

1-1 By: Hinojosa, Huffman S.B. No. 1238
1-2 (In the Senate - Filed March 6, 2013; March 13, 2013, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 March 25, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 25, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1238 By: Hinojosa

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the composition and duties of and investigations
1-20 conducted by the Texas Forensic Science Commission, the
1-21 administrative attachment of the Texas Forensic Science Commission
1-22 to Sam Houston State University, and the accreditation of criminal
1-23 laboratories by the Department of Public Safety of the State of
1-24 Texas.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 2, Article 38.01, Code of Criminal
1-27 Procedure, is amended to read as follows:

1-28 Sec. 2. DEFINITIONS [DEFINITION]. In this article:

1-29 (1) "Accredited field of forensic science" means a
1-30 specific forensic method or methodology validated or approved by
1-31 the public safety director of the Department of Public Safety under
1-32 Section 411.0205(b-1)(2), Government Code, as part of the
1-33 accreditation process for crime laboratories established by rule
1-34 under Section 411.0205(b) of that code.

1-35 (2) "Commission" means the Texas Forensic Science
1-36 Commission.

1-37 (3) "Crime laboratory" has the meaning assigned by
1-38 Article 38.35.

1-39 (4) "Forensic analysis" means a medical, chemical,
1-40 toxicologic, ballistic, or other expert examination or test
1-41 performed on physical evidence, including DNA evidence, for the
1-42 purpose of determining the connection of the evidence to a criminal
1-43 action, except that the term does not include the portion of an
1-44 autopsy conducted by a medical examiner or other forensic
1-45 pathologist who is a licensed physician[, "forensic analysis" has
1-46 the meaning assigned by Article 38.35(a)].

1-47 SECTION 2. Subsections (a) and (b), Section 3, Article
1-48 38.01, Code of Criminal Procedure, are amended to read as follows:

1-49 (a) The commission is composed of [~~the following~~] nine
1-50 members[+]

1-51 [~~(1) four members~~] appointed by the governor as
1-52 follows:

1-53 (1) two members who [~~(A) two of whom~~] must have
1-54 expertise in the field of forensic science;

1-55 (2) [~~(B)~~] one member who [~~of whom~~] must be a
1-56 prosecuting attorney that the governor selects from a list of 10
1-57 names submitted by the Texas District and County Attorneys
1-58 Association;

1-59 (3) [~~and~~]
1-60 [~~(C)~~] one member who [~~of whom~~] must be a defense

2-1 attorney that the governor selects from a list of 10 names submitted
2-2 by the Texas Criminal Defense Lawyers Association;

2-3 (4) one member who [~~(2) three members appointed by the~~
2-4 ~~lieutenant governor.~~

2-5 [~~(A) one of whom~~] must be a faculty member or
2-6 staff member of The University of Texas who specializes in clinical
2-7 laboratory medicine that the governor selects [~~selected~~] from a
2-8 list of 10 names submitted [~~to the lieutenant governor~~] by the
2-9 chancellor of The University of Texas System;

2-10 (5) one member who [~~(B) one of whom~~] must be a faculty
2-11 member or staff member of Texas A&M University who specializes in
2-12 clinical laboratory medicine that the governor selects [~~selected~~]
2-13 from a list of 10 names submitted [~~to the lieutenant governor~~] by
2-14 the chancellor of The Texas A&M University System;

2-15 (6) one member who [~~(C) one of whom~~] must be a faculty
2-16 member or staff member of Texas Southern University that the
2-17 governor selects [~~who has expertise in pharmaceutical laboratory~~
2-18 ~~research selected~~] from a list of 10 names submitted [~~to the~~
2-19 ~~lieutenant governor~~] by the chancellor of Texas Southern
2-20 University;

2-21 (7) one member who [~~and~~
2-22 [~~(3) two members appointed by the attorney general.~~

2-23 [~~(A) one of whom~~] must be a director or division
2-24 head of the University of North Texas Health Science Center at Fort
2-25 Worth Missing Persons DNA Database; and

2-26 (8) one member who [~~(B) one of whom~~] must be a faculty
2-27 or staff member of the Sam Houston State University College of
2-28 Criminal Justice and have expertise in the field of forensic
2-29 science or statistical analyses that the governor selects
2-30 [~~selected~~] from a list of 10 names submitted [~~to the lieutenant~~
2-31 ~~governor~~] by the chancellor of the Texas State University System.

2-32 (b) Each member of the commission serves a two-year term.
2-33 The terms expire [~~term of the members appointed under Subsections~~
2-34 ~~(a)(1) and (2) expires~~] on September 1 of:

2-35 (1) each odd-numbered year, for a member appointed
2-36 under Subsection (a)(1), (2), (3), or (4); and

2-37 (2) [The term of the members appointed under
2-38 ~~Subsection (a)(3) expires on September 1 of] each even-numbered
2-39 year, for a member appointed under Subsection (a)(5), (6), (7), or
2-40 (8).~~

2-41 SECTION 3. Section 4, Article 38.01, Code of Criminal
2-42 Procedure, is amended by amending Subsections (a), (b), (d), and
2-43 (e) and adding Subsections (a-1), (b-1), (b-2), (f), and (g) to read
2-44 as follows:

2-45 (a) The commission shall:

2-46 (1) develop and implement a reporting system through
2-47 which a crime laboratory may [~~accredited laboratories, facilities,~~
2-48 ~~or entities~~] report professional negligence or professional
2-49 misconduct;

2-50 (2) require a crime laboratory [~~all laboratories,~~
2-51 ~~facilities, or entities~~] that conducts [~~conduct~~] forensic analyses
2-52 to report professional negligence or professional misconduct to the
2-53 commission; and

2-54 (3) investigate, in a timely manner, any allegation of
2-55 professional negligence or professional misconduct that would
2-56 substantially affect the integrity of the results of a forensic
2-57 analysis conducted by a crime laboratory [~~an accredited laboratory,~~
2-58 ~~facility, or entity~~].

2-59 (a-1) The commission may initiate for educational purposes
2-60 an investigation of a forensic analysis without receiving a
2-61 complaint, submitted through the reporting system implemented
2-62 under Subsection (a)(1), that contains an allegation of
2-63 professional negligence or professional misconduct involving the
2-64 forensic analysis conducted if the commission determines by a
2-65 majority vote of a quorum of the members of the commission that an
2-66 investigation of the forensic analysis would advance the integrity
2-67 and reliability of forensic science in this state.

2-68 (b) If the commission conducts an [~~An~~] investigation under
2-69 Subsection (a)(3) of a crime laboratory that is accredited by the

3-1 Department of Public Safety under Section 411.0205, Government
3-2 Code, pursuant to an allegation of professional negligence or
3-3 professional misconduct involving an accredited field of forensic
3-4 science, the investigation:

3-5 (1) must include the preparation of a written report
3-6 that identifies and also describes the methods and procedures used
3-7 to identify:

- 3-8 (A) the alleged negligence or misconduct;
- 3-9 (B) whether negligence or misconduct occurred;

3-10 [~~and~~]

3-11 (C) any corrective action required of the
3-12 laboratory, facility, or entity;

3-13 (D) observations of the commission regarding the
3-14 integrity and reliability of the forensic analysis conducted;

3-15 (E) best practices identified by the commission
3-16 during the course of the investigation; and

3-17 (F) other recommendations that are relevant, as
3-18 determined by the commission; and

3-19 (2) may include one or more:

3-20 (A) retrospective reexaminations of other
3-21 forensic analyses conducted by the laboratory, facility, or entity
3-22 that may involve the same kind of negligence or misconduct; and

3-23 (B) follow-up evaluations of the laboratory,
3-24 facility, or entity to review:

3-25 (i) the implementation of any corrective
3-26 action required under Subdivision (1)(C); or

3-27 (ii) the conclusion of any retrospective
3-28 reexamination under Paragraph (A).

3-29 (b-1) If the commission conducts an investigation under
3-30 Subsection (a)(3) of a crime laboratory that is not accredited by
3-31 the Department of Public Safety under Section 411.0205, Government
3-32 Code, or the investigation is conducted pursuant to an allegation
3-33 involving a forensic method or methodology that is not an
3-34 accredited field of forensic science, the investigation may include
3-35 the preparation of a written report that contains:

3-36 (1) observations of the commission regarding the
3-37 integrity and reliability of the forensic analysis conducted;

3-38 (2) best practices identified by the commission during
3-39 the course of the investigation; or

3-40 (3) other recommendations that are relevant, as
3-41 determined by the commission.

3-42 (b-2) If the commission conducts an investigation of a
3-43 forensic analysis under Subsection (a-1), the investigation must
3-44 include the preparation of a written report that contains:

3-45 (1) observations of the commission regarding the
3-46 integrity and reliability of the forensic analysis conducted;

3-47 (2) best practices identified by the commission during
3-48 the course of the investigation; and

3-49 (3) other recommendations that are relevant, as
3-50 determined by the commission.

3-51 (d) The commission may require that a crime laboratory ~~facility, or entity~~
3-52 investigated under this section pay any costs
3-53 incurred to ensure compliance with Subsection (b), (b-1), or (b-2)
3-54 [~~(b)(1)~~].

3-55 (e) The commission shall make all investigation reports
3-56 completed under Subsection (b), (b-1), or (b-2) [~~(b)(1)~~] available
3-57 to the public. A report completed under Subsection (b), (b-1), or
3-58 (b-2) [~~(b)(1)~~], in a subsequent civil or criminal proceeding, is
3-59 not prima facie evidence of the information or findings contained
3-60 in the report.

3-61 (f) The commission may not make a determination of whether
3-62 professional negligence or professional misconduct occurred or
3-63 issue a finding on that question in an investigation initiated
3-64 under Subsection (a-1) or for which an investigation report may be
3-65 prepared under Subsection (b-1).

3-66 (g) The commission may not issue a finding related to the
3-67 guilt or innocence of a party in an underlying civil or criminal
3-68 trial involving conduct investigated by the commission under this
3-69 article.

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

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

(1) a description of each complaint filed with the commission 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 the commission recommends to the public safety director of the Department of Public Safety for validation or approval 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;

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

(4) developments in forensic science made or used in other state or federal investigations and the activities of the commission, 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 the commission.

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

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

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

Sec. 10. OPEN RECORDS LIMITATION. 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, Government Code, until the conclusion of an investigation by the commission under Section 4.

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

SECTION 5. Section 411.0205, Government Code, is amended by adding Subsection (b-3) to read as follows:

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

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

SECTION 7. Not later than December 1, 2014, the Texas

5-1 Forensic Science Commission shall submit the first annual report
5-2 required by Section 8, Article 38.01, Code of Criminal Procedure,
5-3 as added by this Act.

5-4 SECTION 8. This Act takes effect immediately if it receives
5-5 a vote of two-thirds of all the members elected to each house, as
5-6 provided by Section 39, Article III, Texas Constitution. If this
5-7 Act does not receive the vote necessary for immediate effect, this
5-8 Act takes effect September 1, 2013.

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