

Reform of New York State Commission on Forensic Science Senate Bill S9672 Gianaris

Purpose of Senate Bill S9672

Forensic science commissions are established to provide oversight over forensic laboratories, develop standards and guidelines, host training sessions, and more. They have the ultimate aim of improving forensic science and services. This bill is designed to reinforce the structure and function of the existing New York State Commission on Forensic Science and modernize its powers and duties to meet the needs of today. Making the Commission more independent, accountable, and transparent, while vesting it with the power to conduct meaningful investigations, will strengthen forensic science in criminal courts, improve public trust, and reduce wrongful convictions while preserving the right to a fair trial. An update to New York's oversight structure is necessary to ensure that the broad range of forensic science methods and technologies that are proposed for use in New York's courts are accurate, reliable, equitably deployed, and ethically used.

What makes a successful forensic science commission?

Successful forensic science commissions are equipped to thoroughly monitor, investigate, and resolve issues that may arise with forensic laboratories, analysts, methods, and technologies. They are also able to provide adequate support and guidance to forensic laboratories and analysts as well as promote transparency and accountability.

Multiple serious problems have plagued crime laboratories across New York.

- Decades of problems in New York's crime laboratories make the need for a modern CFS not only apparent but urgent. For example, in a series of investigation reports that spanned the early 2000s, the State's Inspector General found systemic issues of laboratory failure—including falsified test results, professional incompetence, and profound supervisory and oversight failures—in multiple crime laboratories spanning the state including Nassau, Erie, and Monroe Counties and the New York State Police. In just the last year, there have been more scandals, including issues involving the Niagara County forensics laboratory, the New York City Police Department's Latent Print Unit, and the New York City Office of the Chief Medical Examiner's Department of Forensic Biology.
- Scandals from Garry Veeder's misconduct that went undetected for years at the New York State Police (NYSP) (2009), to the NYSP cheating scandal at the DNA laboratory in 2015 resulting in the firing of 15+ analysts, to more recent violations at Niagara County's Forensic Laboratory.
- Still two more recent examples from labs in NYC —
In July of 2023, the New York City Police Department disclosed formally for the first time that nearly eight years ago one of its fingerprint examiners misidentified a crime-scene fingerprint while two others agreed with that misidentification. For close to a decade, the accused entered guilty pleas or proceeded to trial in cases involving one of those examiner's conclusions without knowing that the examiner had made this kind of mistake or that the laboratory had not made a global disclosure of the error after it was discovered. Critically, one of the three examiners

testified misleadingly at trials when asked whether he had ever made misidentifications throughout his career.

- At the end of 2023, the NYC Office of Chief Medical Examiner disclosed that three analysts were under investigation for suspicions of cheating on a promotional exam. Upon further investigation, it was discovered that at least 31 lab reports had been falsified by a supervisor, who had performed all the work of the case analyst and then reviewed his own work. The name of the case analyst appeared as the author of the lab reports, but that person played no other role whatsoever in the analysis.
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The current commission is ineffective.

- The existing New York State Commission on Forensic Science (NYS CFS) statute was created in 1994, during the rise of traditional forensic DNA analysis, to specifically oversee the use of DNA technology. However, New York is faced with far more complex uses of DNA technologies, as well as numerous new and emerging tools. The current composition and subcommittee of the NYS CFS do not possess the necessary expertise and capacity to perform thorough technical and ethical assessments of all forensic science methods and technologies used in criminal investigations and introduced in NY courts.
- While the NYS CFS has made efforts to respond to serious adverse events when they occur, the CFS is hamstrung by its lack of statutory authority to conduct meaningful investigations, its preference for secrecy over transparency. Unlike the Texas Forensic Science Commission, for example, the NYS CFS does not have basic investigative powers or specific authority to conduct full inquiries into either new methodologies and technologies or emerging scandals. Much of its limited investigative work is done out of the sight of the public and criminal legal system partners. Therefore, the findings and conclusions of these investigative efforts are not publicly disclosed.

The Solution: Senate Bill S9672

S9672 expands the powers and duties of the NYS CFS.

- The commission is required to develop and implement a new uniform system through which professional negligence and misconduct complaints can be reported. The commission is then tasked with prompt investigation of these allegations and is vested with the necessary powers to conduct those investigations, including subpoena power.
- A new method accreditation process will be executed. This new process will permit the commission to comprehensively investigate new and existing forensic methods and prepare public written reports of their findings, recommendations, and more.
- This bill tasks the commission with developing a robust analyst licensing program to ensure professionalism, diligence, and access to training for all analysts who appear to testify in NY's criminal courts.
- Three new committees—scientific advisory; social justice, ethics, and equity assessment; and forensic analyst license advisory—will be formed to advise and aid the commission.

- The scientific advisory committee will ultimately replace the current DNA subcommittee. However, the scientific advisory committee is composed of experts from many forensic disciplines (e.g. forensic biology, forensic chemistry, forensic toxicology, pattern-matching). With assistance and advice from this committee, the CFS will have the expertise to adequately assess and understand technical issues that relate to most, if not all, forensic science methods and technologies used in NY courts.
- As the name may indicate, the social justice, ethics, and equity assessment committee is tasked with evaluating the ethical, social justice, and equity implications of new and existing forensic methods and technologies. New forensic methods are routinely introduced. It is important to determine if the risks outweigh the benefits before they are used for casework. This committee can also assist the commission with understanding and investigating alleged ethical violations and human factors issues within the laboratory.
- The Forensic Analyst License Advisory Committee is designed to guide and aid the commission's implementation of the proposed forensic analyst licensing program.

S9672 establishes effective accountability and transparency mechanisms.

- The commission must adopt a code of professional responsibility to regulate the conduct of forensic analysts, laboratories, and other relevant entities. There will be sanctions for code violations.
- The commission must prepare and publish annual reports that cover their activities, significant non-conformities, and operational statistics.
- Most laboratory-based professions are required to obtain licenses (e.g. clinical laboratory technicians). The licensing requirement for forensic analysts will stress the significance of accuracy, transparency, and reliability of forensic testing, and uphold high standards for forensic analyst training and testimony.
- The commission is responsible for publishing various reports, non-conformity records, its code of professional responsibility, and other important documents on its websites. The public is also permitted to file simple requests to access other information.

S9672 ensures a more just New York.

- Every year science and technology play a more and more prominent role in our criminal legal system. However, these same innovations are also among the leading causes of wrongful convictions. Robust oversight that is up to today's task is critical to ensure bad science and fabricated evidence stay out of our courtrooms.
- These same innovations also disproportionately burden our State's Black and Brown communities. Racial bias impacts our adoption of new science and technology in three major ways: (1) through invisibility; (2) through hyper-visibility; and (3) through exposure saturation.
 - A prime example of the invisibility effect has been facial recognition software. Study after study has demonstrated that the facial recognition systems used in the United States are least accurate when used on young Black women and most accurate when used on older white men. The reason for this bias lies in the choices made in developing the facial

recognition system itself: the data sets used to train the facial recognition algorithms fail to include a diversity of images resulting in algorithmic bias.

- A prime example of this hyper-visibility effect has been predictive policing algorithms. The reason for this garbage-in-garbage-out bias lies in the choices made in developing the predictive policing system itself: the data sets used to train the predictive policing algorithms were collected in a biased manner to begin.
- A prime example of exposure saturation has been the deployment of ShotSpotter sensors in our cities. A new analysis of ShotSpotter locations from a leaked dataset nationwide suggests systemic targeting of Black and brown communities: “in aggregate, nearly 70 percent of people who live in a neighborhood with at least one SoundThinking sensor identified...as either Black or Latine. Nearly three-quarters of these neighborhoods are majority nonwhite, and the average household earns a little more than \$50,000 a year.”

Oversight informed by an allegiance to ethics, social justice, and equity is crucial to building a more just society for *all* New Yorkers.