel, as needed, to eliminate the backlog.

DSP received approximately \$54,500 in federal funds from that award cycle. DSP advises that a total of \$192,000 in federal funds was awarded to Maryland under the Coverdell grant program. Presumably, most of these funds were awarded to local government laboratories. The program's oversight requirement was met by establishing the Internal Affairs Section as the independent external investigative entity to conduct investigations into allegations of serious negligence or misconduct by laboratory employees and/or forensic contractors. However, this solution would not be sufficient for the rest of the State, DSP advises.

State Revenues:

General Fund Revenues to the State: General fund revenues would increase by \$18,000 in fiscal 2012 as an estimated 12 forensic laboratories would each pay a \$1,500 annual licensure fee.

General fund revenues could also increase minimally beginning in fiscal 2012 under the bill's monetary misdemeanor penalty provisions for those cases heard in the District Court. General fund revenues could further increase minimally beginning in fiscal 2012 under the bill's civil penalty provision. Since the bill does not specify where collected civil penalties would be deposited, it is assumed for the purposes of this analysis that the civil penalties would be deposited into the general fund.

DHMH: DHMH would be eligible to receive federal grants under the Coverdell program beginning in fiscal 2012.

State Expenditures:

DHMH: DHMH general fund expenditures could increase by an estimated \$50,798 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of an administrator to staff the advisory committee. It includes a salary, fringe benefits, one-time start-up costs, advisory committee travel costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$43,785
Operating Expenses	7,013
Total FY 2008 State Expenditures	\$50,798

Future year expenditures reflect: • in fiscal 2010, OHCQ hiring one full-time laboratory scientist surveyor who would begin working six months into the fiscal year to receive specific training and one part-time laboratory scientist supervisor who would begin working at the start of the fiscal year; • in fiscal 2011, OHCQ hiring one part-time computer analyst; • a contract for a forensic specialist consultant beginning in fiscal 2010 to help write the regulations and answer lab surveyors' questions as they begin the inspections; • full salaries with 4.5% annual increases and 3% employee turnover; • 1% annual increases in ongoing operating expenses; and • payment of licensure fees beginning in fiscal 2012.

Existing OHCQ surveyors could not be used to regulate forensic laboratories because OHCQ's Laboratories Unit is understaffed by three surveyors. OHCQ as a whole is understaffed by 67 surveyors.

DSP: DSP currently receives federal Coverdell grants because its Internal Affairs Section provides the necessary oversight. These federal grants could be used to pay for the department's licensure and certification expenditures and are assumed so for the purposes of this analysis. Accordingly, DSP federal fund expenditures would increase by \$4,500 annually beginning in fiscal 2012 which reflects the department paying a \$1,500 license fee for each of its three forensic laboratories.

Local Fiscal Effect: Expenditures for local forensic laboratories would increase beginning in fiscal 2012 as they are required to be licensed.

Municipal and county forensic laboratories' revenues could increase beginning in FY 2012 as they would become eligible for the Coverdell grant program, to the extent they are not already eligible.

Revenues could increase minimally beginning in fiscal 2012 under the bill's monetary misdemeanor penalty provisions for those cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: HB 879 (Delegate Anderson, *et al.*) – Health and Government Operations.

Information Source(s): Department of State Police; *Report on Laboratory Oversight Body*, Maryland State Police Forensic Sciences Division, October 2006; Department of Health and Mental Hygiene; Commission on Criminal Sentencing Policy; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2007
mll/jr Revised - Senate Third Reader - March 21, 2007
Revised - Enrolled Bill - April 27, 2007

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510