

SUBJECT: Creating forensic analyst license, shifting crime laboratory accreditation

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller

0 nays

1 absent — S. Thompson

SENATE VOTE: On final passage, April 16 — 29-2 (Burton, Huffines)

WITNESSES: For — Bill Gibbens, Texas Association of Crime Laboratory Directors; (*Registered, but did not testify*: Lindsay Lanagan, City of Houston)

Against — None

On — (*Registered, but did not testify*: Lynn Garcia, Texas Forensic Science Commission)

BACKGROUND: Crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings are accredited through a process established by the director of the Department of Public Safety, as required under Government Code, sec. 411.0205.

Under Code of Criminal Procedure, art. 38.35, a forensic analysis of physical evidence and related expert testimony are not admissible in a criminal action if the crime laboratory is not accredited.

DIGEST: CSSB 1287 would change the agency responsible for the accreditation of crime laboratories, create a forensic analyst license, and create an advisory committee.

Accreditation. The bill would shift crime laboratory accreditation

procedures and responsibilities from the Department of Public Safety (DPS) to the Texas Forensic Science Commission (TFSC).

Forensic analyst license. The bill would create a license for a “forensic analyst,” which would be defined as a person who performs or reviews forensic analyses or interprets forensic analyses for a court or crime laboratory accredited by TFSC. Medical examiners or other forensic pathologists who were licensed physicians would not be included.

A person could not act as a forensic analyst without a license on or after January 1, 2019. The bill would require TFSC to establish by rule the qualifications for a license, the fees for an issuance or renewal, and the term of a license. The qualifications would include successful completion of:

- education requirements;
- course work and experience that includes instruction in courtroom testimony and ethics in a crime laboratory;
- an examination; and
- proficiency testing required for crime laboratory accreditation.

TFSC could recognize a certification issued by a national organization in an accredited field of forensic science as satisfying the examination requirement for a license if the content required for the certification was substantially equivalent to the content of the examination.

Disciplinary action. If TFSC determined that a license holder committed professional misconduct or a violation of a TFSC rule or relevant statutory provision, the commission could revoke or suspend the license, refuse to renew the license, or reprimand the license holder.

TFSC could place a person whose license had been suspended on probation. The commission could require the person to report regularly on the matters that were the basis of the probation or to attain a satisfactory degree of skill in the areas that were the basis of the probation.

Advisory committee. The bill would require TFSC to establish an advisory committee by January 1, 2016, to advise TFSC and make recommendations on matters related to the licensing of forensic analysts. The advisory committee would consist of nine members:

- one prosecuting attorney recommended by the Texas District and County Attorneys Association;
- one defense attorney recommended by the Texas Criminal Defense Lawyers Association; and
- seven forensic scientists, crime laboratory directors, or crime laboratory quality managers selected by TFSC from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.

The advisory committee would elect a presiding officer and would meet once a year and at the call of the presiding officer or TFSC. Members would not be entitled to compensation but could be reimbursed for actual and necessary expenses incurred.

On September 1, 2015, a certificate of accreditation issued by DPS would continue to be in effect as a certificate of accreditation of TFSC. An application or proceeding that was pending before DPS on the effective date of the bill would be transferred to TFSC without a change in status.

Except as otherwise provided, the bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 1287 would provide a solution to ensure the competence of forensic analysts. A crime laboratory must be accredited in Texas in order for evidence analyzed by that lab to be admissible in a criminal trial, but there is no accreditation procedure to assess the competency of individuals working in the lab. Analysts who engage in misconduct face discipline only from the lab and can continue working at other labs.

In criminal cases, a person's life and liberty are at stake, and forensic analysis of physical evidence and the related testimony are often the

deciding factors. In 2012, the Department of Public Safety retested evidence in hundreds of drug cases after it discovered an error, and subsequently found others, by the analyst who did the original testing in those cases. Forensic analysts should be competent and held accountable for substandard work.

**OPPONENTS
SAY:**

CSSB 1287 would create another level of bureaucracy and regulation where it is not needed. The forensic analyst license would be unnecessary because there is not a crisis of criminal cases being overturned due to shoddy forensic analyses.

The bill only would create a barrier to entry in the forensic analysis industry, making it more difficult for people to begin those careers. The Legislature should promote economic freedom and remove state barriers to employment, not add new ones.