

## **BILL ANALYSIS**

Senate Research Center

H.B. 2703  
By: Bailey et al(Gallegos)  
Criminal Justice  
5-11-2003  
Engrossed

### **DIGEST AND PURPOSE**

Following to recent difficulties with the DNA evidence testing and examination operations in the Houston Police Department Crime Lab, an independent audit of that lab detailed a wide-range of deficiencies in the DNA analysis section. Some of these deficiencies include the potential for evidence contamination and a lack of basic record keeping. The Houston Police Department Crime Lab DNA section has operated as a non-accredited laboratory and as such has not conducted in-depth internal or external audits that accredited laboratories conduct each year relating to evidence testing, examinations and procedures.

H.B. 2703 amends the definition of “forensic analysis” to specifically include DNA evidence testing and examination. This bill requires the public safety director of the Texas Department of Public Safety (director) by rule to establish an accreditation process for crime laboratories, including DNA laboratories, and other entities conducting forensic analyses of physical evidence for use in criminal proceedings. H.B. 2703 requires the director by rule to regulate DNA testing, including regulation of DNA laboratories.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the public safety director of the Department of Public Safety of the State of Texas in SECTION 4 (Sections 411.0205 and 411.0206, Government Code) of this bill .

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Article 38.35, Code of Criminal Procedure to read as follows:

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSABILITY.

SECTION 2. Amends Article 38.35, Code of Criminal Procedure, by amending Subdivision (a)(1) as follows:

(a)(1) Redefines “forensic analysis” to specifically include DNA evidence testing and examination. Provides that the term does not include latent print examination; a test of a specimen of breath under Chapter 724, Transportation Code; or an examination or test excluded by rule under Section 411.0205(c), Government.

SECTION 3. Amends Article 38.35, Code of Criminal Procedure, by adding Subsections (d) and (e) as follows:

(d) Provides that physical evidence subjected to a forensic analysis, and testimony regarding the evidence, under this article is not admissible in a criminal case if, at the time of the analysis or the time the evidence is submitted to the court, the crime laboratory or other entity conducting the analysis was not accredited by the Department of Public Safety under Section 411.0205, Government Code.

(e) Provides that physical evidence subjected to a forensic analysis under this article, notwithstanding Subsection (d), is not inadmissible in a criminal case based solely on the accreditation status of the crime laboratory or other entity conducting the analysis if the

laboratory or entity: has preserved one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and has agreed to preserve those samples until all appeals in the case are final. Provides that this subsection expires September 1, 2005.

SECTION 4. Amends Subchapter A, Chapter 411, Government Code, by adding Sections 411.0205, 411.0206, and 411.0207 as follows:

Sec. 411.0205. **CRIME LABORATORY ACCREDITATION PROCESS.** (a) Defines "forensic analysis" and "physical evidence" as having the meanings assigned by Article 38.35, Code of Criminal Procedure, and "DNA laboratory" as having the meaning assigned by Section 411.141.

(b) Requires the public safety director of the Texas Department of Public Safety (director) by rule to establish an accreditation process for crime laboratories, including DNA laboratories, and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

(c) Authorizes the director by rule to exempt from the accreditation process established under Subsection (b) a crime laboratory or other entity conducting a forensic analysis of physical evidence for use in criminal proceedings if the director makes certain determinations.

Sec. 411.0206. **REGULATION OF DNA TESTING.** Requires the director to by rule regulate DNA testing, including regulation of DNA laboratories.

Sec. 411.0207. **ACCURACY OF DNA EXAMINATION OR TEST.** (a) Authorizes the director to order a crime laboratory to conduct an additional DNA examination or test of physical evidence if: the director receives a complaint alleging that the results of the preceding DNA examination or test are inaccurate; and the complaint is accompanied by an audit that confirms that the results of the examination or test may be inaccurate.

(b) Authorizes the director to require a crime laboratory that is the subject of an order under Subsection (a) to remit a fee sufficient to pay the cost of administering the order.

SECTION 5. Requires the public safety director to adopt rules under Section 411.0205, Government Code, as added by this Act, not later than the 61st day after the effective date of this Act.

SECTION 6. Effective date: upon passage or September 1, 2003.  
Makes application of this Act prospective.