



**STATEMENT OF JOSE MARRERO  
OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA**

**BEFORE COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

**PUBLIC HEARING ON**

**B24-0838, THE “RESTORING TRUST AND CREDIBILITY TO FORENSIC SCIENCES  
AMENDMENT ACT OF 2022”**

**THURSDAY, JUNE 30, 2022, 9:30 A.M. – 1:30 P.M.  
VIRTUAL HEARING VIA ZOOM**

Good afternoon. My name is Jose Marrero. I serve as Assistant Chief of the Criminal Section of the Public Safety Division of the Office of the Attorney General for the District of Columbia (OAG). Thank you, Chairman Allen and Councilmembers, for the invitation to speak with you regarding the Restoring Trust and Credibility to Forensic Sciences Amendment Act of 2022.

For over two years, OAG raised the alarm that there were significant, systemic failures at the Department of Forensic Sciences (DFS)—failures that would undermine the integrity of criminal convictions, faith in the criminal justice system, and public safety in the District of Columbia. Throughout, we made clear that our interest was in determining the existence, extent, and cause of any failures so that we could work together to address them. Unfortunately, DFS refused to cooperate in that effort until, after years of denial, it lost its accreditation and was required to cease operations. When a full assessment of the lab finally was conducted in the wake of the accreditation loss, SNA International identified staggering deficiencies at the lab. These deficiencies may have resulted in wrongful convictions, while allowing wrong-doers to walk free, making the District less safe. They have made it more difficult for prosecutors to do our jobs, and it will cost District taxpayers millions of dollars to identify and correct these errors. The importance of addressing these failures, and ensuring they never are repeated, cannot be overstated.

Passing the Restoring Trust and Credibility to Forensic Sciences Amendment Act of 2022 is one of many steps necessary to rehabilitate and reestablish confidence in the District’s crime lab. OAG thanks Chairman Allen and the Council for their willingness to take on the difficult and important task of redesigning DFS to prevent a calamity like this from ever occurring again. At bottom, the SNA report and OAG’s experience make clear that what is needed is greater accountability for lab leaders, an effective quality assurance program, and increased oversight of the lab. This legislation meets those needs and offers a thoughtful and creative approach to addressing the significant issues at DFS. Having discussed the legislation’s outlined reform plan extensively with experts, some of whom you will hear from today, we offer recommendations for modest changes to the legislation to help ensure it accomplishes these goals.

First, the bill would make DFS—renamed the “Forensic Sciences and Public Health Laboratory”—an independent agency. In essence, this means that the director of the Laboratory would report to the Council, rather than the Mayor, and that the Laboratory would be empowered to seek the funds it needs directly from the Council. This important change will help allow the laboratory’s Director to be frank and transparent about what is required to rehabilitate the Laboratory and help ensure the lab is appropriately funded.

As we now know, systemic issues at the lab were longstanding, and were allowed to fester and compound for years. For example, SNA determined in its audit that, in 2012, as the crime lab was transitioning from the Metropolitan Police Department to the newly created DFS, only two of 11 fingerprint examiners passed skills assessment tests. This was reported to DFS at the time but no action appears to have been taken to ensure fingerprint examiners were qualified to perform their critical function. Moreover, when OAG and the U.S. Attorney’s Office discovered information about additional problems at DFS, those concerns were repeatedly dismissed and downplayed. With this as backdrop, it is imperative that the Laboratory’s new director be able to assess and report on what they find in the laboratory, and what will be required to fix it, with candor. The only way to accomplish this is to allow the Laboratory’s director to report to the Council and to allow for removal of the Director only for good cause. The legislation’s provisions regarding

independence also are necessary if we are to attract qualified candidates with integrity to serve in leadership roles at the Laboratory by ensuring that Laboratory leaders are sufficiently empowered to tackle the significant challenges the agency faces.

This independence also will allow the Laboratory's Director to be frank with the Council about how much funding the Laboratory needs to operate effectively. This is important because it appears that one of the causes of failures at DFS may have been a lack of adequate staffing, resulting in pressure being put on staff to report test results faster than was possible. Lab leaders emphasized speed over accuracy, and staff reportedly took short cuts, including reporting having examined evidence and providing results without ever taking the evidence out of its container. While this behavior certainly cannot be blamed entirely on funding, allowing lab leaders to report directly to the Council may help ensure that they can speak frankly about the staffing and funding needed to produce accurate results in a timely manner.

Second, the legislation would significantly expand the role of the Laboratory's outside oversight body—called in the legislation the “Science Advisory and Review Board,” or “SARB.” The legislation expands the number of members of this body, including by requiring that members have a wide range of relevant expertise. Importantly, it allows SARB members to access all documents necessary for it to accomplish its mission and requires that SARB members be compensated. This expanded and more robust SARB is an important reform that has the potential to provide critical oversight and collaboration to identify and resolve issues as they arise. We do think, however, that some adjustments to the scope of the SARB's responsibility are warranted to ensure it can provide effective oversight.

The expanded scope of the SARB's responsibilities would outsource much of the lab's quality assurance program to the SARB, stripping Laboratory managers of their responsibility to ensure that lab processes are effective and error free. The impetus for this is well thought out—DFS failed entirely to execute this responsibility. But outsourcing so much of this responsibility may reduce accountability and effectiveness by decreasing the responsibility of the Laboratory's leadership. It is ultimately the responsibility of Laboratory leaders to develop and implement a robust quality assurance program and ensure protocols are followed to the letter. While external oversight is critical, it cannot come at the expense of ensuring that there are effective leaders and a robust quality assurance program in the Laboratory.

In addition to moving the focus away from lab leadership, outsourcing so much of this responsibility also will overburden SARB members, reducing their ability to identify the major, overarching failures of the kind we are looking to address here. This is especially so since SARB members will not be full-time employees. We therefore recommend that the SARB's responsibilities be refocused on investigating more major allegations of process failures or impropriety of the lab and regularly reviewing the laboratory's quality assurance program, while using other mechanisms, including those included in this bill, to ensure the lab has a robust and effective quality assurance program and that its leaders act with integrity.

Third, the bill reimagines the lab's management structure. It would place at the head of the lab—the Director—someone with significant management experience but reduced scientific knowledge and background. The scientific knowledge would be held by the person in a newly created position—the Chief Forensic Sciences Officer—who reports to the Director but is a separate

Council-confirmed Mayoral appointee. This is a thoughtful approach, clearly designed to address the significant leadership failures SNA identified. We think it warrants additional consideration, however, to assess whether the legislation strikes the right balance between management and scientific experience as requirements for Laboratory leadership.

We look forward to continuing to discuss the best approach to fixing DFS and we are enormously grateful to the Council for taking up the mantle of reform. This legislation reflects many months of thought and engagement, and a willingness to take bold steps to ensure this catastrophe never recurs. The stakes could not be higher. Having a functioning crime lab upon which District residents can rely is critical to public safety, and it is critical to justice and fairness. We look forward to continuing to work with the Council, relevant experts, DFS, and all stakeholders to ensure that this legislation will allow OAG and the public to have confidence and trust in the reliability of scientific testing at DFS. Thank you for holding this hearing and for your work to protect District of Columbia residents and the integrity of our criminal justice system.