

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1287
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Criminal Justice
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Committee Report (Substituted)

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. C.S.S.B. 1287 requires the Forensic Science Commission to establish a forensic licensing program.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Forensic Science Commission in SECTION 2 (Article 38.01, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. 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;

(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 the 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 2. 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 by the Department of Public Safety of the State of Texas (DPS) under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code.

(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 by DPS under Section 411.0205, Government Code.

(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.

SECTION 3. Amends Section 9, Article 38.01, Code of Criminal Procedure, as follows:

Sec. 9. New heading: ADMINISTRATIVE ATTACHMENT TO DEPARTMENT OF PUBLIC SAFETY. (a) Provides that FSC is administratively attached to DPS, rather than Sam Houston State University (SHSU)

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

(c) Provides that DPS, except as provided by Subsection (b), has no authority or responsibility, rather than providing that neither the Board of Regents of the Texas State University System nor SHSU has any authority or responsibility, with respect to the duties of FSC under this article.

SECTION 4. 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 appointment, to designate:

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

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

SECTION 5. 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 6. (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.