

BILL ANALYSIS

Senate Research Center

S.B. 1287
By: Hinojosa
Criminal Justice
7/1/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Texas law, crime laboratories practicing certain forensic disciplines are required to be accredited by the Texas Department of Public Safety. If the laboratory is not accredited, the analysis is not admissible in criminal cases. This law, among other significant achievements, has made Texas a national leader in forensic science reform.

However, accreditation is focused on the crime laboratory as an entity. It requires the laboratory to meet certain standards; it does not measure the competency of individual forensic analysts to perform their jobs. Currently, analysts who engage in misconduct only face discipline within their laboratories. There is no mechanism to prevent those analysts from moving to another laboratory within the state.

In fact, at the current time there is no requirement under Texas law that forensic examiners be certified or licensed to practice or testify in court, despite the fact that forensic analyses and related testimony are often the deciding factor in criminal cases where punishment involves the life and liberty of accused defendants.

Texas is poised to lead the country in creating and implementing a licensing program for forensic examiners to ensure our forensic scientists are competent to perform critical analyses and testify in court. S.B. 1287 requires the Forensic Science Commission to establish a forensic licensing program.

S.B. 1287 amends current law relating to the Texas Forensic Science Commission, the accreditation of crime laboratories, and the licensing and regulation of forensic analysts, authorizes fees, and requires an occupational license.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Forensic Science Commission in SECTION 4 (Sections 3-a and 4-a, Article 38.01, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to the public safety director is transferred to the Texas Forensic Science Commission and modified in SECTION 5 (Section 4-d, 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, by amending Subdivision (1) to redefine "accredited field of forensic science" and adding Subdivision (5) to define "physical evidence."

SECTION 2. Amends Section 3(a), Article 38.01, Code of Criminal Procedure, as follows:

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

(1)-(3) Makes no change to these subdivisions;

(4) one member who must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine that the governor selects from a list of five names, rather than 10 names, submitted by the chancellor of The University of Texas System;

(5) one member who must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine that the governor selects from a list of five names, rather than 10 names, submitted by the chancellor of The Texas A&M University System.

(6) one member who must be a faculty member or staff member of Texas Southern University that the governor selects from a list of five names, rather than 10 names, submitted by the chancellor of Texas Southern University;

(7) Makes no change to this subdivision; and

(8) one member who 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 that the governor selects from a list of five names, rather than 10 names, submitted by the chancellor of the Texas State University System.

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

(b) Requires that the investigation, if FSC conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited under this article, rather than if FSC conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited by the Department of Public Safety (DPS) under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code, pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science:

(1) and (2) Makes no change to these subdivisions.

(b-1) Makes conforming changes.

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

Sec. 3-a. RULES. Requires FSC to adopt rules necessary to implement this article.

Sec. 4-a. FORENSIC ANALYST LICENSING. (a) Defines “forensic analysis” and “forensic analyst.”

(b) Prohibits a person from acting or offering to act as a forensic analyst unless the person holds a forensic analyst license. Authorizes FSC by rule to establish classifications of forensic analyst licenses if FSC determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by FSC.

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

(d) Requires FSC by rule to:

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

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

(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 FSC; 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) Authorizes FSC by rule to 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 FSC determines the content required to receive the certification is substantially equivalent to the content of the requirements under that subsection.

(f) Requires FSC to issue a license to an applicant who:

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

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

(3) pays the required fee.

Sec. 4-b. **ADVISORY COMMITTEE.** (a) Requires FSC to establish an advisory committee to advise FSC and make recommendations on matters related to the licensing of forensic analysts under Section 4-a.

(b) Provides that 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 FSC from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.

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

(d) Provides that 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. Prohibits an advisory committee member from serving more than two consecutive terms. Provides that 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) Requires the advisory committee to elect a presiding officer from among its members to serve a one-year term. Authorizes a member to serve more than one term as presiding officer.

(f) Requires that the advisory committee meet annually and at the call of the presiding officer or FSC.

(g) Provides that an advisory committee member is not entitled to compensation. Entitles a member 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) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory committee.

Sec. 4-c. DISCIPLINARY ACTION. (a) Authorizes FSC, on a determination by FSC that a license holder has committed professional misconduct under this article or violated this article or a rule or order of FSC under this article, to:

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

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

(3) reprimand the license holder.

(b) Authorizes FSC to place on probation a person whose license is suspended. Authorizes FSC, if a license suspension is probated, to require the license holder to:

(1) report regularly to FSC 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 FSC in those areas that are the basis of the probation.

(c) Provides that disciplinary proceedings of FSC are governed by Chapter 2001 (Administrative Procedure), Government Code. Requires that a hearing under this section be conducted by an administrative law judge of the State Office of Administrative Hearings.

SECTION 5. Transfers Section 411.0205, Government Code, to Chapter 38, Code of Criminal Procedure, redesignates it as Section 4-d, Article 38.01, Code of Criminal Procedure, and amends it, as follows:

Sec. 4-d. CRIME LABORATORY ACCREDITATION PROCESS. Redesignates existing Section 411.0205 as Section 4-d. (a) Defines "forensic analysis" rather than defines "crime laboratory," "forensic analysis," and "physical evidence."

(b) Provides that FSC, rather than the public safety director (director), by rule:

(1) Makes no change to this subdivision;

(2) may modify or remove a crime laboratory exemption under this section if FSC, rather than the director, determines that the underlying reason for the exemption no longer applies.

(b-1) Authorizes FSC, rather than the director, as part of the accreditation process established and implemented under Subsection (b), to:

(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, rather than consistent with this article and code;

(2) and (3) Makes no change to these subdivisions.

(b-2) Authorizes FSC, rather than the director, to 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) Requires 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 this article. Deletes existing text requiring 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.

(c) Authorizes FSC, rather than the director, by rule to 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 FSC, rather than the director, determines that:

- (1) Makes no change to this subdivision;
- (2) Makes a nonsubstantive change;
- (3) Makes no change to this subdivision; or
- (4) Makes a conforming change.

(d) Authorizes FSC, rather than the director, to 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) Authorizes FSC, rather than the director, to collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) Authorizes FSC, rather than the director, if FSC provides a copy of an audit or other report made under this section, to charge \$6 for the copy, in addition to any other cost permitted under Chapter 552 (Public Information), Government Code, or a rule adopted under that chapter. Makes a conforming change.

Deletes existing Subsection (g) requiring that funds collected under this section be deposited in the state treasury to the credit of the state highway fund, and requiring that money deposited to the state highway fund under this section be used only to defray the cost of administering this section or Subchapter G (DNA Database System).

SECTION 6. Amends Section 8, Article 38.01, Code of Criminal Procedure, 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) Makes no change to this subdivision;
- (2) a description of any specific forensic method or methodology FSC designates as part of the accreditation process for crime laboratories established by rule under this article, rather than a description of any specific forensic method or methodology FSC recommends to the director of DPS 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 Section 411.0205(b) of that code;

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

(4) and (5) Makes no change to these subdivisions.

SECTION 7. Amends Article 38.01, Code of Criminal Procedure, by adding Section 12, as follows:

Sec. 12. COLLECTION OF CERTAIN FORENSIC EVIDENCE. Requires FSC to establish a method for collecting DNA and other forensic evidence related to unidentified bodies located less than 120 miles from the Rio Grande River.

SECTION 8. Amends Articles 38.35(a)(3) and (4), Code of Criminal Procedure, as follows:

(3) Defines "commission" rather than "director."

(4) Redefines "forensic analysis."

SECTION 9. Amends Articles 38.35(d) and (e), Code of Criminal Procedure, as follows:

(d)(1) Provides that, 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 FSC under Article 38.01, rather than the crime laboratory conducting the analysis was not accredited by the director under Section 411.0205, Government Code.

(2) Makes conforming changes.

(e) Makes conforming changes.

SECTION 10. Amends Articles 38.43(i) and (m), Code of Criminal Procedure, as follows:

(i) Changes a reference to Section 411.0205, Government Code, to Article 38.01.

(m) Makes conforming changes.

SECTION 11. Amends Article 64.03(c), Code of Criminal Procedure, to change a reference to Section 411.0205, Government Code, to Article 38.01.

SECTION 12. Amends Section 411.145(c), Government Code, to delete a reference to Section 411.0205.

SECTION 13. Amends Section 420.003(1), Government Code, to change a reference to Section 411.0205 to Article 38.01, Code of Criminal Procedure.

SECTION 14. Provides that, on the effective date of this Act:

(1) a certificate of accreditation issued by DPS under former Section 411.0205, Government Code, is continued in effect as a certificate of accreditation of FSC; and

(2) an application or proceeding before DPS under former Section 411.0205, Government Code, that is pending on the effective date of this Act is transferred without change in status to FSC.

SECTION 15. Requires FSC, not later than January 1, 2016, to 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. Requires FSC, in making the appointments, to designate:

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

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

SECTION 16. Requires FSC, not later than January 1, 2017, to make 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 17. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2015.

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