

AN ACT
D.C. ACT 19-89

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 24, 2011

*Codification
District of
Columbia
Official Code*

2001 Edition

2011 Fall
Supp.

To establish a Department of Forensic Sciences, its powers and duties, to specify the qualifications, term, and duties of the Director, to require testing and certification of the accuracy of equipment used to test the alcohol content of breath, to transfer the functions, authority, personnel, and funds regarding forensic science services from the Metropolitan Police Department to the Department of Forensic Sciences, to provide a procedure for the reporting and investigation of professional negligence, misconduct, or misidentification or other testing error, to require accreditation, to establish a Science Advisory Board and a Stakeholder Council, and to make various agency documents public documents.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Department of Forensic Sciences Establishment Act of 2011”.

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) “Board” means the Science Advisory Board established by section 12.
- (2) “Department” means the Department of Forensic Sciences established by

section 3.

- (3) “Director” means the Director of the Department of Forensic Sciences.

(4) “Forensic science services” means forensic science research, analysis, and related services, including the examination of evidence, the interpretation of results, and the provision of expert testimony, such as for the purposes of a criminal investigation or civil action.

- (5) “MPD” means the Metropolitan Police Department.

Sec. 3. Establishment of the Department of Forensic Sciences.

(a) There is established as a subordinate agency in the executive branch of the government of the District of Columbia, the Department of Forensic Sciences.

(b) The mission of the Department shall be to provide high-quality, timely, accurate,

and reliable forensic science services with:

- (1) The use of best practices and best available technology;
- (2) A focus on unbiased science and transparency; and
- (3) The goal of enhancing public safety.

Sec. 4. Director; appointment, qualifications, compensation, term.

(a) The Department shall be headed by a Director who shall be appointed by the Mayor, with the advice and consent of the Council, pursuant to section 2(a) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)).

(b) The Director shall be knowledgeable about forensic science services and experienced in the rigors of scientific analysis. The Director shall have:

- (1) Graduated from an accredited college or university with a masters or doctoral degree in an applicable area of science;
- (2) Demonstrated training and experience in scientific research and methodology;
- (3) Demonstrated management and administrative skills;
- (4) Demonstrated comprehensive knowledge of forensic sciences;
- (5) A minimum of 6 years experience in scientific research, forensic sciences, or a combination thereof; and
- (6) A minimum of 4 years experience in directing or supervising both scientific and administrative staff in a forensic science, medical, or research setting.

(c) The Mayor shall fix the compensation of the Director pursuant to title X-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-610.51 *et seq.*).

(d) The Director shall be appointed for a 4-year term.

(e) If a vacancy in the position of the Director occurs as a consequence of any reason, the Mayor shall appoint a successor for a new term, in the same manner provided by this act.

Sec. 5. Duties of the Director.

(a) The Director shall:

- (1) Be responsible for the management and operation of the Department;
- (2) Ensure that accreditation is obtained in compliance with section 7(d);
- (3) Ensure that accreditation is maintained in compliance with section 7(d);
- (4) Report to the Board any allegation of professional negligence, misconduct, or misidentification or other testing error that occurs in the provision of forensic science services within the Department;

(5) Prepare an annual report on the activities of the Department, which shall be submitted to the Mayor and the Council and made available to the public in February of each year;

(6) Be responsible for the preparation of minutes of meetings of the Board; and

(7) Perform such other acts as may be appropriate to accomplish the declared mission of the Department.

(b) The Director shall ensure that the Department promulgates training manuals and standard operating procedures, including:

(1) Protocols for forensic testing, examination, and analysis;

(2) Procedures for handling case-specific information to minimize bias;

(3) Standards for the maintenance and calibration of all laboratory equipment and materials, including standards for maintaining logs documenting the maintenance and calibration performed;

(4) Procedures for estimations of uncertainty;

(5) Procedures for monitoring the quality of forensic analysis;

(6) Procedures for regular internal and external audits;

(7) A system through which reports of allegations of negligence, misconduct, or misidentification or other testing error are processed;

(8) Proficiency testing protocols;

(9) Internal validation studies;

(10) Standards for reporting results, including model laboratory reports and guidelines for the presentation of results in court; and

(11) Qualification standards for analyst positions within the Department.

(c)(1) All documents promulgated pursuant to subsection (b) of this section shall be:

(A) Provided by the Director to the Board prior to adoption; and

(B) Made available by the Director to the Board when requested for periodic review.

(2) The Director shall consider the recommendations of the Board. To the extent that the Director rejects the recommendations of the Board, the Director shall explain his or her reasons to the Board.

(d) The Director may receive, administer, and expend all funds, including public and private grants, and other funding assistance available to perform his or her duties and to accomplish the agency mission.

Sec. 6. Personnel.

(a)(1) In addition to a Director, the Department shall have a Deputy Director, and other professional and support personnel as necessary and appropriate to carry out the agency's mission.

(2) The Deputy Director shall have a masters or doctoral degree in an applicable area of science or forensic analysis and a minimum of 2 years experience in forensic sciences.

Sec. 7. Powers and duties of the Department.

(a) The Department shall provide forensic science services for the District of Columbia, which may include:

- (1) Forensic alcohol;
- (2) Computer forensics;
- (3) Analysis of controlled substances;
- (4) DNA/biological material analysis;
- (5) Fingerprint comparison;
- (6) Firearms and tool mark examination;
- (7) Forensic photography;
- (8) Analysis of questioned documents;
- (9) Trace evidence analysis; and
- (10) Emerging fields in forensic science.

(b) The Department shall provide these forensic science services upon request to:

- (1) District agencies, including:
 - (A) The MPD;
 - (B) The Office of the Chief Medical Examiner;
 - (C) The Office of the Attorney General;
 - (D) The Department of Health; and
 - (E) The Fire and Emergency Medical Services Department; and
- (2) To the United States Attorney's Office for the District of Columbia.

(c) The Department also may provide forensic science services to other law enforcement or investigative agencies.

(d)(1) The Department shall be accredited by an appropriate, bona fide national accrediting organization.

(2) Department accreditation shall be obtained before January 1, 2014.

(3) Any forensic unit not included in the Department's accreditation, and any forensic unit subsequently added to the Department, shall be accredited as soon as possible.

(e) The Department shall provide for the security and protection of evidence and samples in its custody.

(f) The Department shall provide training regarding the collection and preservation of forensic evidence to:

- (1) Law enforcement agencies;
- (2) Hospitals; and
- (3) Other entities or individuals that collect evidence for testing or examination

by the Department.

(g) The Department shall, to the extent feasible, complete cases submitted by MPD in the priority order requested by the Chief of Police.

(h)(1) The Department shall make available all records pertaining to the analysis conducted in a particular case to the agency that requested the analysis.

(2) If the records pertain to a criminal prosecution, the Department shall provide the prosecutor with 2 identical sets of records, one for the government and one for the defense.

(3) For the purposes of this subsection, the term "records" shall include:

- (A) Lab notes and bench notes;
- (B) Worksheets, graphs, and charts;
- (C) Photographs;
- (D) Raw data;
- (E) Reports;
- (F) Statistical information used to calculate probabilities or uncertainty;
- (G) Any logs related to the equipment or materials used in testing;
- (H) Any written communications or records of oral communications

regarding a specific individual case between the Department and any other agency or between the Department and any person not employed by the Department, except as otherwise prohibited by law; and

(I) Proficiency test results for individual examiners involved in the analysis.

(i) The following documents shall be public documents:

- (1) All accreditation documents;
- (2) All of the documents listed in section 5(b);
- (3) Any investigative report prepared pursuant to section 11(c);
- (4) Minutes of meetings of the Board; and
- (5) Any other documents as required by law to be public.

Sec. 8. Testing of breath alcohol equipment.

(a) The Department shall test and certify, at least once every 3 months or as recommended by the manufacturer, whichever is more frequent, the accuracy of all equipment used by any District law enforcement personnel to test the alcohol content of breath.

(b) Only equipment certified by the Department to be accurate shall be used by a District law enforcement agency to test the alcohol content of breath.

(c) The Director may delegate by memorandum of agreement to the Office of the Chief Medical Examiner the responsibility for testing breath alcohol equipment and some or all of the responsibility for providing forensic science services pertaining to forensic alcohol.

Sec. 9. Transfer of personnel, records, functions, and authority.

(a) The Mayor shall provide for the orderly transfer to the Department all of the authority, responsibilities, duties, assets, and functions of MPD pertaining to forensic science services, including:

- (1) Forensic alcohol;
- (2) Computer forensics;
- (3) Analysis of controlled substances;
- (4) DNA/biological material analysis;
- (5) Fingerprint comparison;
- (6) Firearms and tool mark examination;
- (7) Forensic photography;
- (8) Analysis of questioned documents;
- (9) Trace evidence analysis;
- (10) Personnel and authority for vacant and filled positions;
- (11) Property;
- (12) Records; and

(13) All unexpended balances of appropriations, allocations, and other funds available or to be made available to the MPD for the purposes of forensic science services.

(b) The transfer set forth in subsection (a) of this section shall occur no later than October 1, 2012.

Sec. 10. Reexamination by independent experts.

The facilities, equipment, or supplies of the Department shall not be used by an independent expert employed by the accused or his or her attorney for any reexamination of materials previously examined by the Department.

Sec. 11. Allegations of negligence, misconduct, or misidentification or other testing error.

(a) Any allegation of professional negligence, misconduct, or misidentification or other testing error that occurs in the provision of forensic science services at the Department shall be:

- (1) Reported immediately to the Board; and
- (2) Investigated promptly by the Director, in accordance with the Department's quality assurance program and the requirements of the Department's accreditation.

(b)(1) An allegation that the Director determines is credible and substantial and that may substantially affect the integrity of the results of forensic analysis conducted by the Department shall be investigated by an evaluator, external to the Department, who shall be selected by the Director and the investigation shall be initiated within 30 business days after the Director becomes aware of the allegation.

(2) An investigation pursuant to this subsection shall be in addition to the requirements of subsection (a) of this section.

(c) An investigation pursuant to subsection (a) or (b) of this section shall culminate in the preparation of a written report that shall identify and describe:

(1) The alleged negligence, misconduct, or misidentification or other testing error;

(2) Whether the negligence, misconduct, or misidentification or other testing error occurred; and

(3) All corrective actions required of the Department.

(d) All investigative reports prepared in accordance with this section shall be submitted promptly to the Board.

Sec. 12. Science Advisory Board.

(a) There is established a Science Advisory Board, which shall consist of 9 voting members to be appointed pursuant to section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), as follows:

(1) Five scientists with experience in scientific research and methodology, who have published in peer-reviewed scientific journals, including:

(A) One statistician; and

(B) One with expertise in quality assurance; and

(2) Four forensic scientists not currently employed by the Department or by a law enforcement laboratory or agency that provides forensic science services to the District.

(b) The Director and Deputy Director shall be ex officio, non-voting members of the Board.

(c)(1) Except as provided in paragraph (2) of this subsection, each voting member shall be appointed for a 3-year term. Whenever a vacancy occurs in an unexpired term, the Mayor shall appoint a replacement to fill that unexpired term in the same manner as the original appointment.

(2) The initial term of each member shall be staggered so that 3 members are appointed for one year, 3 members are appointed for 2 years, and 3 members are appointed for 3 years. The members to serve the one-year term, 2-year term, and 3-year term shall be determined by the Mayor at the time of nomination.

(3) The initial terms shall begin on the date a majority of the voting members have been sworn in, which shall become the anniversary date for all subsequent appointments.

(d) The Board shall elect a chairperson from among its voting members.

(e) The presence of a majority of the voting members holding office shall constitute a quorum.

(f) The Board shall hold no fewer than 4 regular meetings per year. The chairperson of the Board shall fix the time and place of each meeting. Additional meetings may be called

either by the chairperson or upon the written request of the Director or of any 3 members of the Board.

(g) Minutes shall be prepared for each meeting. A transcript or detailed summary shall meet this requirement.

Sec. 13. Functions of the Board.

The Board shall:

(1) Review all 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;

(2) Periodically review the program standards and protocols related to Department operations;

(3) At least once every 3 years, conduct a review of relevant scientific literature to determine whether modification of any of the manuals and procedures referenced in section 5(b) is desirable;

(4) Review and make recommendations as necessary to the Director concerning:
(A) The quality and timeliness of the forensic science services at the Department;

(B) New scientific programs, protocols, methods of testing, and forensic technologies;

(C) Plans for:

(i) The implementation of new programs;

(ii) Sustaining existing programs;

(iii) Improving programs, where possible; and

(iv) The elimination of programs no longer needed;

(D) Qualification standards for analyst positions within the Department;

and

(E) Any other matters related to the scientific operation of the Department; and

(5) Advise the Director or the Mayor and Council, when it considers appropriate, on matters relating to the Department or forensic science.

Sec. 14. Stakeholder Council.

(a) There is established a Stakeholder Council, which shall consist of the following members:

(1) The Deputy Mayor for Public Safety and Justice;

(2) The Chief of MPD;

(3) The Chief Medical Examiner;

(4) The Attorney General;

(5) The United States Attorney for the District of Columbia;
(6) The Director of the Public Defender Service for the District of Columbia;
(7) The Federal Public Defender for the District of Columbia;
(8) The Director of the Department of Health;
(9) The Chief of the Fire and Emergency Medical Services Department;
(10) The Director of the Department; and
(11) The head of any other government agency that regularly utilizes the forensic science services of the Department.

(b) The chairperson of the Judiciary Committee of the Council of the District of Columbia shall be an ex officio, non-voting member of the Stakeholder Council.

(c) The members listed in subsection (a) of this section shall not be represented by a designee.

(d) The chairperson of the Stakeholder Council shall be the Deputy Mayor for Public Safety and Justice. In his or her absence, the Attorney General shall be the chairperson.

(e) The Stakeholder Council shall meet no fewer than 2 times per year. The chairperson shall fix the time and place of the meetings.

Sec. 15. Functions of the Stakeholder Council.

The Stakeholder Council shall:

(1) Identify issues or concerns regarding:

(A) The Department's delivery of forensic science services to agencies, including the timeliness of service; and

(B) The general effectiveness of the Department in the furtherance of its agency mission; and

(2) Advise the Mayor and the Council, as it considers necessary, on matters relating to the Department or forensic science.

Sec. 16. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

Sec. 17. Continuity; regulations and rules.

Regulations and rules of any agency, department, administration, board, or commission, the functions of which are transferred by this act to the Department, and any Mayor's order or

administrative order not in conflict with this act and relating to a function transferred by this act, shall continue in force until such time as the Mayor issues new rules, regulations, or orders governing the subject.

Sec. 18. Conforming amendment.

Note,
§ 1-523.01

Section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), is amended by adding a new paragraph (48) to read as follows:

“(48) The Science Advisory Board to the Department of Forensic Sciences, established by section 12 of the Department of Forensic Sciences Establishment Act of 2011, passed on 2nd reading on June 7, 2011 (Enrolled version of Bill 19-5).”.

Sec. 19. Fiscal impact statement.

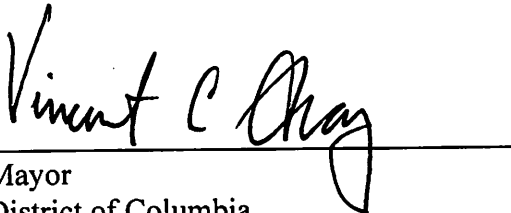
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 20. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B19-5**

[] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FIRST READING, 05-03-11

[X] VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

BARRY

[] ROLL CALL VOTE - Result ()

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown	X				Brown, M	X				Mendelson	X			
Alexander	X				Catania	X				Thomas, Jr.	X			
Barry				X	Cheh	X				Wells	X			
Biddle	X				Evans	X								
Bowser	X				Graham	X								

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

6.15.11

Date

[] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FINAL READING, 06-07-11

[X] VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ALL PRESENT

[] ROLL CALL VOTE - Result ()

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Thomas, Jr.	X			
Barry	X				Evans	X				Wells	X			
Bowser	X				Graham	X								
Brown, M	X				Mendelson	X								

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

6.15.11

Date

[] ITEM ON CONSENT CALENDAR

[] ACTION & DATE

[] VOICE VOTE
 RECORDED VOTE ON REQUEST

ABSENT

[] ROLL CALL VOTE - Result ()

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Brown					Catania					Orange				
Alexander					Cheh					Thomas, Jr.				
Barry					Evans					Wells				
Bowser					Graham									
Brown, M					Mendelson									

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

