

By: Ellis

S.B. No. 1607

A BILL TO BE ENTITLED

AN ACT

relating to regulation of state crime laboratories.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Government Code is amended to add the following Chapter 534, to read as follows:

CHAPTER 534. OVERSIGHT OF CRIME LAB FACILITIES.

SUBCHAPTER A. GENERAL PROVISIONS

Section 534.001. Definitions

When used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

1. For purposes of general forensic analysis the term "forensic laboratory" shall mean any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.

2. For purposes of forensic DNA analysis, the term "forensic DNA laboratory" shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term "forensic DNA testing" shall mean any test that employs techniques to examine deoxyribonucleic acid (DNA)

1 derived from the human body for the purpose of providing  
2 information to resolve issues of identification. Regulation  
3 pursuant to this article shall not include DNA testing on materials  
4 derived from the human body for the purpose of determining a  
5 person's genetic disease or medical condition and shall not include  
6 a laboratory operated by the federal government.

7 3. "DNA testing methodology" means methods and procedures  
8 used to extract and analyze DNA material, as well as the methods,  
9 procedures, assumptions, and studies used to draw statistical  
10 inferences from the test results.

11 4. "Blind external proficiency testing" means a test sample  
12 that is presented to a forensic laboratory for forensic DNA testing  
13 through a second agency, and which appears to the analysts to  
14 involve routine evidence submitted for forensic DNA testing.

15 5. "DNA" means deoxyribonucleic acid.

16 6. "Designated offender" means a person convicted of and  
17 sentenced for any one or more of the following felonies as defined  
18 in the penal law (a): aggravated assault, murder, sex offenses,  
19 incest, violent felony offenses, attempted murder, kidnapping,  
20 attempted kidnapping, burglary, attempted burglary degree, or (b)  
21 criminal possession of a controlled substance, criminal sale and  
22 delivery of a controlled substance, or felony theft.

23 7. "DNA record" means DNA identification information  
24 prepared by a forensic DNA laboratory for purposes of establishing  
25 identification in connection with law enforcement investigations  
26 or supporting statistical interpretation of the results of DNA  
27 analysis. A DNA record is the objective form of the results of a DNA

1 analysis sample.

2 8. "DNA subcommittee" shall mean the subcommittee on  
3 forensic DNA laboratories and forensic DNA testing established  
4 pursuant to Section 534.003 of this article.

5 9. "Commission" shall mean the commission on forensic  
6 science established pursuant to Section 534.002 of this article.

7 Section 534.002. Commission on forensic science.

8 1. There is hereby created in the executive branch, the  
9 commission on forensic science, which shall consist of the  
10 following twelve members:

11 (a) the commissioner of the department of health or his or  
12 her designee, who shall serve as an ex-officio member of the  
13 commission and who shall be chair of the commission;

14 (b) twelve members appointed by the governor.

15 2. Of the members appointed by the governor,

16 (a) one member shall be the director of the department of  
17 public safety crime laboratory;

18 (b) one member shall be the director of a forensic  
19 laboratory located in the state of Texas;

20 (c) two members shall be a scientist having experience in  
21 the areas of laboratory standards or quality assurance regulation  
22 and monitoring and shall be appointed upon the recommendation of  
23 the commissioner of health;

24 (d) one member shall be a representative of a law  
25 enforcement agency and shall be appointed upon the recommendation  
26 of the director of the department of public safety;

27 (e) one member shall be a representative of prosecution

1 services who shall be appointed upon the recommendation of a  
2 statewide professional association of prosecuting attorneys;

3 (f) one member shall be a representative of the public  
4 criminal defense bar who shall be appointed upon the recommendation  
5 of a statewide professional association of criminal defense  
6 attorneys that is authorized to receive grants under Section  
7 56.003(f), Government Code, and whose members regularly represent  
8 indigent defendants in criminal matters;

9 (g) one member shall be a representative of the private  
10 criminal defense bar who shall be appointed upon the recommendation  
11 of a statewide professional association of criminal defense  
12 attorneys;

13 (h) two members shall be members-at-large, one of whom shall  
14 be appointed upon the recommendation of the lieutenant governor of  
15 the senate, and one of whom shall be appointed upon the  
16 recommendation of the speaker of the house of representatives; and

17 (i) one member, who shall be an attorney or judge with a  
18 background in privacy issues and biomedical ethics, shall be  
19 appointed upon the recommendation of the chief judge of the supreme  
20 court.

21 3. Of the members appointed by the governor, each member  
22 shall be appointed to serve a two year term. Any member appointed  
23 by the governor may be reappointed for additional two year terms.

24 4. Any member chosen to fill a vacancy created otherwise  
25 than by expiration of term shall be appointed by the governor for  
26 the unexpired term of the member he or she is to succeed. Any such  
27 vacancy shall be filled in the same manner as the original

1 appointment.

2 5. The commission shall meet at least four times each year  
3 and may establish its own rules and procedures concerning the  
4 conduct of its meetings and other affairs not inconsistent with  
5 law.

6 6. No member of the commission on forensic science shall be  
7 disqualified from holding any public office or employment, nor  
8 shall he or she forfeit any such office or employment, by reason of  
9 his or her appointment hereunder, and members of the commission  
10 shall not be required to take and file oaths of office before  
11 serving on the commission.

12 7. Members of the commission shall receive no compensation  
13 for their services but shall be allowed their actual and necessary  
14 expenses incurred in the performance of their functions hereunder.

15 Section 534.003. Powers and duties of the commission

16 1. The commission shall develop minimum standards and a  
17 program of accreditation for all forensic laboratories in the state  
18 of Texas, including establishing minimum qualifications for  
19 forensic laboratory directors and such other personnel as the  
20 commission may determine to be necessary and appropriate, and  
21 approval of forensic laboratories for the performance of specific  
22 forensic methodologies. Nothing in this article shall be deemed to  
23 preclude forensic laboratories from performing research and  
24 validation studies on new methodologies and technologies which may  
25 not yet be approved by the commission at that time. In designing a  
26 system of accreditation pursuant to this article, the commission  
27 shall evaluate other systems of accreditation.

1        2. The minimum standards and program of accreditation shall  
2 be designed to accomplish the following objectives:

3        (a) increase and maintain the effectiveness, efficiency,  
4 reliability, and accuracy of forensic laboratories, including  
5 forensic DNA laboratories;

6        (b) ensure that forensic analyses, including forensic DNA  
7 testing, are performed in accordance with the highest scientific  
8 standards practicable;

9        (c) promote increased cooperation and coordination among  
10 forensic laboratories and other agencies in the criminal justice  
11 system;

12        (d) ensure compatibility, to the extent consistent with the  
13 provisions of this article and any other applicable provision of  
14 law pertaining to privacy or restricting disclosure or redisclosure  
15 of information, with other state and federal forensic laboratories  
16 to the extent necessary to share and exchange information, data and  
17 results of forensic analyses and tests; and

18        (e) set forth minimum requirements for the quality and  
19 maintenance of equipment.

20        2-a. Any program of forensic laboratory accreditation with  
21 respect to a DNA laboratory pursuant to this section shall be under  
22 the direction of the DNA subcommittee established pursuant to  
23 subdivision ten of this section. Such subcommittee shall have the  
24 sole authority to grant, deny, review or modify a DNA forensic  
25 laboratory accreditation pursuant to this article, provided that  
26 such authority shall be effectuated through binding  
27 recommendations made by the DNA subcommittee to the commission. In

1 the event the commission disagrees with any of the binding  
2 recommendations of the DNA subcommittee made pursuant to this  
3 article, the commission may so notify such subcommittee and request  
4 such subcommittee to reasonably review such binding  
5 recommendations. The DNA subcommittee shall conduct such review  
6 and either forward revised binding recommendations to the  
7 commission or indicate, with the reasons therefor, that following  
8 such review such subcommittee has determined that such binding  
9 recommendations shall not be revised.

10 3. The program of forensic laboratory accreditation shall  
11 include, at a minimum, the following requirements:

12 (a) an initial laboratory inspection, and routine  
13 inspections, as necessary, to ensure compliance with accreditation  
14 requirements;

15 (b) routine internal and external proficiency testing of  
16 all laboratory personnel involved in forensic analysis, including  
17 blind external proficiency testing if the commission, or the DNA  
18 subcommittee as the case may be, determines such a blind  
19 proficiency testing program to be practicable and appropriate. In  
20 determining whether a blind proficiency testing program is  
21 practicable and appropriate, the commission, or the DNA  
22 subcommittee as the case may be, shall consider such factors as  
23 accuracy and reliability of laboratory results,  
24 cost-effectiveness, time, allocation of resources, and  
25 availability;

26 (c) quality control and quality assurance protocols, a  
27 method validation procedure and a corrective action and remedial

1 program;

2 (d) annual certification to the commission by the forensic  
3 laboratories of their continued compliance with the requirements of  
4 the accreditation program which certification, in the case of a  
5 forensic DNA laboratory, shall be forwarded to the DNA  
6 subcommittee;

7 (e) the accreditation of a forensic laboratory may be  
8 revoked, suspended or otherwise limited, upon a determination by  
9 the commission or, in the case of a forensic DNA laboratory, upon  
10 the binding recommendation of the DNA subcommittee, that the  
11 laboratory or one or more persons in its employ:

12 (i) is guilty of misrepresentation in obtaining a forensic  
13 laboratory accreditation;

14 (ii) rendered a report on laboratory work actually  
15 performed in another forensic laboratory without disclosing the  
16 fact that the examination or procedure was performed by such other  
17 forensic laboratory;

18 (iii) showed a pattern of excessive errors in the  
19 performance of forensic laboratory examination procedures;

20 (iv) failed to file any report required to be submitted  
21 pursuant to this article or the rules and regulations promulgated  
22 pursuant thereto; or

23 (v) violated in a material respect any provision of this  
24 article or the rules and regulations promulgated pursuant thereto;  
25 and

26 (f) no forensic laboratory accreditation shall be revoked,  
27 suspended, or otherwise limited without a hearing. The commission



1 shall serve written notice of the alleged violation, together with  
2 written notice of the time and place of the hearing, which notice  
3 shall be mailed by certified mail to the holder of the forensic  
4 laboratory accreditation at the address of such holder at least  
5 twenty-one days prior to the date fixed for such hearing. An  
6 accredited laboratory may file a written answer to the charges with  
7 the commission, not less than five days prior to the hearing.

8 4. A laboratory director who knowingly operates a  
9 laboratory without obtaining the accreditation required by this  
10 article, or who, with the intent to mislead or deceive,  
11 misrepresents a material fact to the commission or DNA  
12 subcommittee, shall be subject to a civil penalty not to exceed  
13 seventy-five hundred dollars and such other penalties as are  
14 prescribed by the law.

15 5. The commission and the DNA subcommittee established  
16 pursuant to subdivision ten of this section may require and receive  
17 from any agency of the state or any political subdivision thereof  
18 such assistance and data as may be necessary to enable the  
19 commission or DNA subcommittee to administer the provisions of this  
20 article. The commission or DNA subcommittee may enter into such  
21 cooperative arrangements with the department of public safety, the  
22 department of health, and any other state agency, each of which is  
23 authorized to enter into such cooperative arrangements as shall be  
24 necessary or appropriate. Upon request of the commission or DNA  
25 subcommittee, any state agency may transfer to the commission such  
26 officers and employees as the commission or DNA subcommittee may  
27 deem necessary from time to time to assist the commission or DNA

1 subcommittee in carrying out its functions and duties. Officers  
2 and employees so transferred shall not lose their civil service  
3 status or rights, and shall remain in the negotiating unit, if any,  
4 established prior to such transfer.

5 6. All of the commission's records, reports, assessments,  
6 and evaluation with respect to accreditation, implementation of  
7 quality assurance standards (including proficiency testing) and  
8 monitoring thereof, shall be archived by the commission.

9 7. The commission and DNA subcommittee may establish,  
10 appoint, and set terms of members to as many advisory councils as it  
11 deems necessary to provide specialized expertise to the commission  
12 with respect to new forensic technologies including DNA testing  
13 methodologies.

14 8. The commission or DNA subcommittee shall designate one or  
15 more entities for the performance of proficiency tests required  
16 pursuant to the provisions of this article.

17 9. Upon the recommendation of the DNA subcommittee  
18 established pursuant to subdivision ten of this section, the  
19 commission shall designate one or more approved methodologies for  
20 the performance of forensic DNA testing, and shall review and act  
21 upon applications by forensic DNA laboratories for approval to  
22 perform forensic DNA testing.

23 10. (a) The commission shall establish a subcommittee on  
24 forensic DNA laboratories and forensic DNA testing. The chair of  
25 the subcommittee shall be appointed by the chair of the commission.  
26 The chair of the subcommittee shall appoint six other members to the  
27 subcommittee, one of whom shall represent the discipline of

1 molecular biology and be appointed upon the recommendation of the  
2 commissioner of the department of health, one of whom shall  
3 represent the discipline of population genetics and be appointed  
4 upon the recommendation of the commissioner of the department of  
5 health, one of whom shall be representative of the discipline of  
6 laboratory standards and quality assurance regulation and  
7 monitoring and be appointed upon the recommendation of the  
8 commissioner of the department of health, one of whom shall be a  
9 forensic scientist and be appointed upon the recommendation of the  
10 commissioner of the department of health, one of whom shall be  
11 representative of the discipline of population genetics and be  
12 appointed upon the recommendation of the director of the department  
13 of public safety, and one of whom shall be representative of the  
14 discipline of forensic science and be appointed upon the  
15 recommendation of the director of the department of public safety.  
16 Members of the DNA subcommittee shall serve for two year terms and  
17 be subject to the conditions of service specified in section  
18 534.002 of this article.

19 (b) The DNA subcommittee shall assess and evaluate all DNA  
20 methodologies proposed to be used for forensic analysis, and make  
21 reports and recommendations to the commission as it deems  
22 necessary. The DNA subcommittee shall make binding recommendations  
23 for adoption by the commission addressing minimum scientific  
24 standards to be utilized in conducting forensic DNA analysis  
25 including, but not limited to, examination of specimens, population  
26 studies and methods employed to determine probabilities and  
27 interpret test results. The DNA subcommittee may require a

1 demonstration by an independent laboratory of any proposed forensic  
2 DNA testing methodology proposed to be used by a forensic  
3 laboratory.

4 (c) The DNA subcommittee shall make binding recommendations  
5 for adoption by the commission with regard to an accreditation  
6 program for laboratories performing forensic DNA testing. Such  
7 recommendations shall include the adoption and implementation of  
8 internal and external proficiency testing programs, including, if  
9 possible, a blind external proficiency testing program for forensic  
10 laboratories performing forensic DNA testing. The DNA subcommittee  
11 shall also provide the commission with a list of accepted  
12 proficiency testers.

13 (d) The DNA subcommittee shall be authorized to advise the  
14 commission on any other matters regarding the implementation of  
15 scientific controls and quality assurance procedures for the  
16 performance of forensic DNA testing, or on any other matters  
17 referred to it by the commission.

18 Section 534.004. Confidentiality

19 1. All records, findings, reports, and results of DNA  
20 testing performed on any person shall be confidential and may not be  
21 disclosed or redisclosed without the consent of the subject of such  
22 DNA testing. Such records, findings, reports and results shall not  
23 be released to insurance companies, employers or potential  
24 employers, health providers, employment screening or personnel  
25 companies, agencies, or services, private investigation services,  
26 and may not be disclosed in response to a subpoena or other  
27 compulsory legal process or warrant, or upon request or order of any

1 agency, authority, division, office, corporation, partnership, or  
2 any other private or public entity or person, except that nothing  
3 contained herein shall prohibit disclosure in response to a  
4 subpoena issued on behalf of the subject of such DNA record or on  
5 behalf of a party in a civil proceeding where the subject of such  
6 DNA record has put such record in issue.

7 2. Notwithstanding the provisions of subdivision one of  
8 this section, records, findings, reports, and results of DNA  
9 testing may be disclosed in a criminal proceeding to the court, the  
10 prosecution, and the defense pursuant to a written request on a form  
11 prescribed by the commissioner of the division of criminal justice  
12 services.

13 Section 534.005. Applicability

14 This article shall not apply to a forensic DNA laboratory  
15 operated by any agency of the federal government, or to any forensic  
16 DNA test performed by any such federal laboratory.

17 Section 534.006. Penalties

18 Any person who (a) intentionally discloses a DNA record, or  
19 the results of a forensic DNA test or analysis, to an individual or  
20 agency other than one authorized to have access to such records  
21 pursuant to this article or (b) intentionally uses or receives DNA  
22 records, or the results of a forensic DNA test or analysis, for  
23 purposes other than those authorized pursuant to this article or  
24 (c) any person who knowingly tampers or attempts to tamper with any  
25 DNA sample or the collection container without lawful authority  
26 shall be guilty of a state jail felony.

27 SECTION 2. The change in law made by this Act applies only

1 to forensic DNA testing performed on or after the effective date of  
2 this Act. Forensic DNA testing performed before the effective date  
3 of this Act is governed by the law in effect when such testing  
4 occurred, and the former law is continued in effect for that  
5 purpose.

6 SECTION 3. This Act takes effect September 1, 2003.