

# Attorney General Jennings Announces Independent Review of Hair Evidence in Some Pre-2000 Convictions

WILMINGTON – Citing the FBI’s acknowledgement of a decades-long pattern of flawed testimony from one of its forensic units, **Attorney General Kathy Jennings** announced Monday that the Delaware Department of Justice (DOJ) has initiated an independent review of criminal convictions involving potentially questionable hair evidence.

The FBI regularly used microscopic hair comparison analysis as a forensic technique until 2000, when it adopted a more scientifically robust practice of analyzing DNA in hair evidence. In 2009 the National Academy of Sciences called the earlier practice of microscopic hair comparison “highly unreliable.”

The FBI announced in 2015 that an internal review of trial transcripts involving microscopic hair comparison analysis prior to the year 2000 revealed widespread error in FBI testimony on criminal cases across the country. At least 90 percent of trial transcripts covered in the review contained erroneous statements or lab reports from FBI examiners.

“We have a responsibility to make the best decisions we can based on the facts as we understand them,” said Attorney General Jennings. “Given the serious issues that the FBI’s errors have raised, I believe that this review is the most responsible step we can take. I’m grateful for the impartiality and experience of the experts we’ve enlisted and will address the impact of their findings on the integrity of the convictions.”

DOJ has enlisted the assistance of Prosecutors’ Center for Excellence (PCE) to perform an impartial review of criminal convictions prior to 2000 that involved FBI testimony on hair evidence. PCE is a non-profit organization that supports best practices in prosecution through technical assistance, expert advice, research and consulting throughout the United States and Canada. Experts from PCE have been reviewing relevant convictions since early February.

The notifications have come from the FBI on a rolling basis since 2015, including in 2018. DOJ prosecutors notified of cases in which there was questionable hair evidence had been attempting to assess on a case-by-case basis in each old case whether the role of the hair analysis warranted action. At this time, the number of cases and the benefit of an independent assessment led to asking PCE to conduct the review.

Any finding that a Delaware conviction used questionable hair evidence would not necessarily cast doubt on the case’s resolution if additional evidence, such as confessions or DNA analysis, supported the conviction.

“Our mission is to help prosecutors improve the criminal justice system and address emerging issues like this one,” said **Kristine Hamann, Executive Director of PCE**, who is a former Independent Counsel to the District of Columbia U.S. Attorney’s Office’s Conviction Integrity Unit. “Attorney General Jennings is making the right decision by opting for a proactive, independent review of convictions that could be affected by the FBI’s admission of error in its hair analysis. We owe it to the justice system to get this right and are looking forward to completing a thorough review.”

Similar audits have been initiated in other states, including Texas, Massachusetts, and North Carolina.

Defendants or defense attorneys in criminal cases identified by the FBI to have involved questionable hair analysis were notified by the FBI at the same time as notifications went to prosecutors, and some of those cases are already in post-

conviction litigation in Delaware courts. DOJ has supported retesting hair evidence with current technology in one of those cases.