



Pathology/Biology Section - 2014

G125 Status of National Policy Initiatives for Forensic Science Reform

Victor W. Weedn, MD, JD*, George Washington University, 2100 Foxhall Road, NW, Somer's Hall, Lower Level, L-12, Washington, DC 20007

After attending this presentation, attendees will: (1) know the various policy options being discussed and their differences; (2) understand the implications of each policy; and, (3) critically consider each policy option being discussed.

This presentation will impact the forensic science community by increasing awareness of the fact that the result of the current policy efforts will likely result in federalization, uniformity, raising standards, increased compliance requirements, and unfunded mandates.

Since the 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward*, there have been a number of policy initiatives set in motion such as the White House Subcommittee on Forensic Science, the Leahy Senate Bill introduced, the Department of Justice/National Institute of Standards and Technology (DOJ/NIST) National Commission on Forensic Science announced, and the Scientific Working Groups (SWGs) set to transition.¹ Although there are significant hurdles that may prevent their coming to fruition, it appears likely that these efforts will result in a policy shift. Law enforcement and public safety, including crime laboratories and medical examiner and coroner offices, has traditionally been the province of the state and local governments. However, this has resulted in a patchwork of systems with varying quality. Although there is value in experimentation among the pluralist state systems and there is value in tailoring systems to local needs and local communities, these justifications for the current local control seem to be trumped by the argument that a perpetrator should not get away with murder by crossing a jurisdictional boundary. Critics of the current system, defense attorneys, and many forensic scientists have called for national standards. Although professional organizations in some disciplines (National Organization of Medical Examiners (NAME), for example) have developed national standards, others have not. Given the lack of standards in some disciplines, the Federal Bureau of Investigation (FBI) and the National Institute of Justice (NIJ) have historically sponsored SWGs. However, the NAS Report criticized the SWGs for their haphazard quality and other shortcomings. It is not clear if the current federal government-sponsored SWGs are governmental, quasi-governmental, or non-governmental entities, but it is clear that they are not fully compliant with the Office of Management and Budget (OMB) Circular A-119 on federal participation in the development and use of voluntary consensus standards and conformity assessment activities nor are they currently able to enforce any standards that they might promulgate. The number of SWGs has swelled to 21, to include disciplines that have professional organizations which have promulgated standards, and there has been an effort to standardize the SWGs by a SWG chair's meetings. It appears that the SWG administration will transfer from DOJ to NIST. The American Society for Testing and Materials (ASTM) E-30 committee has been promulgating standards in compliance with OMB Circular A-119 with mixed community acceptance. The DOJ/NIST National Commission on Forensic Science would use the SWGs or replace them with discipline-specific "guidance committees" whose reports may be considered by a National Commission that reports to the Attorney General, who would have ultimate authority over any policy recommendations. The White House Subcommittee on Forensic Science appears to have fed into the development of the National Commission which would be composed of many different stakeholder groups. The Leahy bill, on the other hand, would replace the SWGs with discipline-specific "committees" composed entirely of scientists, which would make recommendations to a Forensic Science Board. In this latter case, the Board would not be able to amend the recommended standards without re-consulting the committee. Also, under Leahy, the DOJ could decide against any recommendation of the Board, but this would trigger review by Congress. Congress does not seem to have the appetite to fund committees that are as large as the current SWGs, nor an overly large supporting bureaucracy. Both the White House-derived National Commission and the Leahy Forensic Science Board would have setting standards as a primary mission. Unlike the National Commission, the Forensic Science Board, which would be backed by legislative authority, would have the "rule-making" power to impose its standards on state and local governments. The Leahy bill would mandate accreditation and certification; this is probably a goal of the National Commission as well. The Leahy bill also seeks to create a national ethics code, standardization of terms, and a research program. Cost and/or politics could thwart these initiatives. If implemented, these initiatives would result in some degree of regulation and federalization of the forensic sciences. Essentially, these efforts would be a federal unfunded mandate that the state and local forensic science agencies bring their performance up to a national set of standards. It can be envisioned that some agencies and some managers will be unable to comply while others will prosper.



Pathology/Biology Section - 2014

Reference:

1. National Academy of Sciences, *Strengthening Forensic Science in the United States: A Path Forward*, National Academies Press, 2009.
-

Policy, Regulation, Federalization