

BILL ANALYSIS

Senate Research Center

S.B. 1238
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the Texas Forensic Science Commission (FSC) was created under Chapter 38 (Evidence in Criminal Actions), Code of Criminal Procedure.

FSC investigates complaints that allege professional negligence or misconduct by a laboratory, facility, or entity that has been accredited by the public safety director of the Department of Public Safety of the State of Texas that would substantially affect the integrity of the results of a forensic analysis.

As proposed, S.B. 1238 amends current law 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, and the accreditation of criminal laboratories by the Department of Public Safety of the State of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 4 (Article 38.01, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 38.01, Code of Criminal Procedure, as follows:

Sec. 2. New heading: DEFINITIONS. Defines "accredited field of forensic science," "commission," "crime laboratory," and "forensic analysis" in this article. Deletes existing definition of "forensic analysis."

SECTION 2. Amends Section 3, Article 38.01, Code of Criminal Procedure, by amending Subsections (a) and (b), as follows:

(a) Provides that the Texas Forensic Science Commission (FSC) is composed of nine members appointed by the governor as follows:

- (1) two who are required to have expertise in the field of forensic science;
- (2) one who is required to be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association;
- (3) one who is required to be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;
- (4) one who is required to be a faculty member or staff member of The University of Texas (UT) who specializes in clinical laboratory medicine that the governor selects from a list of 10 names submitted by the chancellor of The UT System;
- (5) one who is required to be a faculty member or staff member of Texas A&M University (TAMU) who specializes in clinical laboratory medicine that the

governor selects from a list of 10 names submitted by the chancellor of The TAMU System;

(6) one who is required to be a faculty member or staff member of Texas Southern University (TSU) that the governor selects from a list of 10 names submitted by the chancellor of TSU;

(7) one who is required to be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and

(8) one who is required to be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science that the governor selects from a list of 10 names submitted by the chancellor of TSU System.

Deletes existing text providing that FSC is composed of the following nine members: four members appointed by the governor, two of whom must have expertise in the field of forensic science, one of whom must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association, and one of whom must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association; three members appointed by the lieutenant governor, one of whom must be a faculty member or staff member of UT who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The UT System, one of whom must be a faculty member or staff member of TAMU who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The TAMU System, one of whom must be a faculty member or staff member of TSU who has expertise in pharmaceutical laboratory research selected from a list of 10 names submitted to the lieutenant governor by the chancellor of TSU; and two members appointed by the attorney general, one of whom must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database, and one of whom must be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science or statistical analyses selected from a list of 10 names submitted to the lieutenant governor by the chancellor of TSU System.

(b) Sets forth the terms of FSC members.

SECTION 3. Amends Section 4, Article 38.01, Code of Criminal Procedure, by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (b-1), (b-2), (f), and (g), as follows:

(a) Requires FSC to:

(1) develop and implement a reporting system through which a crime laboratory, rather than accredited laboratories, facilities, or entities, is authorized to report professional negligence or professional misconduct;

(2) require a crime laboratory that conducts, rather than all laboratories, facilities, or entities that conduct, forensic analyses to report professional negligence or professional misconduct to FSC; and

(3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory, rather than an accredited laboratory, facility, or entity.

(a-1) Authorizes FSC to initiate for educational purposes an investigation of a forensic analysis without a report containing an allegation of professional negligence or professional misconduct involving the forensic analysis conducted if FSC determines by

a majority vote of the members of FSC that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in this state.

(b) Provides that an investigation, if FSC conducts the investigation under Subsection (a)(3) of a crime laboratory that is accredited by the Department of Public Safety of the State of Texas (DPS) under Section 411.0205, Government Code, pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science:

(1) is required to include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred;

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

(D) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;

(E) best practices identified by FSC during the course of the investigation; and

(F) other recommendations that are relevant, as determined by FSC; and

(2) is authorized to include one or more:

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

(B) follow-up evaluations of the laboratory, facility, or entity to review the implementation of any corrective action required under Subdivision (1)(C) or the conclusion of any retrospective reexamination under Paragraph (A).

(b-1) Authorizes an investigation, if FSC conducts the investigation under Subsection (a)(3) of a crime laboratory that is not accredited by DPS under Section 411.0205, Government Code, or the investigation is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science, to include the preparation of a written report that contains:

(1) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;

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

(3) other recommendations that are relevant, as determined by FSC.

(b-2) Requires that an investigation, if FSC conducts the investigation of a forensic analysis under Subsection (a-1), include the preparation of a written report that contains:

(1) observations of FSC regarding the integrity and reliability of the forensic analysis conducted;

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

(3) other recommendations that are relevant, as determined by FSC.

(d) Authorizes FSC to require that a crime laboratory, rather than a laboratory, facility, or entity, investigated under this section pay any costs incurred to ensure compliance with Subsection (b), (b-1), or (b-2), rather than Subsection (b)(1).

(e) Requires FSC to make all investigation reports completed under Subsection (b), (b-1), or (b-2), rather than Subsection (b)(1), available to the public. Provides that a report completed under Subsection (b), (b-1), or (b-2), rather than Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information of findings contained in the report.

(f) Prohibits FSC from making a determination of whether professional negligence or professional misconduct occurred or issuing a finding on that question in an investigation initiated under Subsection (a-1) or for which an investigation report may be prepared under Subsection (b-1).

(g) Prohibits FSC from issuing a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by FSC under this article.

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

Sec. 8. ANNUAL REPORT. Requires FSC, not later than December 1 of each year, to prepare and publish a report that includes:

(1) a description of each complaint filed with FSC 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 FSC recommends to the public safety director of DPS (director) for validation or approval under Section 411.0205(b-1)(2) (relating to authorizing the director to validate or approve specific forensic methods or methodologies), Government Code, as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) (relating to requiring the director to establish an accreditation process for certain crime laboratories and other entities and authorizing the director to modify or remove crime laboratory exemptions under certain conditions) of that code;

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

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

Sec. 9. ADMINISTRATIVE ATTACHMENT TO SAM HOUSTON STATE UNIVERSITY. (a) Provides that FSC is administratively attached to Sam Houston State University (SHSU).

(b) Requires the Board of Regents, Texas State University System (TSUS regents), to provide administrative support to FSC as necessary to carry out the purposes of this article.

(c) Authorizes FSC only to exercise the duties of FSC under this article. Provides that neither TSUS regents nor SHSU has any authority or responsibility with respect to the duties of FSC under this article, except as provided by Subsection (b).

Sec. 10. OPEN RECORDS LIMITATION. Provides that information filed as part of an allegation of professional misconduct or professional negligence or obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under Chapter 552 (Public Information), Government Code, until the conclusion of an investigation by FSC under Section 4.

Sec. 11. REPORT INADMISSIBLE AS EVIDENCE. Provides that a written report prepared by FSC under this article is not admissible in a civil or criminal action.

SECTION 5. Amends Section 411.0205, Government Code, by adding Subsection (b-3), to require the director to 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 FSC that is made as part of the exercise of FSC's duties under Article 38.01, Code of Criminal Procedure.

SECTION 6. (a) Provides that notwithstanding any other law, the terms of the members of FSC appointed under Subdivisions (2) and (3), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, and serving on the effective date of this Act expire on the date the last appointment to FSC is made under Subsection (b) of this section.

(b) Requires the governor, not later than January 1, 2014, to appoint five members of FSC, as required by Subdivisions (1), (2), (3), and (4), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as amended by this Act.

SECTION 7. Requires FSC, not later than December 1, 2014, to submit the first annual report required by Section 8, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2013.