

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

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — S. Miller, Fletcher, Beck, Driver, Flynn, Mallory Caraway, Pena
2 nays — Burnam, Walle

SENATE VOTE: On final passage, May 13 — 31-0

WITNESSES: No public hearing

BACKGROUND: In 2005 the Legislature created the Forensic Science Commission (FSC). Under Code of Criminal Procedure art. 38.01 the commission is composed of nine members:

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

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: SB 1658 would change the composition and duties of the Forensic Science Commission (FSC), exempt certain information from its investigations from the Public Information Act, require an annual report from the commission, and administratively attach the commission to Sam Houston State University.

The 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, 2011.

Composition of commission. SB 1658 would reduce the size of the commission from nine to seven members and change its composition. All seven members would be appointed by the governor. Five members would have to have expertise in forensic science, and one member would have to be a prosecutor and one a defense attorney. The governor would continue to appoint the presiding officer.

By January 1, 2012, the governor would be required to appoint five of the commission members. The terms of the members of the FSC who were serving when CSSB 1658 became effective would expire upon the last of these five gubernatorial appointments.

Duties of the commission. The duties of the commission would be changed so that they applied only to crime laboratories and not to accredited laboratories, facilities, or entities.

If certain conditions were met, the commission would be authorized to initiate, for educational purposes, an investigation of a forensic analysis

without a report of an allegation of professional negligence or professional misconduct involving the forensic analysis. This could be done if the commission determined by a majority vote of commission members that an investigation would advance the integrity and reliability of forensic science in Texas. If the commission investigated a forensic analysis under this authority, it would have to prepare a written report that contained:

- observations of the commission about the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission; and
- other recommendations.

The bill would establish different reporting requirements for FSC investigations, depending on the type of crime lab investigated.

If the investigation were of a crime lab accredited by the Department of Public Safety pursuant to allegations of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation would have to include a written report that identified and described the methods and procedures used to identify:

- the alleged negligence or misconduct and whether it occurred;
- any corrective action required;
- observations of the commission regarding the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the investigation; and
- other recommendations.

If the investigation were of a crime lab not accredited by DPS or the investigation were pursuant to allegations involving a forensic method that was not an accredited field of forensic science, the investigation could include a written report that contained:

- observations of the commission about the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the investigation; and
- other recommendations.

All of the reports described above would have to be made available to the public.

For two types of reports, the commission would be prohibited from making a determination of whether professional negligence or professional misconduct occurred or issuing a finding on that question. This prohibition would apply when the commission conducted investigations that it initiated without a report of an allegation of professional negligence or professional misconduct and when it investigated crime labs that were not accredited by the DPS or were pursuant to allegations of a forensic method that is not an accredited field of forensic science.

The commission would be prohibited from issuing findings related to the guilt or innocence of parties in an underlying civil or criminal trial. The commission's written reports would not be admissible in civil or criminal cases.

The DPS director would have to require laboratories, facilities, or entities that had to be accredited by DPS to agree to requests for cooperation by the Forensic Science Commission.

Public information exemption. Information filed as part of an allegation of professional misconduct or professional negligence or that was obtained during an investigation into one of these would not be subject to release under the Government Code's public information statutes until the conclusion of the commission's investigation.

Annual report. By December 1 each year, the commission would have to publish a report that included several items listed in the bill, including a description of complaints filed in the preceding year and the disposition and status of the complaints. The first annual report would be due by December 1, 2012.

Affiliation with Sam Houston State University. The commission 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. The university and the board of regents of the Texas State University System would have no authority or responsibility for the duties of the commission.

SUPPORTERS
SAY:

SB 1658 is needed to clarify the scope and duties of the Forensic Science Commission. Almost since its creation, the commission has been bogged down with questions about its authority and operations, especially during its investigation into the case of Cameron Todd Willingham, executed after a fire that killed his three daughters. The changes in the bill would improve the structure of the commission and clarify its jurisdiction so that it could move forward with its work and increase public confidence in the Texas criminal justice system.

Composition of the commission. SB 1658 would require the governor to make all appointments to the FSC, something not unusual for state commissions. With five of the appointees being required to have expertise in forensic science, one required to be a prosecutor, and one required to be a defense attorney, the expertise of the commission would be focused on forensic science and courtroom knowledge.

Duties of the commission. SB 1658 would broaden the FSC's powers so that it could launch an investigation without first receiving a complaint. This would give the commission more flexibility to address issues in the use of forensic science, which would lead to continued improvements. This authority, along with authority to investigate nonaccredited fields of forensic science, would give the commission the necessary discretion to look into junk science or other areas it deemed appropriate. These investigations could only be ordered by majority vote and would have to be done to advance the integrity and reliability of forensic science.

The bill would clarify the FSC's duties by outlining what was required to be in the reports of different types of investigations. Including best practices in the reports would help courts and others evaluate uses of forensic science.

Prohibiting the commission from issuing findings about guilt or innocence and prohibiting its reports from being used as evidence in civil and criminal cases would ensure that the commission focused its work on improving forensic science, not on issues in specific court cases.

Public information exemption. SB 1658 would provide only a limited and temporary exemption to the Public Information Act so that during an investigation the commission could keep its investigative and work files confidential. This would be a common-sense exception to allow the FSC to conduct proper investigations and to ensure that its investigations are

not tainted. Information on cases would become accessible and open to the public after an investigation was completed.

Annual report. Requiring an annual report of the FSC would ensure that the public and stakeholders were kept informed of the commission's work.

Affiliation with Sam Houston State University. SB 1658 would officially administratively attach the FSC to Sam Houston State University, which already provides administrative support to the commission and houses the FSC's office. The bill would clarify that the commission was otherwise independent from the university.

OPPONENTS
SAY:

Composition of commission. SB 1658 would give too much power to the governor by allowing all commission appointments to be made by the governor. Current law splits appointments among the governor, the lieutenant governor, and the attorney general, ensuring that no one official has the power to dominate the commission. SB 1658 would move too quickly to consolidate this power in the governor's hands by removing the current members as soon as the governor made five appointments.

Reducing the size of the commission from nine to seven and eliminating requirements for certain types of expertise also would weaken the commission by reduce the commission's depth and diversity of knowledge.

Duties of the commission. Allowing the FSC to investigate cases without a complaint would give the commission too much authority. Requiring that the commission operate after complaints, and not simply on its own, ensures that its investigations are focused on specific uses or misuses of forensic science.

SB 1658 should require that the commission issue reports in all its investigations, instead of giving it the option to report on cases of non-accredited labs or non-accredited fields of forensic science.

Prohibiting the commission from issuing findings about guilt or innocence would be too restrictive. The commission should have discretion to make this kind of finding if it deemed appropriate.

Public information exemption. SB 1658 would thwart the goal of open and accessible government by exempting some FSC documents from the

Public Information Act. One of the goals of the commission was to improve public trust in the criminal justice system, and denying access to information, even during an investigation, would work against this goal. The exception in SB 1658 would allow the commission to hide from the public its on-going investigations, which could restrict the public's oversight of the commission.