

# Sessions orders Justice Dept. to end forensic science commission, suspend review policy

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By **Spencer S. Hsu** April 10 at 1:57 PM

Attorney General Jeff Sessions will end a Justice Department partnership with independent scientists to raise forensic science standards and has suspended an expanded review of FBI testimony across several techniques that have come under question, saying a new strategy will be set by an in-house team of law enforcement advisers.

In a statement Monday, Sessions said he would not renew the National Commission on Forensic Science, a roughly 30-member advisory panel of scientists, judges, crime lab leaders, prosecutors and defense lawyers chartered by the Obama administration in 2013.

A path to meet needs of overburdened crime labs will be set by a yet-to-be named senior forensic adviser and an internal department crime task force, Sessions's statement said.

The announcement came as the commission began its last, two-day meeting before its term ends April 23, and as some of its most far-reaching final recommendations remained hanging before the department.

Justice officials said, for example, that no decision has been made on a call for new, departmentwide standards for examining and reporting forensic

evidence in criminal courts across the country. But the department has decided to suspend work on setting uniform standards for forensic testimony.

Sessions in his statement said the shifts were intended to build on the commission's work while also weighing other approaches to assessing forensic science findings now central to many crime investigations and court proceedings.

"The availability of prompt and accurate forensic science analysis to our law enforcement officers and prosecutors is critical to integrity in law enforcement, reducing violent crime, and increasing public safety," Sessions said in the statement. "We applaud the professionalism of the National Commission on Forensic Science and look forward to building on the contributions it has made in this crucial field."

The action marked the latest break by Sessions, a former federal prosecutor, with Obama-era priorities. The former Alabama senator last week announced top aides will review agreements reached with troubled police forces nationwide to ensure the pacts to overhaul departments do not counter the Trump administration's goals of combating violent crime and promoting police safety and morale.

Obama, a constitutional law scholar, had championed changes to forensic science.

In September, a White House science panel called on courts to question the admissibility of four heavily used techniques, including firearms tracing, saying claims about their reliability had not been scientifically proven. The Justice Department last year also announced a wider review of testimony by experts across several disciplines after finding that nearly all FBI experts for years overstated and gave scientifically misleading testimony about two techniques the FBI Laboratory long championed: the tracing of crime scene hairs based on microscopic examinations and of bullets based on chemical composition.

The wider review has been suspended pending review by the incoming administration and a strategy to be devised by the internal task force with input through public comments, Office of Legal Policy senior counsel Kira Antell said at the start of Monday's commission meeting in Washington.

"We plan to consider all options," Associate Deputy Attorney General Andrew D. Goldsmith said, including using a different commission, a Justice Department office or a group composed of representatives from many agencies. Sessions has made clear that "good forensics is not only important because it enables us to convict the guilty, but also to clear the innocent" and prioritized "prompt access to high-quality forensics technology" to reduce "troubling" crime lab backlogs, Goldsmith told commissioners.

In his statement about the future of forensic sciences, Sessions highlighted the need to survey crime lab workloads, backlogs and equipment needs as a way to increase the labs' capacities to do work, and the need for reliability and "specificity" of results.

Even before the announcement not to renew the national commission, several commission members from outside the Justice Department warned against ending its work, saying the Trump administration has made several moves to reduce the role of science and independent scientists in policymaking.

In a letter Thursday, six leading research scientists on the panel urged re-upping the commission for another two-years saying "for too long, decisions regarding forensic science have been made without the input of the research science community."

"Limiting the 'relevant scientific community' to forensic practitioners is a disservice to that field and to the criminal justice system," they wrote, led by Thomas D. Albright, an internationally recognized neuroscientist specializing in vision and the brain at the Salk Institute for Biological Studies.

The full commission declined to recommend its renewal, on a 16 to 15 vote in

January, the Justice officials noted.

The commission jointly led by the Justice Department and the Commerce Department's National Institute of Standards and Technology or NIST, has prompted several changes.

Following one recommendation, NIST launched a \$20 million research effort to solidify understanding of whether techniques used more than 100,000 times a year in U.S. crime labs work as advertised — starting with the question of how often claimed matches of pattern-based evidence such as complex DNA profile mixtures may be in error, followed by studies of firearms and bitemark tracing.

Sessions's predecessor as attorney general, Loretta E. Lynch, also accepted commission recommendations to set new accrediting and ethical codes for forensic labs and practitioners.

Several commission members who have worked in criminal courts and supported the input of independent scientists said the department risks retreating into insularity and repeating past mistakes, saying that no matter how well-intentioned, prosecutors lack scientists' objectivity and training.

U.S. District Judge Jed S. Rakoff of New York, the only federal judge on the commission, said "it is unrealistic to expect that truly objective, scientifically sound standards for the use of forensic science ... can be arrived at by entities centered solely within the Department of Justice."

In suspending reviews of past testimony and the development of standards for future reporting, "the department has literally decided to suspend the truth," said Peter S. Neufeld, co-founder of the Innocence Project, which has reported that nearly half of 349 DNA exonerations involved misapplications of forensic science. "As a consequence innocent people will languish in prison or, God forbid, could be executed," he said.

However, the National District Attorneys Association, which represents prosecutors, applauded the end of the commission and called for it to be

replaced by an Office of Forensic Science inside the Justice Department. Disagreements between crime lab practitioners and defense community representatives on the commission had reduced it to “a think tank,” yielding few accomplishments and wasted tax dollars, the association said.

The commission was created following critical reports by the National Academy of Sciences about a dearth of standards and funding for crime labs, examiners and researchers, problems it partly traced to law enforcement control over the system.

Although examiners had long claimed to be able to match pattern evidence — such as with firearms or bite marks — to a source with “absolute” or “scientific” certainty, only DNA analysis had been validated through statistical research, scientists reported.

In one case, the FBI lab in 2005 abandoned its four-decade-long practice of tracing bullets to a specific manufacturer’s batch through chemical analyses after its method were scientifically debunked. In 2015, the department and bureau reported that nearly every examiner in an elite hair analysis unit gave scientifically flawed or overstated testimony in 90 percent of cases for two decades before 2000.

The cases include 32 defendants sentenced to death. Of those, 14 have been executed or died in prison.

Separately on Monday, the national commission heard from Keith Harward, an ex-Navy sailor exonerated last year after serving 33 years of a life sentence for rape and murder in Newport News, Va. Harward was convicted after six separate experts including a leader in the field concurred that bite marks on a victim matched his teeth to a “medical certainty.” DNA testing identified a different sailor as the true, lone, perpetrator. No court in the United States has barred bite mark evidence, despite 21 known wrongful convictions, a proposed moratorium in Texas and research showing that experts cannot consistently agree even on whether injuries are caused by human teeth.

The Justice Department and commission's moves have had impact.

FBI Director James B. Comey last year asked U.S. governors to ask state and local crime labs to review their hair comparison cases, and reviews of past convictions are underway in at least a dozen states, according to the National Association of Criminal Defense Lawyers.

“We want to make sure there aren't other innocent people in jail based on our work,” Comey wrote in a June letter. “Unfortunately, in a large number of cases, our examiners made statements that went too far in explaining the significance of a hair comparison and could have misled a jury or judge.”

In backing the expanded Justice Department testimony review, then-deputy attorney general Sally Yates said last February that its goal was to determine whether “the same kind of ‘testimonial overstatement’ ... could have crept into other disciplines.”

“The authority afforded to scientific experts is second to none, and we must make sure that our statements are clearly supported by sound science,” Yates said.

In another example, the Defense Forensic Science Center, formerly called the U.S. Army Criminal Investigation Laboratory, has funded new research establishing error rates for firearms tracking and last month announced it would begin reporting fingerprint results using statistical probabilities instead of declaring one-to-one matches to individuals, a departure from FBI practice.

**Read more:**

[Judge orders D.C. to pay \\$13.2 million in wrongful FBI hair conviction case](#)

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