

1-1 By: Hinojosa S.B. No. 1658
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 10, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 1; May 10, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1658 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the duties of and investigations conducted by the Texas
1-11 Forensic Science Commission, the administrative attachment of the
1-12 Texas Forensic Science Commission to Sam Houston State University,
1-13 and the accreditation of criminal laboratories by the Department of
1-14 Public Safety of the State of Texas.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 SECTION 1. Section 2, Article 38.01, Code of Criminal
1-17 Procedure, is amended to read as follows:

1-18 Sec. 2. DEFINITIONS [DEFINITION]. In this article:

1-19 (1) "Accredited field of forensic science" means a
1-20 specific forensic method or methodology validated or approved by
1-21 the public safety director of the Department of Public Safety under
1-22 Section 411.0205(b-1)(2), Government Code, as part of the
1-23 accreditation process for crime laboratories established by rule
1-24 under Section 411.0205(b) of that code.

1-25 (2) "Commission" means the Texas Forensic Science
1-26 Commission.

1-27 (3) "Crime laboratory" has the meaning assigned by
1-28 Article 38.35.

1-29 (4) "Forensic analysis" means a medical, chemical,
1-30 toxicologic, ballistic, or other expert examination or test
1-31 performed on physical evidence, including DNA evidence, for the
1-32 purpose of determining the connection of the evidence to a criminal
1-33 action[~~, "forensic analysis" has the meaning assigned by Article~~
1-34 ~~38.35(a)~~].

1-35 SECTION 2. Section 4, Article 38.01, Code of Criminal
1-36 Procedure, is amended by amending Subsections (a), (b), (d), and
1-37 (e) and adding Subsections (a-1), (b-1), and (b-2) to read as
1-38 follows:

1-39 (a) The commission shall:

1-40 (1) develop and implement a reporting system through
1-41 which a crime laboratory may ~~[accredited laboratories, facilities,~~
1-42 ~~or entities]~~ report professional negligence or misconduct;

1-43 (2) require a crime laboratory ~~[all laboratories,~~
1-44 ~~facilities, or entities]~~ that conducts [conduct] forensic analyses
1-45 to report professional negligence or misconduct to the commission;
1-46 and

1-47 (3) investigate, in a timely manner, any allegation of
1-48 professional negligence or professional misconduct that would
1-49 substantially affect the integrity of the results of a forensic
1-50 analysis conducted by a crime laboratory ~~[an accredited laboratory,~~
1-51 ~~facility, or entity]~~.

1-52 (a-1) The commission may initiate an investigation of a
1-53 forensic analysis without a report containing an allegation of
1-54 professional negligence or professional misconduct involving the
1-55 forensic analysis conducted if the commission determines by a
1-56 majority vote of a quorum of the members of the commission that an
1-57 investigation of the forensic analysis would advance the integrity
1-58 and reliability of forensic science in this state.

1-59 (b) If the commission conducts an [An] investigation under
1-60 Subsection (a)(3) of a crime laboratory that is accredited by the
1-61 Department of Public Safety under Section 411.0205, Government
1-62 Code, pursuant to an allegation of professional negligence or
1-63 professional misconduct involving an accredited field of forensic

2-1 science, the investigation:
2-2 (1) must include the preparation of a written report
2-3 that identifies and also describes the methods and procedures used
2-4 to identify:
2-5 (A) the alleged negligence or misconduct;
2-6 (B) whether negligence or misconduct occurred;
2-7 [~~and~~]
2-8 (C) any corrective action required of the
2-9 laboratory, facility, or entity;
2-10 (D) observations of the commission regarding the
2-11 integrity and reliability of the forensic analysis conducted;
2-12 (E) best practices identified by the commission
2-13 during the course of the investigation; and
2-14 (F) other recommendations that are relevant, as
2-15 determined by the commission; and
2-16 (2) may include one or more:
2-17 (A) retrospective reexaminations of other
2-18 forensic analyses conducted by the laboratory, facility, or entity
2-19 that may involve the same kind of negligence or misconduct; and
2-20 (B) follow-up evaluations of the laboratory,
2-21 facility, or entity to review:
2-22 (i) the implementation of any corrective
2-23 action required under Subdivision (1)(C); or
2-24 (ii) the conclusion of any retrospective
2-25 reexamination under Paragraph (A).
2-26 (b-1) If the commission conducts an investigation under
2-27 Subsection (a)(3) of a crime laboratory that is not accredited by
2-28 the Department of Public Safety under Section 411.0205, Government
2-29 Code, or the investigation is conducted pursuant to an allegation
2-30 involving a forensic method or methodology that is not an
2-31 accredited field of forensic science, the investigation:
2-32 (1) must include the preparation of a written report
2-33 that contains:
2-34 (A) observations of the commission regarding the
2-35 integrity and reliability of the forensic analysis conducted;
2-36 (B) best practices identified by the commission
2-37 during the course of the investigation; and
2-38 (C) other recommendations that are relevant, as
2-39 determined by the commission; and
2-40 (2) may include one or more:
2-41 (A) analyses, if any, of the alleged negligence
2-42 or misconduct;
2-43 (B) analyses of whether negligence or misconduct
2-44 occurred;
2-45 (C) recommendations as to any corrective action
2-46 required of the laboratory;
2-47 (D) retrospective reexaminations of other
2-48 forensic analyses conducted by the laboratory that may involve the
2-49 same kind of negligence or misconduct; and
2-50 (E) follow-up evaluations of the laboratory to
2-51 review:
2-52 (i) the implementation of any corrective
2-53 action required under Paragraph (C); or
2-54 (ii) the conclusion of any retrospective
2-55 reexamination under Paragraph (D).
2-56 (b-2) If the commission conducts an investigation of a
2-57 forensic analysis under Subsection (a-1), the investigation must
2-58 include the preparation of a written report that contains:
2-59 (1) observations of the commission regarding the
2-60 integrity and reliability of the forensic analysis conducted;
2-61 (2) best practices identified by the commission during
2-62 the course of the investigation; and
2-63 (3) other recommendations that are relevant, as
2-64 determined by the commission.
2-65 (d) The commission may require that a crime laboratory
2-66 facility, or entity investigated under this section pay any costs
2-67 incurred to ensure compliance with Subsection (b), (b-1), or (b-2)
2-68 [Subsection (b)(1)].
2-69 (e) The commission shall make all investigation reports

3-1 completed under Subsection (b), (b-1), or (b-2) [~~(b)(1)~~] available
3-2 to the public. A report completed under Subsection (b), (b-1), or
3-3 (b-2) [~~(b)(1)~~], in a subsequent civil or criminal proceeding, is
3-4 not prima facie evidence of the information or findings contained
3-5 in the report.

3-6 SECTION 3. Article 38.01, Code of Criminal Procedure, is
3-7 amended by adding Sections 8, 9, and 10 to read as follows:

3-8 Sec. 8. ANNUAL REPORT. Not later than December 1 of each
3-9 year, the commission shall prepare and publish a report that
3-10 includes:

3-11 (1) a description of each complaint filed with the
3-12 commission during the preceding 12-month period, the disposition of
3-13 each complaint, and the status of any complaint still pending on
3-14 December 31;

3-15 (2) a description of any specific forensic method or
3-16 methodology the commission recommends to the public safety director
3-17 of the Department of Public Safety for validation or approval under
3-18 Section 411.0205(b-1)(2), Government Code, as part of the
3-19 accreditation process for crime laboratories established by rule
3-20 under Section 411.0205(b) of that code;

3-21 (3) recommendations for best practices concerning the
3-22 definition of "forensic analysis" provided by statute or by rule of
3-23 the Department of Public Safety;

3-24 (4) developments in forensic science made or used in
3-25 other state or federal investigations and the activities of the
3-26 commission, if any, with respect to those developments; and

3-27 (5) other information that is relevant to
3-28 investigations involving forensic science, as determined by the
3-29 presiding officer of the commission.

3-30 Sec. 9. ADMINISTRATIVE ATTACHMENT TO SAM HOUSTON STATE
3-31 UNIVERSITY. (a) The commission is administratively attached to
3-32 Sam Houston State University.

3-33 (b) The Board of Regents, Texas State University System,
3-34 shall provide administrative support to the commission as necessary
3-35 to carry out the purposes of this article.

3-36 (c) Only the commission may exercise the duties of the
3-37 commission under this article. Except as provided by Subsection
3-38 (b), neither the Board of Regents, Texas State University System,
3-39 nor Sam Houston State University has any authority or
3-40 responsibility with respect to the duties of the commission under
3-41 this article.

3-42 Sec. 10. OPEN RECORDS LIMITATION. Information that is
3-43 filed as part of an allegation of professional misconduct or
3-44 professional negligence or that is obtained during an investigation
3-45 of an allegation of professional misconduct or professional
3-46 negligence is not subject to release under Chapter 552, Government
3-47 Code, until the conclusion of an investigation by the commission
3-48 under Section 4.

3-49 SECTION 4. Section 411.0205, Government Code, is amended by
3-50 adding Subsection (b-3) to read as follows:

3-51 (b-3) The director shall require that a laboratory,
3-52 facility, or entity that must be accredited under this section, as
3-53 part of the accreditation process, agree to consent to any request
3-54 for cooperation by the Texas Forensic Science Commission that is
3-55 made as part of the exercise of the commission's duties under
3-56 Article 38.01, Code of Criminal Procedure.

3-57 SECTION 5. Not later than December 1, 2012, the Texas
3-58 Forensic Science Commission shall submit the first annual report
3-59 required by Section 8, Article 38.01, Code of Criminal Procedure,
3-60 as added by this Act.

3-61 SECTION 6. This Act takes effect immediately if it receives
3-62 a vote of two-thirds of all the members elected to each house, as
3-63 provided by Section 39, Article III, Texas Constitution. If this
3-64 Act does not receive the vote necessary for immediate effect, this
3-65 Act takes effect September 1, 2011.

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