

AN ACT

relating to the composition and 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, the accreditation of criminal laboratories by the Department of Public Safety of the State of Texas, and the status of certain local government corporations as criminal justice agencies for the purpose of engaging in criminal identification activities, including forensic analysis.

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

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

Sec. 2. DEFINITIONS [~~DEFINITION~~]. In this article:

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

(2) "Commission" means the Texas Forensic Science Commission.

(3) "Crime laboratory" has the meaning assigned by Article 38.35.

(4) "Forensic analysis" means a medical, chemical,

1 toxicologic, ballistic, or other expert examination or test
2 performed on physical evidence, including DNA evidence, for the
3 purpose of determining the connection of the evidence to a criminal
4 action, except that the term does not include the portion of an
5 autopsy conducted by a medical examiner or other forensic
6 pathologist who is a licensed physician~~[, "forensic analysis" has~~
7 ~~the meaning assigned by Article 38.35(a)].~~

8 SECTION 2. Subsections (a) and (b), Section 3, Article
9 38.01, Code of Criminal Procedure, are amended to read as follows:

10 (a) The commission is composed of [~~the following~~] nine
11 members[~~+~~

12 [~~(1) four members~~] appointed by the governor as
13 follows:

14 (1) two members who [~~(A) two of whom~~] must have
15 expertise in the field of forensic science;

16 (2) [~~(B)~~] one member who [~~of whom~~] must be a
17 prosecuting attorney that the governor selects from a list of 10
18 names submitted by the Texas District and County Attorneys
19 Association;

20 (3) [~~and~~
21 [~~(C)~~] one member who [~~of whom~~] must be a defense
22 attorney that the governor selects from a list of 10 names submitted
23 by the Texas Criminal Defense Lawyers Association;

24 (4) one member who [~~(2) three members appointed by~~
25 ~~the lieutenant governor:~~

26 [~~(A) one of whom~~] must be a faculty member or
27 staff member of The University of Texas who specializes in clinical

1 laboratory medicine that the governor selects [~~selected~~] from a
2 list of 10 names submitted [~~to the lieutenant governor~~] by the
3 chancellor of The University of Texas System;

4 (5) one member who [~~(B) one of whom~~] must be a faculty
5 member or staff member of Texas A&M University who specializes in
6 clinical laboratory medicine that the governor selects [~~selected~~]
7 from a list of 10 names submitted [~~to the lieutenant governor~~] by
8 the chancellor of The Texas A&M University System;

9 (6) one member who [~~(C) one of whom~~] must be a faculty
10 member or staff member of Texas Southern University that the
11 governor selects [~~who has expertise in pharmaceutical laboratory~~
12 ~~research selected~~] from a list of 10 names submitted [~~to the~~
13 ~~lieutenant governor~~] by the chancellor of Texas Southern
14 University;

15 (7) one member who [~~and~~
16 [~~(3) two members appointed by the attorney general:~~
17 [~~(A) one of whom~~] must be a director or division
18 head of the University of North Texas Health Science Center at Fort
19 Worth Missing Persons DNA Database; and

20 (8) one member who [~~(B) one of whom~~] must be a faculty
21 or staff member of the Sam Houston State University College of
22 Criminal Justice and have expertise in the field of forensic
23 science or statistical analyses that the governor selects
24 [~~selected~~] from a list of 10 names submitted [~~to the lieutenant~~
25 ~~governor~~] by the chancellor of the Texas State University System.

26 (b) Each member of the commission serves a two-year term.
27 The terms expire [~~term of the members appointed under Subsections~~

1 ~~(a)(1) and (2) expires]~~ on September 1 of:

2 (1) each odd-numbered year, for a member appointed
3 under Subsection (a)(1), (2), (3), or (4); and

4 (2) [~~. The term of the members appointed under~~
5 ~~Subsection (a)(3) expires on September 1 of]~~ each even-numbered
6 year, for a member appointed under Subsection (a)(5), (6), (7), or
7 (8).

8 SECTION 3. Section 4, Article 38.01, Code of Criminal
9 Procedure, is amended by amending Subsections (a), (b), (d), and
10 (e) and adding Subsections (a-1), (b-1), (b-2), (f), and (g) to read
11 as follows:

12 (a) The commission shall:

13 (1) develop and implement a reporting system through
14 which a crime laboratory may [~~accredited laboratories, facilities,~~
15 ~~or entities]~~ report professional negligence or professional
16 misconduct;

17 (2) require a crime laboratory [~~all laboratories,~~
18 ~~facilities, or entities]~~ that conducts [~~conduct]~~ forensic analyses
19 to report professional negligence or professional misconduct to the
20 commission; and

21 (3) investigate, in a timely manner, any allegation of
22 professional negligence or professional misconduct that would
23 substantially affect the integrity of the results of a forensic
24 analysis conducted by a crime laboratory [~~an accredited laboratory,~~
25 ~~facility, or entity]~~.

26 (a-1) The commission may initiate for educational purposes
27 an investigation of a forensic analysis without receiving a

1 complaint, submitted through the reporting system implemented
2 under Subsection (a)(1), that contains an allegation of
3 professional negligence or professional misconduct involving the
4 forensic analysis conducted if the commission determines by a
5 majority vote of a quorum of the members of the commission that an
6 investigation of the forensic analysis would advance the integrity
7 and reliability of forensic science in this state.

8 (b) If the commission conducts an ~~[An]~~ investigation under
9 Subsection (a)(3) of a crime laboratory that is accredited by the
10 Department of Public Safety under Section 411.0205, Government
11 Code, pursuant to an allegation of professional negligence or
12 professional misconduct involving an accredited field of forensic
13 science, the investigation:

14 (1) must include the preparation of a written report
15 that identifies and also describes the methods and procedures used
16 to identify:

- 17 (A) the alleged negligence or misconduct;
- 18 (B) whether negligence or misconduct occurred;

19 ~~[and]~~

20 (C) any corrective action required of the
21 laboratory, facility, or entity;

22 (D) observations of the commission regarding the
23 integrity and reliability of the forensic analysis conducted;

24 (E) best practices identified by the commission
25 during the course of the investigation; and

26 (F) other recommendations that are relevant, as
27 determined by the commission; and

1 (2) may include one or more:

2 (A) retrospective reexaminations of other
3 forensic analyses conducted by the laboratory, facility, or entity
4 that may involve the same kind of negligence or misconduct; and

5 (B) follow-up evaluations of the laboratory,
6 facility, or entity to review:

7 (i) the implementation of any corrective
8 action required under Subdivision (1)(C); or

9 (ii) the conclusion of any retrospective
10 reexamination under Paragraph (A).

11 (b-1) If the commission conducts an investigation under
12 Subsection (a)(3) of a crime laboratory that is not accredited by
13 the Department of Public Safety under Section 411.0205, Government
14 Code, or the investigation is conducted pursuant to an allegation
15 involving a forensic method or methodology that is not an
16 accredited field of forensic science, the investigation may include
17 the preparation of a written report that contains:

18 (1) observations of the commission regarding the
19 integrity and reliability of the forensic analysis conducted;

20 (2) best practices identified by the commission during
21 the course of the investigation; or

22 (3) other recommendations that are relevant, as
23 determined by the commission.

24 (b-2) If the commission conducts an investigation of a
25 forensic analysis under Subsection (a-1), the investigation must
26 include the preparation of a written report that contains:

27 (1) observations of the commission regarding the

1 integrity and reliability of the forensic analysis conducted;

2 (2) best practices identified by the commission during
3 the course of the investigation; and

4 (3) other recommendations that are relevant, as
5 determined by the commission.

6 (d) The commission may require that a crime laboratory[~~7 facility, or entity~~] investigated under this section pay any costs
8 incurred to ensure compliance with Subsection (b), (b-1), or (b-2)
9 [~~(b)(1)~~].

10 (e) The commission shall make all investigation reports
11 completed under Subsection (b), (b-1), or (b-2) [~~(b)(1)~~] available
12 to the public. A report completed under Subsection (b), (b-1), or
13 (b-2) [~~(b)(1)~~], in a subsequent civil or criminal proceeding, is
14 not prima facie evidence of the information or findings contained
15 in the report.

16 (f) The commission may not make a determination of whether
17 professional negligence or professional misconduct occurred or
18 issue a finding on that question in an investigation initiated
19 under Subsection (a-1) or for which an investigation report may be
20 prepared under Subsection (b-1).

21 (g) The commission may not issue a finding related to the
22 guilt or innocence of a party in an underlying civil or criminal
23 trial involving conduct investigated by the commission under this
24 article.

25 SECTION 4. Article 38.01, Code of Criminal Procedure, is
26 amended by adding Sections 8, 9, 10, and 11 to read as follows:

27 Sec. 8. ANNUAL REPORT. Not later than December 1 of each

1 year, the commission shall prepare and publish a report that
2 includes:

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

7 (2) a description of any specific forensic method or
8 methodology the commission recommends to the public safety director
9 of the Department of Public Safety for validation or approval under
10 Section 411.0205(b-1)(2), Government Code, as part of the
11 accreditation process for crime laboratories established by rule
12 under Section 411.0205(b) of that code;

13 (3) recommendations for best practices concerning the
14 definition of "forensic analysis" provided by statute or by rule of
15 the Department of Public Safety;

16 (4) developments in forensic science made or used in
17 other state or federal investigations and the activities of the
18 commission, if any, with respect to those developments; and

19 (5) other information that is relevant to
20 investigations involving forensic science, as determined by the
21 presiding officer of the commission.

22 Sec. 9. ADMINISTRATIVE ATTACHMENT TO SAM HOUSTON STATE
23 UNIVERSITY. (a) The commission is administratively attached to
24 Sam Houston State University.

25 (b) The Board of Regents of the Texas State University
26 System shall provide administrative support to the commission as
27 necessary to carry out the purposes of this article.

1 (c) Only the commission may exercise the duties of the
2 commission under this article. Except as provided by Subsection
3 (b), neither the Board of Regents of the Texas State University
4 System nor Sam Houston State University has any authority or
5 responsibility with respect to the duties of the commission under
6 this article.

7 Sec. 10. OPEN RECORDS LIMITATION. Information that is
8 filed as part of an allegation of professional misconduct or
9 professional negligence or that is obtained during an investigation
10 of an allegation of professional misconduct or professional
11 negligence is not subject to release under Chapter 552, Government
12 Code, until the conclusion of an investigation by the commission
13 under Section 4.

14 Sec. 11. REPORT INADMISSIBLE AS EVIDENCE. A written report
15 prepared by the commission under this article is not admissible in a
16 civil or criminal action.

17 SECTION 5. Subchapter A, Chapter 411, Government Code, is
18 amended by adding Section 411.0011 to read as follows:

19 Sec. 411.0011. CERTAIN LOCAL GOVERNMENT CORPORATIONS
20 ENGAGED IN CRIMINAL IDENTIFICATION ACTIVITIES. For purposes of
21 this chapter, a reference to "criminal justice agency" includes a
22 local government corporation created under Subchapter D, Chapter
23 431, Transportation Code, for governmental purposes relating to
24 criminal identification activities, including forensic analysis,
25 that allocates a substantial part of its annual budget to those
26 criminal identification activities.

27 SECTION 6. Section 411.0205, Government Code, is amended by

1 adding Subsection (b-3) to read as follows:

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

8 SECTION 7. The term of a person appointed under former
9 Subdivision (3), Subsection (a), Section 3, Article 38.01, Code of
10 Criminal Procedure, as that law existed immediately before the
11 effective date of this Act, expires September 1, 2014, and the
12 governor shall appoint a person to fill each vacancy on that date in
13 accordance with Subdivisions (7) and (8), Subsection (a), Section
14 3, Article 38.01, Code of Criminal Procedure, as amended by this
15 Act. On the expiration of a term under former Subdivision (1) or
16 (2), Subsection (a), Section 3, Article 38.01, Code of Criminal
17 Procedure, as that law existed immediately before the effective
18 date of this Act, the governor shall appoint a person to fill each
19 vacancy in accordance with Subdivision (1), (2), (3), (4), (5), or
20 (6), Subsection (a), Section 3, Article 38.01, Code of Criminal
21 Procedure, as amended by this Act, as applicable.

22 SECTION 8. Not later than December 1, 2014, the Texas
23 Forensic Science Commission shall submit the first annual report
24 required by Section 8, Article 38.01, Code of Criminal Procedure,
25 as added by this Act.

26 SECTION 9. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1238 passed the Senate on April 4, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 20, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1238 passed the House, with amendment, on May 17, 2013, by the following vote: Yeas 141, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor