

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION.

The Texas Forensic Science Commission is created.

Sec. 2. DEFINITION.

In this article, "forensic analysis" has the meaning assigned by Article 38.35(a).

Sec. 3. COMPOSITION.

- (a) The commission is composed of the following nine members:
 - (1) four members appointed by the governor:
 - (A) two of whom must have expertise in the field of forensic science;
 - (B) one of whom must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association; and
 - (C) one of whom must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;
 - (2) three members appointed by the lieutenant governor:
 - (A) one of whom must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The University of Texas System;
 - (B) one of whom must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The Texas A&M University System;
 - (C) one of whom must be a faculty member or staff member of Texas Southern University who has expertise in pharmaceutical laboratory research selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas Southern University; and
 - (3) two members appointed by the attorney general:
 - (A) one of whom must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and
 - (B) one of whom 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 selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas State University System.
- (b) Each member of the commission serves a two-year term. The term of the members appointed under Subsections (a)(1) and (2) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsection (a)(3) expires on September 1 of each even-numbered year.
- (c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 4. DUTIES.

- (a) The commission shall:
 - (1) develop and implement a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;
 - (2) require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and
 - (3) investigate, in a timely manner, any allegation 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.
- (b) An investigation under Subsection (a)(3):
 - (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; and
 - (C) any corrective action required of the laboratory, facility, or entity; 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).
- (c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) to any person the commission determines to be qualified to assume those duties.
- (d) The commission may require that a laboratory, facility, or entity investigated under this section pay any costs incurred to ensure compliance with Subsection (b)(1).
- (e) The commission shall make all investigation reports completed under Subsection (b)(1) available to the public. A report completed under Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. REIMBURSEMENT.

A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE.

The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION.

The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

Added by Acts 2005, 79th Leg., Ch. [1224](#), Sec. 1, eff. September 1, 2005.

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

- (a) In this article:
 - (1) "Crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.
 - (2) "Criminal action" includes an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.
 - (3) "Director" means the 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 Section 411.0205(c), 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.
 - (5) "Physical evidence" means any tangible object, thing, or substance relating to a criminal action.

- (b) A law enforcement agency, prosecutor, or court may request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action and the requesting entity:
 - (1) controls the evidence;
 - (2) submits the evidence to the laboratory; or
 - (3) consents to the analysis.
- (c) A law enforcement agency, other governmental agency, or private entity performing a forensic analysis of physical evidence may require the requesting law enforcement agency to pay a fee for such analysis.
- (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 director under Section 411.0205, Government Code.
 - (2) If before the date of the analysis the director issues a certificate of accreditation under 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 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 director at the time of the examination or test; and
 - (B) obtains accreditation from the director before the time of testimony about the examination or test.
- (f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

Added by Acts 1991, 72nd Leg., ch. 298, Sec. 1, eff. Sept. 1, 1991;

Art. heading amended by Acts 2003, 78th Leg., ch. 698, Sec. 1, eff. June 20, 2003; Subsec. (a)(1) amended by Acts 2003, 78th Leg., ch. 698, Sec. 2, eff. June 20, 2003; Subsecs. (d), (e) added by Acts 2003, 78th Leg., ch. 698, Sec. 3, eff. June 20, 2003.

Amended by: Acts 2005, 79th Leg., Ch. [1224](#), Sec. 2, eff. September 1, 2005.