

BILL ANALYSIS

C.S.S.B. 1287
By: Hinojosa
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that crime laboratories practicing certain forensic disciplines are currently required to be accredited by the Department of Public Safety and that, if the laboratory is not accredited, any analysis performed by that laboratory is not admissible in criminal cases. The parties also note that, while this practice has made Texas a national leader in forensic science reform, accreditation remains focused on the crime laboratory as an entity and does not measure the competency of individual forensic analysts to perform their duties. The parties have expressed concern regarding the lack of a requirement that forensic examiners be certified or licensed to practice or testify in court, as forensic analyses and related testimony often are the deciding factors in criminal cases where punishment involves the life and liberty of accused defendants. C.S.S.B. 1287 seeks to address this issue by, among other things, establishing a forensic licensing program.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Forensic Science Commission in SECTION 4 of this bill and that rulemaking authority previously granted to the public safety director of the Department of Public Safety is transferred to the Texas Forensic Science Commission in SECTION 5 of this bill.

ANALYSIS

C.S.S.B. 1287 amends the Code of Criminal Procedure to decrease from 10 to five the number of names on each of the following slates of nominees submitted to the governor for gubernatorial appointments to the Texas Forensic Science Commission: the list of names of The University of Texas faculty and staff who specialize in clinical laboratory medicine submitted by The University of Texas System chancellor, the list of names of Texas A&M University faculty and staff who specialize in clinical laboratory medicine submitted by The Texas A&M University System chancellor, the list of names of Texas Southern University faculty and staff submitted by the Texas Southern University chancellor, and the list of names of the Sam Houston State University College of Criminal Justice faculty and staff members who have expertise in the field of forensic science or statistical analyses submitted by the Texas State University System chancellor.

C.S.S.B. 1287 transfers from the Government Code to the Code of Criminal Procedure the statutory provisions regarding the crime laboratory accreditation process and to redesignate those transferred provisions as Code of Criminal Procedure provisions subject to the statutory provisions and bill provisions governing the Texas Forensic Science Commission. The bill

amends those transferred and redesignated provisions to transfer from the public safety director of the Department of Public Safety (DPS) to the commission the authority, including rulemaking authority, relating to the establishment of the accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings. The bill removes from those transferred and redesignated provisions the requirement that funds collected under the provisions be deposited in the state treasury to the credit of the state highway fund. The bill establishes that, on the bill's effective date, a certificate of accreditation issued by DPS under the transferred and redesignated provisions before their transfer and redesignation by the bill is continued in effect as a certificate of accreditation of the commission and an application or proceeding before DPS under the transferred and redesignated provisions before their transfer and redesignation by the bill that is pending on the bill's effective date is transferred without change in status to the commission.

C.S.S.B. 1287 amends the Code of Criminal Procedure to prohibit a person from acting or offering to act as a forensic analyst unless the person holds a forensic analyst license and authorizes the commission by rule to establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission and the bill makes this bill provision effective January 1, 2019. The bill defines "forensic analyst" as a person who on behalf of an accredited crime laboratory technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory but specifically excludes from the term a medical examiner or other forensic pathologist who is a licensed physician.

C.S.S.B. 1287 requires the commission to adopt rules necessary to implement statutory provisions and bill provisions governing the commission. The bill authorizes the commission by rule to establish voluntary licensing programs for forensic disciplines that are not subject to accreditation by the commission. The bill requires the commission by rule to establish the qualifications for a forensic analyst license that include certain qualifications prescribed by the bill, to set fees for the issuance and renewal of a license, and to establish the term of a license. The bill authorizes the commission by rule to recognize a certification issued by a national organization in an accredited field of forensic science as satisfying an examination requirement established by the commission to the extent the commission determines the content required to receive the certification is substantially equivalent to the content of the examination requirement. The bill requires the commission to issue a license to an applicant who submits an application on a form prescribed by the commission, meets the qualifications established by commission rule, and pays the required fee.

C.S.S.B. 1287 requires the commission to establish a nine-member advisory committee to advise the commission and make recommendations on matters related to the licensing of forensic analysts. The bill prescribes the composition of the advisory committee; sets out provisions relating to the appointment of committee members, member terms, member compensation and reimbursement, and the election of a presiding officer; requires the commission, not later than January 1, 2016, to appoint the initial members; and provides for those initial terms. The bill requires the advisory committee to meet annually and at the call of the presiding officer or the commission. The bill exempts the advisory committee from Government Code provisions relating to state agency advisory committees.

C.S.S.B. 1287 authorizes the commission, on a determination by the commission that a license holder has committed professional misconduct under statutory provisions or bill provisions governing the commission or has violated such provisions or a rule or order of the commission under such provisions, to revoke or suspend the person's license, refuse to renew the person's license, or reprimand the license holder. The bill authorizes the commission to place on probation a person whose license is suspended and, if a license suspension is probated, to require the license holder to report regularly to the commission on matters that are the basis of the probation or to continue or review continuing professional education until the license holder

attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation. The bill establishes that disciplinary proceedings of the commission are governed by the Administrative Procedure Act and requires a hearing under these provisions to be conducted by an administrative law judge of the State Office of Administrative Hearings.

C.S.S.B. 1287 amends the Code of Criminal Procedure and Government Code to make conforming changes to reflect the bill's transfer and redesignation of statutory provisions regarding the crime laboratory accreditation process.

C.S.S.B. 1287 requires the commission, not later than January 1, 2017, to make recommendations to the legislature regarding suggested changes to the licensing of forensic analysts as established by the bill's provisions, including recommendations regarding the issuance of licenses to individuals practicing as forensic analysts on the bill's effective date.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1287 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

SECTION 1. Section 3(a), Article 38.01, Code of Criminal Procedure, is amended.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 2, Article 38.01, Code of Criminal Procedure, is amended by amending Subdivision (1) and adding Subdivision (5) to read as follows:

- (1) "Accredited field of forensic science" means a specific forensic method or methodology validated or approved by the commission under this article [~~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~~].
- (5) "Physical evidence" has the meaning assigned by Article 38.35.

SECTION 2. Same as engrossed version.

SECTION 3. Sections 4(b) and (b-1), Article 38.01, Code of Criminal Procedure, are amended to read as follows:

- (b) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited [~~by the Department of Public Safety~~] under this article [~~Section 411.0205,~~

~~Government Code,~~] pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation:

(1) must 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 the commission regarding the integrity and reliability of the forensic analysis conducted;

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

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

(2) may 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:

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

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

(b-1) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited ~~[by the Department of Public Safety]~~ under this article ~~[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, the investigation may include the preparation of a written report that contains:

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

(2) best practices identified by the commission during the course of the

SECTION 2. Article 38.01, Code of Criminal Procedure, is amended by adding Sections 3-a, 4-a, 4-b, and 4-c to read as follows:

Sec. 3-a. RULES. The commission shall adopt rules necessary to implement this article.

Sec. 4-a. FORENSIC ANALYST LICENSING. (a) Notwithstanding Section 2, in this section:

(1) "Forensic analysis" has the meaning assigned by Article 38.35.

(2) "Forensic analyst" means a person who on behalf of a crime laboratory accredited by the Department of Public Safety under Section 411.0205, Government Code, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(b) A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license. The commission by rule may establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission.

(c) The commission by rule may establish voluntary licensing programs for forensic disciplines that are not subject to accreditation by the Department of Public Safety under Section 411.0205, Government Code.

(d) The commission by rule shall:

(1) establish the qualifications for a license that include:

(A) successful completion of the education requirements established by the commission;

(B) specific course work and experience, including instruction in courtroom testimony and ethics in a crime laboratory;

(C) successful completion of an

investigation; or

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

SECTION 4. Article 38.01, Code of Criminal Procedure, is amended by adding Sections 3-a, 4-a, 4-b, and 4-c to read as follows:

Sec. 3-a. RULES. The commission shall adopt rules necessary to implement this article.

Sec. 4-a. FORENSIC ANALYST LICENSING. (a) Notwithstanding Section 2, in this section:

(1) "Forensic analysis" has the meaning assigned by Article 38.35.

(2) "Forensic analyst" means a person who on behalf of a crime laboratory accredited under this article technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(b) A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license. The commission by rule may establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission.

(c) The commission by rule may establish voluntary licensing programs for forensic disciplines that are not subject to accreditation under this article.

(d) The commission by rule shall:

(1) establish the qualifications for a license that include:

(A) successful completion of the education requirements established by the commission;

(B) specific course work and experience, including instruction in courtroom testimony and ethics in a crime laboratory;

(C) successful completion of an

examination required or recognized by the commission; and

(D) successful completion of proficiency testing to the extent required for crime laboratory accreditation;

(2) set fees for the issuance and renewal of a license; and

(3) establish the term of a forensic analyst license.

(e) The commission by rule may recognize a certification issued by a national organization in an accredited field of forensic science as satisfying the requirements established under Subsection (d)(1)(C) to the extent the commission determines the content required to receive the certification is substantially equivalent to the content of the requirements under that subsection.

(f) The commission shall issue a license to an applicant who:

(1) submits an application on a form prescribed by the commission;

(2) meets the qualifications established by commission rule; and

(3) pays the required fee.

Sec. 4-b. ADVISORY COMMITTEE.

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the licensing of forensic analysts under Section 4-a.

(b) The advisory committee consists of nine members as follows:

(1) one prosecuting attorney recommended by the Texas District and County Attorneys Association;

(2) one defense attorney recommended by the Texas Criminal Defense Lawyers Association; and

(3) seven members who are forensic scientists, crime laboratory directors, or crime laboratory quality managers, selected by the commission from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.

(c) The commission shall ensure that appointments under Subsection (b)(3) include representation from municipal, county, state, and private crime laboratories that are accredited by the Department of Public Safety under Section 411.0205, Government Code.

(d) The advisory committee members

examination required or recognized by the commission; and

(D) successful completion of proficiency testing to the extent required for crime laboratory accreditation;

(2) set fees for the issuance and renewal of a license; and

(3) establish the term of a forensic analyst license.

(e) The commission by rule may recognize a certification issued by a national organization in an accredited field of forensic science as satisfying the requirements established under Subsection (d)(1)(C) to the extent the commission determines the content required to receive the certification is substantially equivalent to the content of the requirements under that subsection.

(f) The commission shall issue a license to an applicant who:

(1) submits an application on a form prescribed by the commission;

(2) meets the qualifications established by commission rule; and

(3) pays the required fee.

Sec. 4-b. ADVISORY COMMITTEE.

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the licensing of forensic analysts under Section 4-a.

(b) The advisory committee consists of nine members as follows:

(1) one prosecuting attorney recommended by the Texas District and County Attorneys Association;

(2) one defense attorney recommended by the Texas Criminal Defense Lawyers Association; and

(3) seven members who are forensic scientists, crime laboratory directors, or crime laboratory quality managers, selected by the commission from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.

(c) The commission shall ensure that appointments under Subsection (b)(3) include representation from municipal, county, state, and private crime laboratories that are accredited under this article.

(d) The advisory committee members

serve staggered two-year terms, with the terms of four or five members, as appropriate, expiring on August 31 of each year. An advisory committee member may not serve more than two consecutive terms. A vacancy on the advisory committee is filled by appointing a member in the same manner as the original appointment to serve for the unexpired portion of the term.

(e) The advisory committee shall elect a presiding officer from among its members to serve a one-year term. A member may serve more than one term as presiding officer.

(f) The advisory committee shall meet annually and at the call of the presiding officer or the commission.

(g) An advisory committee member is not entitled to compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing duties as a member of the advisory committee subject to the General Appropriations Act.

(h) Chapter 2110, Government Code, does not apply to the advisory committee.

Sec. 4-c. DISCIPLINARY ACTION.

(a) On a determination by the commission that a license holder has committed professional misconduct under this article or violated this article or a rule or order of the commission under this article, the commission may:

(1) revoke or suspend the person's license;

(2) refuse to renew the person's license;

or

(3) reprimand the license holder.

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the license holder to:

(1) report regularly to the commission on matters that are the basis of the probation; or

(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(c) Disciplinary proceedings of the

serve staggered two-year terms, with the terms of four or five members, as appropriate, expiring on August 31 of each year. An advisory committee member may not serve more than two consecutive terms. A vacancy on the advisory committee is filled by appointing a member in the same manner as the original appointment to serve for the unexpired portion of the term.

(e) The advisory committee shall elect a presiding officer from among its members to serve a one-year term. A member may serve more than one term as presiding officer.

(f) The advisory committee shall meet annually and at the call of the presiding officer or the commission.

(g) An advisory committee member is not entitled to compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing duties as a member of the advisory committee subject to the General Appropriations Act.

(h) Chapter 2110, Government Code, does not apply to the advisory committee.

Sec. 4-c. DISCIPLINARY ACTION.

(a) On a determination by the commission that a license holder has committed professional misconduct under this article or violated this article or a rule or order of the commission under this article, the commission may:

(1) revoke or suspend the person's license;

(2) refuse to renew the person's license;

or

(3) reprimand the license holder.

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the license holder to:

(1) report regularly to the commission on matters that are the basis of the probation; or

(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(c) Disciplinary proceedings of the

commission are governed by Chapter 2001, Government Code.

commission are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

SECTION 3. Section 9, Article 38.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 9. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT OF PUBLIC SAFETY [~~SAM HOUSTON STATE UNIVERSITY~~].

(a) The commission is administratively attached to the Department of Public Safety [~~Sam Houston State University~~].

(b) The Department of Public Safety [~~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), the Department of Public Safety [~~neither the Board of Regents of the Texas State University System nor Sam Houston State University~~] has no [~~any~~] authority or responsibility with respect to the duties of the commission under this article.

No equivalent provision.

No equivalent provision.

SECTION 5. Section 411.0205, Government Code, is transferred to Chapter 38, Code of Criminal Procedure, redesignated as Section 4-d, Article 38.01, Code of Criminal Procedure, and amended to read as follows:

Sec. 4-d [411.0205]. CRIME LABORATORY ACCREDITATION PROCESS. (a) Notwithstanding Section 2, in this section [~~In this section,~~ "crime laboratory,"] "forensic analysis" has the meaning [~~analysis,"—and "physical evidence" have the meanings~~] assigned by Article 38.35 [~~,—Code of Criminal Procedure~~].

(b) The commission [~~director~~] by rule:

(1) shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; and

(2) may modify or remove a crime laboratory exemption under this section if the commission [~~director~~] determines that the underlying reason for the exemption no longer applies.

(b-1) As part of the accreditation process established and implemented under Subsection (b), the commission [~~director~~] may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and applicable laws [~~code~~];

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(b-2) The commission [~~director~~] may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with the accreditation process.

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

(c) The commission [~~director~~] by rule may exempt from the accreditation process established under Subsection (b) a crime laboratory conducting a forensic analysis or a type of analysis, examination, or test if the commission [~~director~~] determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or the type of analysis, examination, or test performed by the laboratory;

(2) the type of analysis, examination, or test performed by the laboratory is admissible under a well-established rule of evidence or a statute other than Article 38.35 [~~, Code of Criminal Procedure~~];

(3) the type of analysis, examination, or

test performed by the laboratory is routinely conducted outside of a crime laboratory by a person other than an employee of the crime laboratory; or

(4) the laboratory:

(A) is located outside this state or, if located in this state, is operated by a governmental entity other than the state or a political subdivision of the state; and

(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established ~~[by the director]~~ under Subsection (b).

(d) The commission ~~[director]~~ may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this section.

(e) The commission ~~[director]~~ may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) If the commission ~~[director]~~ provides a copy of an audit or other report made under this section, the commission ~~[director]~~ may charge \$6 for the copy, in addition to any other cost permitted under Chapter 552, Government Code, or a rule adopted under that chapter.

~~[(g) Funds collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section may be used only to defray the cost of administering this section or Subchapter G.]~~

No equivalent provision.

SECTION 6. Section 8, Article 38.01, Code of Criminal Procedure, is amended 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 designates [~~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 this article [~~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.

No equivalent provision.

SECTION 7. Articles 38.35(a)(3) and (4), Code of Criminal Procedure, are amended to read as follows:

(3) "Commission" [~~"Director"~~] means the Texas Forensic Science Commission established under Article 38.01 [~~public safety director of the Department of Public Safety~~].

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code;

(C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01 [~~Section 411.0205(e), Government Code~~];

(E) a presumptive test performed for the purpose of determining compliance with a term or condition of community

supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

No equivalent provision.

SECTION 8. Articles 38.35(d) and (e), Code of Criminal Procedure, are amended to read as follows:

(d)(1) Except as provided by Subsection (e), a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the commission [~~director~~] under Article 38.01 [~~Section 411.0205, Government Code~~].

(2) If before the date of the analysis the commission [~~director~~] issues a certificate of accreditation under Article 38.01 [~~Section 411.0205, Government Code~~], to a crime laboratory conducting the analysis, the certificate is prima facie evidence that the laboratory was accredited by the commission [~~director~~] at the time of the analysis.

(e) A forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not inadmissible in a criminal action based solely on the accreditation status of the crime laboratory conducting the analysis if the laboratory:

(A) except for making proper application, was eligible for accreditation by the commission [~~director~~] at the time of the examination or test; and

(B) obtains accreditation from the commission [~~director~~] before the time of testimony about the examination or test.

No equivalent provision.

SECTION 9. Articles 38.43(i) and (m), Code of Criminal Procedure, are amended to read as follows:

(i) Before a defendant is tried for a capital offense in which the state is seeking the death penalty, subject to Subsection (j), the state shall require either the Department of Public Safety through one of its laboratories or a laboratory accredited under Article 38.01 [~~Section 411.0205, Government Code,~~] to perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. The laboratory that performs the DNA testing shall pay for all DNA testing performed in accordance with this subsection.

(m) A defendant may have another laboratory accredited under Article 38.01 [~~Section 411.0205, Government Code,~~] perform additional testing of any biological evidence required to be tested under Subsection (i). On an ex parte showing of good cause to the court, a defendant may have a laboratory accredited under Article 38.01 [~~Section 411.0205, Government Code,~~] perform testing of any biological material that is not required to be tested under Subsection (i). The defendant is responsible for the cost of any testing performed under this subsection.

No equivalent provision.

SECTION 10. Article 64.03(c), Code of Criminal Procedure, is amended to read as follows:

(c) If the convicting court finds in the affirmative the issues listed in Subsection (a)(1) and the convicted person meets the requirements of Subsection (a)(2), the court shall order that the requested forensic DNA testing be conducted. The court may order the test to be conducted by:

- (1) the Department of Public Safety;
- (2) a laboratory operating under a contract with the department; or
- (3) on the request of the convicted person, another laboratory if that laboratory is accredited under Article 38.01 [~~Section 411.0205, Government Code,~~].

No equivalent provision.

SECTION 11. Section 411.145(c),

Government Code, is amended to read as follows:

(c) A fee collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section and under Articles 42.12 and 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter [~~and Section 411.0205~~].

No equivalent provision.

SECTION 12. Section 420.003(1), Government Code, is amended to read as follows:

(1) "Accredited crime laboratory" means a crime laboratory, as that term is defined by Article 38.35, Code of Criminal Procedure, that has been accredited under Article 38.01 of that code [~~Section 411.0205~~].

No equivalent provision.

SECTION 13. On the effective date of this Act:

(1) a certificate of accreditation issued by the Department of Public Safety under former Section 411.0205, Government Code, is continued in effect as a certificate of accreditation of the Texas Forensic Science Commission; and

(2) an application or proceeding before the Department of Public Safety under former Section 411.0205, Government Code, that is pending on the effective date of this Act is transferred without change in status to the Texas Forensic Science Commission.

SECTION 4. Not later than January 1, 2016, the Texas Forensic Science Commission shall appoint the members of the advisory committee in accordance with Section 4-b, Article 38.01, Code of Criminal Procedure, as added by this Act. In making the appointments, the commission shall designate:

(1) four members to serve terms expiring August 31, 2016; and

(2) five members to serve terms expiring August 31, 2017.

SECTION 14. Same as engrossed version.

SECTION 5. Not later than January 1, 2017, the Texas Forensic Science Commission shall make

SECTION 15. Same as engrossed version.

recommendations to the legislature regarding suggested changes to the licensing of forensic analysts as established by this Act, including recommendations regarding the issuance of licenses to individuals practicing as forensic analysts on the effective date of this Act.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2015.

(b) Section 4-a(b), Article 38.01, Code of Criminal Procedure, as added by this Act, takes effect January 1, 2019.

SECTION 16. Same as engrossed version.