



Jurisprudence Section - 2016

F32 Justice for All, Oversight for Some? The Independent External Investigation Requirement of the Department of Justice's Paul Coverdell Forensic Science Improvement Grants Recipients

Jeffrey A. Benson, JD, BensonLaw Forensic Counsel, PO Box 1356, Minnetonka, MN 55345*

After attending this presentation, attendees will better understand the independent external investigation requirement of Coverdell Grant recipients and why this requirement is important to high-quality forensic science.

This presentation will impact the forensic science community by providing a framework to examine laboratory certification of oversight by independent external entities as required of all Coverdell Grant recipients and determine if such oversight is necessary and properly occurring.

The Department of Justice Paul Coverdell Forensic Science Improvement Grant Program (Coverdell Grant Program), upon successful application, provides funding to state and local governments to improve the quality and timeliness of forensic science and medical examiner services, to eliminate backlogs in the analysis of forensic science evidence, and to train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.¹

In the United States, 2004 was a crossroads in DNA collection and testing as the number of samples needing testing ballooned as a result of the 2001 authorization of the Patriot Act, which broadened the list of offenses that required DNA collection. In 2004, the Justice for All Act (2004 Act) simultaneously greatly increased the number of samples needing testing by adding all federal felony offenses to the list of offenses that required DNA sample collection and attempted to reverse the growing testing backlog by adding significant funding for laboratories. The 2004 Act amended the funding authorization process with an important addition — all applicants must certify that there is a government entity and an appropriate process in place to conduct external investigation into allegations of two kinds: (1) serious negligence; or, (2) misconduct substantially affecting the integrity of the forensic results.² In fiscal year 2005, nearly \$14 million was awarded to forensic laboratories.

In December 2005, the Office of the Inspector General (OIG) evaluated the application and review process for the Coverdell Grant Program and found that the National Institute of Justice (NIJ) was not enforcing the external independent investigation requirement and recommended: (1) that the grant announcement explain the definition of an external independent investigation and provide examples; (2) naming the entity that will be conducting the investigations; and, (3) NIJ consider requesting verification from the entity that will be conducting the investigations.

In January 2008, the OIG audited the Office of Justice Programs (OJP) administration of the independent external investigation requirement. Again, the OIG found that the difficulties of this requirement continued. They found that one-third of the identified external independent investigation entities (referred to as entities) did not have the authority or the capability to conduct oversight. The OIG recommended that the grant application contain more detailed information about the oversight entity. Several years have passed since the 2008 audit and no additional audits by the OIG appear to have been performed.

This presentation will discuss what oversight means in the context of the Coverdell Grant Program and if that oversight is necessary when most laboratories are accredited by various accrediting bodies. Should the oversight provision be repealed? Is there meaningful oversight of forensic laboratories that receive Coverdell grants? What does the oversight look like and what types of entities are conducting the oversight? Have the OJP and NIJ been enforcing the oversight requirements?

Reference(s):

1. 42 USC §3797m Use of grants (2004).
2. 42 USC §3797k(4) Applications (2004).

Oversight, DNA, Coverdell