

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1658
By: Hinojosa
Criminal Justice
5/6/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1658 amends current law relating to the duties of and investigations conducted by the Texas Forensic Science Commission, the administrative attachment of the Texas Forensic Science Commission to Sam Houston State University, and the accreditation of criminal laboratories by the Department of Public Safety.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 38.01, Code of Criminal Procedure, as follows:

Sec. 2. New heading: DEFINITIONS. Defines, in this article, "accredited field of forensic science," "commission," and "crime laboratory" and redefines "forensic analysis."

SECTION 2. Amends Section 4, Article 38.01, Code of Criminal Procedure, by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (b-1), and (b-2), as follows:

(a) Requires the Texas Forensic Science Commission (FSC) to:

- (1) develop and implement a reporting system through which a crime laboratory, rather than accredited laboratories, facilities, or entities, report professional negligence or misconduct;
- (2) require a crime laboratory, rather than all laboratories, facilities, or entities, that conducts forensic analyses to report professional negligence or misconduct to FSC; and
- (3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory, rather than an accredited laboratory, facility, or entity.

(a-1) Authorizes FSC to initiate an investigation of a forensic analysis without a report containing an allegation of professional negligence or professional misconduct involving the forensic analysis conducted if FSC determines by a majority vote of a quorum of the members of FSC that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in this state.

(b) Provides that, if FSC conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited by the Department of Public Safety of the State of Texas (DPS) under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code, pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation:

(1) is required to include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

- (A) the negligence or misconduct;
- (B) whether negligence or misconduct occurred;
- (C) any corrective action required of the laboratory, facility, or entity;
- (D) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;
- (E) best practices identified by FSC during the course of the investigation; and
- (F) other recommendations that are relevant, as determined by FSC; and

(2) is authorized to include one or more:

- (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct;
- (B) follow-up evaluations of the laboratory, facility, or entity to review the implementation of any corrective action required under Subdivision (1)(C), or the conclusion of any retrospective reexamination under Paragraph (A); and

(b-1) Provides that, if FSC conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited by DPS under Section 411.0205, Government Code, or the investigation is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science, the investigation:

(1) is required to include the preparation of a written report that contains:

- (A) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;
- (B) best practices identified by FSC during the course of the investigation; and
- (C) other recommendations that are relevant, as determined by FSC; and

(2) is authorized to include one or more:

- (A) analyses, if any, of the alleged negligence or misconduct;
- (B) analyses of whether negligence or misconduct occurred;
- (C) recommendations as to any corrective action required of the laboratory;
- (D) retrospective reexaminations of other forensic analyses conducted by the laboratory that may involve the same kind of negligence or misconduct; and
- (E) follow-up evaluations of the laboratory to review the implementation of any corrective action required under Paragraph (C), or the conclusion of any retrospective reexamination under Paragraph (D).

(b-2) Requires that an investigation, if FSC conducts an investigation of a forensic analysis under Subsection (a-1), include the preparation of a written report that contains:

- (1) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;
- (2) best practices identified by FSC during the course of the investigation; and
- (3) other recommendations that are relevant, as determined by FSC.

(d) Authorizes FSC to require that a crime laboratory, rather than a laboratory, facility, or entity, investigated under this section pay any costs incurred to ensure compliance with Subsection (b), (b-1), or (b-2), rather than Subsection (b)(1).

(e) Requires FSC to make all investigation reports completed under Subsection (b), (b-1), or (b-2), rather than Subsection (b)(1), available to the public. Provides that a report completed under Subsection (b), (b-1), or (b-2), in a subsequent civil or criminal proceeding, is not a prima facie evidence of the information or findings contained in the report. Makes a conforming change.

SECTION 3. Amends Article 38.01, Code of Criminal Procedure, by adding Sections 8, 9, and 10, as follows:

Sec. 8. ANNUAL REPORT. Requires FSC, not later than December 1 of each year, to prepare and publish a report that includes:

- (1) a description of each complaint filed with FSC during the preceding 12-month period, the disposition of each complaint, and the status of any complaint still pending on December 31;
- (2) a description of any specific forensic method or methodology FSC recommends to the public safety director of DPS (director) for validation or approval under Section 411.0205(b-1)(2) (relating to authorizing the director to, as part of the accreditation process, validate or approve specific forensic methods or methodologies), Government Code, as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) (relating to requiring the director by rule to establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in crime proceedings and authorizing the director to modify or remove a crime laboratory exemption under this section if the director determines that the underlying reason for the exemption no longer applies) of that code;
- (3) recommendations for best practices concerning the definition of "forensic analysis" provided by statute or rule of DPS;
- (4) developments in forensic science made or used in other state or federal investigations and the activities of FSC, if any, with respect to those developments; and
- (5) other information that is relevant to investigations involving forensic science, as determined by the presiding officer of FSC.

Sec. 9. ADMINISTRATIVE ATTACHMENT TO SAM HOUSTON STATE UNIVERSITY. (a) Provides that FSC is administratively attached to Sam Houston State University (SHSU).

(b) Requires the board of regents, Texas State University System, to provide administrative support to FSC as necessary to carry out the purposes of this article.

(c) Provides that only FSC is authorized to exercise the duties of FSC under this article. Provides that, except as provided by Subsection (b), neither the board of regents, Texas State University System, nor SHSU has any authority or responsibility with respect to the duties of FSC under this article.

Sec. 10. OPEN RECORDS LIMITATION. Provides that information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under Chapter 552 (Public Information), Government Code, until the conclusion of an investigation by FSC under Section 4.

SECTION 4. Amends Section 411.0205, Government Code, by adding Subsection (b-3) to require the director to require that a laboratory, facility, or entity that is required to be accredited under this section, as part of the accreditation process, agree to consent to any request for cooperation by FSC that is made as part of the exercise of FSC's duties under Article 38.01 (Texas Forensic Science Commission), Code of Criminal Procedure.

SECTION 5. Requires FSC, not later than December 1, 2012, to submit the first annual report required by Section 8, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 6. Effective date: upon passage or September 1, 2011.