

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**AUGUST 9-10, 2010**

**RECOMMENDATION**

RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial governments to provide sufficient funding and resources necessary to accomplish the following goals:

1. facilitate basic and applied scientific research to improve and/or further develop forensic science disciplines, especially where the scientific validation or the limits of specificity are unclear or in doubt;
2. annually assess and establish a prioritized agenda of research, development and other needs; identify and evaluate already existing but not yet published research to forensic science disciplines and make such research publicly available; and
3. enable the development of future forensic technologies and methods that will assist in answering questions posed in criminal investigations or that will increase laboratory capacity to meet the demand for forensic science services and the means to meet such demands.

**REPORT**  
(Revised)

By the terms of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, Congress authorized “the National Academy of Sciences to conduct a study of forensic science as described in the Senate report.” The charge from Congress as set out in the Senate Report was as to:

- “(1) assess the present and future resource needs of the forensic science community, to include State and local crime labs, medical examiners, and coroners;
- (2) make recommendations for maximizing the use of forensic technologies and techniques to solve crimes, investigate deaths, and protect the public;
- (3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public....”

On February 18, 2009, the National Academy of Sciences issued a report entitled “Strengthening Forensic Science in the United States: A Path Forward” responding to the Congressional mandate. Since the release of the National Academy report, strengthening forensic sciences has been the subject of two hearings by sub-committees of the United States House of Representatives and two hearings by the United States Senate Committee on the Judiciary. The latest of the Senate hearings occurred on September 9, 2009. Informational meetings with Senate Judiciary staff and representatives of various stakeholder groups have been ongoing and draft legislation is expected soon. The White House Office of Science and Technology Policy has established a subcommittee “to assess the practical challenges of implementing those recommendations and advise the White House on how best to achieve the goals outlined in the [National Academy of Sciences] report.”

ABA resolutions 100D, 100E, 100F, 100G, 100H, and 100I reflect the consideration of the diverse views of the criminal defense bar, the Innocence Project, as well as some individual prosecutors, academicians, members of the judiciary, and practitioners specializing in science and technology. The resolutions have been reviewed by some members of the forensic science community and their input has been considered. The resolutions do not support all recommendations made by the National Academy of Sciences (NAS); the resolution only supports NAS recommendations 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13. The resolutions do not support NAS recommendation 1 because there was no consensus on creating a stand-alone National Forensic Institute of Science. The resolutions do not support NAS recommendation 4 because no consensus could be reached in support of laboratory independence; consensus only was reached in favor of laboratory autonomy.

This resolution is not intended to, in any way, undercut or go counter to Federal Rules of Evidence 702 and the federal trial court’s discretion per *Daubert v. Merrill Dow Pharm, Inc.* and *Kumho Tire Co. v. Carmichael* in determining what expert testimony is useful,

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reliable, and admissible. Likewise, the resolution is not intended to change the law on experts in state courts that have modified or rejected *Daubert*.

This resolution focuses on the forensic science communities need for resources sufficient to establish a research agenda. The report by the Academy addresses a number of issues in which the ABA already has established policy. In this respect this resolution is consistent with and continues to advocate that pre-existing ABA policy, here in the context of the discussion now under consideration in Congress. For instance, this Resolution continues the ABA's advocacy in favor of adequate funding of laboratories and medical examiners offices<sup>1</sup> by emphasizing the need for more resources and funding to be provided for research that will increase laboratory capacity, provide a clearer understanding of the underlying scientific validation of forensic disciplines and techniques where such foundations are unclear and establish a prioritized agenda of research.

Each of the resolutions submitted proposing enhancements and improvements to forensic science are part of an integrated whole which, in the estimation of the two sections, represent good criminal justice policy and will greatly contribute to efforts to enhance the integrity and reliability of forensic evidence in this country. The ABA has already advanced many of these recommendations as policy in the past. The compilation of those policies and new policies in this integrated series of statements by the ABA and its membership will assist governmental policymakers as they proceed in the legislative and implementation process.

Respectfully submitted,

Charles Joseph Hynes  
Chair, Criminal Justice Section  
August 2010

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<sup>1</sup> ABA Resolution 111B (August 2004). See also ABA Standards for Criminal Justice, DNA Evidence 16-3.1(a)(ii).

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Charles Joseph Hynes, Section Chair

1. Summary of Recommendation(s).

The Recommendation urges federal, state, local and territorial government to provide sufficient funding and resources necessary to accomplish the following goals: facilitate basic and applied scientific research to improve and/or further develop forensic science disciplines; annually assess and establish a prioritized agenda of research, development and other needs; enable the development of future forensic technologies and methods that will assist in answering questions posed in criminal investigations or that will increase laboratory capacity to meet the demand for forensic science services and the means to meet such demands.

2. Approval by Submitting Entity.

The proposed resolution was approved on November 7, 2009 by the Criminal Justice Section Council.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

Yes. It was pulled shortly before the HOD Midyear 2010 Meeting due to some issues raised by the ABA Science and Technology Section. Since then we have worked with them on this recommendation.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

ABA Resolution 111B (August 2004). See also ABA Standards for Criminal Justice, DNA Evidence 16-3.1(a)(i). ABA Standards for Criminal Justice, DNA Evidence 16-3.1(a)(ii). ABA Standards for Criminal Justice, DNA Evidence 16-4.2, 16-4.3. ABA Resolution 111E (August 2004). ABA Standards for Criminal Justice, DNA Evidence 16-3.3. ABA Standards for Criminal Justice, DNA Evidence 16-3.1(a)(v). See also Commentary to that same section at DNA EVIDENCE 67 (3<sup>rd</sup> Ed. 2007). ABA Standards for Criminal Justice, DNA Evidence 16-3.1(a)(iii)(vi) (c). ABA Standards for Criminal Justice, DNA Evidence 16-5.3. ABA Resolution 301 (August 2008).

This recommendation is consistent with the above listed Association policies.

5. What urgency exists which requires action at this meeting of the House?

The need to provide the funds, resources and other legislative support necessary to effectively integrate the forensic science community into this nation's system of homeland security as outlined in the National Academy of Sciences report, *Strengthening Forensic Science in the United States: A Path Forward*. The proposed policy suggests specific steps to be considered in order to improve the work of the forensic science community, and be better able to respond not only to resolving issues related to criminal investigations but also to provide aid and assistance in times of natural and man-made mass disasters. Action at this meeting will allow proponents to promote the various recommendations immediately.

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6. Status of Legislation. (If applicable.)  
By the terms of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006 Congress authorized “the National Academy of Sciences to conduct a study of forensic ate report.”
7. Cost to the Association. (Both direct and indirect costs.)  
None.
8. Disclosure of Interest. (If applicable.)  
No known conflict of interest.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)  
Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the August 2010 House of Delegates agenda it is being circulated to the following:  
Section, Divisions, Forums  
Science and Technology Section  
Standing Committee on Legal Aid and Indigent Defendants  
Judicial Division  
Individual Rights and Responsibilities Section  
Coalition for Justice  
Young Lawyers Division  
Council on Ethnic and Racial Justice  
Government and Public Section Lawyers Division  
Standing Committee on Ethics and Responsibility  
Standing Committee on Lawyers’ Professional Responsibility  
Death Penalty Representation Project  
Death Penalty Moratorium Project
10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)  
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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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## EXECUTIVE SUMMARY

### **A. Summary of Recommendation.**

The Recommendation urges federal, state, local and territorial government to provide sufficient funding and resources necessary to accomplish the following goals:

1. facilitate basic and applied scientific research to improve and/or further develop forensic science disciplines including forensic pathology, especially where the scientific validation or the limits of specificity are unclear or in doubt;
2. annually assess and establish a prioritized agenda of research, development and other needs; identify and evaluate already existing but not yet published research to forensic science disciplines and make such research publicly available; and
3. enable the development of future forensic technologies and methods that will assist in answering questions posed in criminal investigations or that will increase laboratory capacity to meet the demand for forensic science services and the means to meet such demands.

### **B. Issue Recommendation Addresses.**

The need to provide the funds, resources and other legislative support necessary to effectively integrate the forensic science community into this nation's system of homeland security as outlined in the National Academy of Sciences report, *Strengthening Forensic Science in the United States: A Path Forward*.

### **C. How Proposed Policy Will Address the Issue.**

The proposed policy suggests specific steps for to be considered in order to improve the work of the forensic science community, and be better able to respond not only to resolving issues related to criminal investigations.

### **D. Minority Views or Opposition.**

No opposition to this recommendation is known to exist at this time.