

SUBJECT: Revising the duties and composition of the Forensic Science Commission

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

1 absent — Kleinschmidt

SENATE VOTE: On final passage, April 4 — 30-0

WITNESSES: No public hearing

BACKGROUND: In 2005, the 79th Legislature created the Forensic Science Commission.

Under Code of Criminal Procedure, art. 38.01 the commission is composed of nine members, including:

- four appointed by the governor, including two with expertise in forensic science, one prosecutor, and one defense attorney;
- three members appointed by the lieutenant governor, including one specialist in clinical laboratory medicine from the University of Texas, one specialist in clinical laboratory medicine from Texas A&M University, and one expert in pharmaceutical laboratory research from Texas Southern University; and
- two members appointed by the attorney general, including one director or division head from the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database, and one expert in forensic science or statistical analyses from the Sam Houston State University College of Criminal Justice.

Commission members serve two-year terms, and the governor appoints the presiding officer.

The duties of the commission are to:

- develop and implement a reporting system for accredited laboratories, facilities, or entities to report professional negligence or misconduct;
- require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and
- investigate allegations of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

**DIGEST:** CSSB 1238 would change the duties of the Forensic Science Commission (FSC) with regard to investigations, exempt certain information from its investigations from disclosure under the Public Information Act, require an annual report from the commission, grant the governor appointment power for all board members, and administratively attach the commission to Sam Houston State University.

**Investigations.** The bill would require the commission to investigate in a timely manner any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

If the FSC conducted an investigation of a crime laboratory accredited by the Department of Public Safety (DPS), the commission would produce a written report that included, in addition to information required under current law, the following information:

- the commission's observations regarding the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the course of the investigation; and
- other relevant recommendations as determined by the commission.

The DPS director would have to require accredited laboratories, facilities, or entities to agree to the commission's requests for cooperation.

If the FSC conducted an investigation of a crime laboratory that was not accredited by DPS, or if the investigation was conducted pursuant to an allegation involving a forensic method or methodology that was not an accredited field of forensic science, the information listed above would

appear in the written report that followed the investigation.

CSSB 215 also would allow the commission to initiate for educational purposes an investigation of a forensic analysis without having received a complaint alleging professional negligence or professional misconduct if the commission voted that such an investigation would advance the integrity and reliability of forensic science. The written report following the conclusion of a self-initiated investigation would include the information listed above.

When concluding an investigation of a non-accredited laboratory or a self-initiated investigation, the FSC would not be able to make a determination about whether professional negligence or professional misconduct occurred.

The commission could require that a crime laboratory pay any costs incurred during the commission's investigation.

**Findings related to guilt or innocence.** The commission would not be able to issue a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission. Further a report prepared by the FSC would not be admissible in a civil or criminal action.

**Open records limitation.** Information filed as part of an allegation of professional misconduct or professional negligence or that was obtained during an investigation would not be subject to release under the Public Information Act until the conclusion of the FSC's investigation.

**Local government corporations.** CSSB 1238 would include in the definition of a criminal justice agency local government corporations that allocated substantial parts of their budgets to conducting criminal identification activities, including forensic analysis.

**Composition of the commission.** CSSB 215 would give the governor responsibility to appoint all the members of the FSC. The bill would remove the requirement that the appointee selected from the faculty of Texas Southern University have experience in pharmaceutical laboratory research. The bill would set staggered expiration dates for the two-year terms of the board members.

**Annual report.** By December 1 each year, beginning in 2014, the commission would publish a report that included several items listed in the bill, including:

- a description of complaints filed in the preceding year and their disposition and status;
- a description of any forensic method recommended to the public safety director for validation or approval as part of the crime laboratory accreditation process;
- activities of the commission with respect to developments in forensic science made or used in other state or federal investigations; and
- recommendations for best practices concerning the definition of forensic analysis.

**Affiliation with Sam Houston State University.** The FSC would be attached administratively to Sam Houston State University. The Texas State University Board of Regents would have to provide administrative support to the commission. Neither university would have authority or responsibility for the duties of the commission.

**Effective date.** This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSSB 1238 would clarify the FSC's jurisdiction, making it clear that the commission could review unaccredited forensic disciplines, such as arson and fingerprinting, and unaccredited forensic entities. These reviews would be forward looking and would attempt to make improvements in forensic science. They would not include a determination of negligence or misconduct.

The bill also would allow the FSC to proactively initiate a review of a forensic discipline for educational purposes without first receiving a complaint from the public, if the commission determined that the review would advance the integrity and reliability of forensic science in Texas.

Under the bill, the FSC would have appropriate investigative powers. The commission's current focus on making public reports of its reviews is the best way to improve forensic science in Texas. Several instances of misconduct and negligence would not have come to light absent its current

review practices. If the FSC had broader investigatory or enforcement powers, such as the ability to levy fines, it would have a chilling effect on the current high levels of voluntary disclosures and petitions for review by forensic science groups and institutions.

The bill would move board appointments to the governor's office to ensure Senate review and confirmation. The Senate should be able to weigh in on all the major appointments in the state, and the bill would ensure it vetted all of the commission board members.

CSSB 1238 would clarify that local government corporations that spend a substantial portion of their budgets on criminal justice investigations are considered law enforcement agencies. This would grant the City of Houston Independent Crime Lab access to the FBI's CODIS database, which stores DNA information. This access is crucial and this designation of the Houston lab is required by the FBI for access.

It is appropriate that the commission not have jurisdiction over medical examiners because FSC staff report that if they were to review autopsies, they would have time for nothing else. Further, requiring autopsy review under the bill would result in a significant fiscal note because forensic pathology is an expensive field.

**OPPONENTS  
SAY:**

CSSB 1238 would do little to expand the authority or investigative power of the FSC when such strengthening is needed to improve the shoddy state of forensic science in Texas. The state's long history of sloppy investigations conducted with outdated techniques calls out for stronger action.

The bill should not consolidate appointment power in the governor's office. It would be better to diversify board appointments, which would keep the appointment power split between different statewide officials.

The commission should have jurisdiction over medical examiners because autopsies are one of the most common, and most important, pieces of forensic evidence used by law enforcement.

**NOTES:**

Unlike the Senate-engrossed version, CSSB 1238 would include in the definition of a criminal justice agency local government corporations that allocate substantial parts of their budgets to conducting criminal identification activities, including forensic analysis.