



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated  
Code of Criminal Procedure (Refs & Annos)  
Title 1. Code of Criminal Procedure  
Trial and Its Incidents  
Chapter Thirty-Eight. Evidence in Criminal Actions (Refs & Annos)

Vernon's Ann.Texas C.C.P. Art. 38.01  
Formerly cited as TX GOVT § 411.0205

Art. 38.01. Texas Forensic Science Commission

Effective: September 1, 2019  
[Currentness](#)

### **Sec. 1. Creation**

The Texas Forensic Science Commission is created.

### **Sec. 2. Definitions**

In this article:

- (1) "Accredited field of forensic science" means a specific forensic method or methodology validated or approved by the commission under this article.
- (2) "Commission" means the Texas Forensic Science Commission.
- (3) "Crime laboratory" has the meaning assigned by [Article 38.35](#).
- (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, except that the term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.
- (5) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.<sup>1</sup>

(6) “Physical evidence” has the meaning assigned by [Article 38.35](#).

**Sec. 3. (a) Composition**

The commission is composed of nine members appointed by the governor as follows:

- (1) two members who must have expertise in the field of forensic science;
- (2) one member who must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association;
- (3) one member who must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;
- (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 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 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 submitted by the chancellor of Texas Southern University;
- (7) one member who must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; 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 submitted by the chancellor of the Texas State University System.

(b) Each member of the commission serves a two-year term. The terms expire on September 1 of:

- (1) each odd-numbered year, for a member appointed under Subsection (a)(1), (2), (3), or (4); and
- (2) each even-numbered year, for a member appointed under Subsection (a)(5), (6), (7), or (8).

(c) The governor shall designate a member of the commission to serve as the presiding officer.

**Sec. 3-a. Rules**

The commission shall adopt rules necessary to implement this article.

**Sec. 4. Duties**

(a) The commission shall:

(1) develop and implement a reporting system through which a crime laboratory may report professional negligence or professional misconduct;

(2) require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

(a-1) The commission may initiate for educational purposes an investigation of a forensic analysis without receiving a complaint, submitted through the reporting system implemented under Subsection (a)(1), that contains an allegation of professional negligence or professional misconduct involving the forensic analysis conducted if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in this state.

(b) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited under this article pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation:

(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;

(C) any corrective action required of the laboratory, facility, or entity;

(D) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;

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(E) best practices identified by the commission during the course of the investigation; and

(F) other recommendations that are relevant, as determined by the commission; 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).

(b-1) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited under this article or the investigation is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science, the investigation may include the preparation of a written report that contains:

(1) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;

(2) best practices identified by the commission during the course of the investigation; or

(3) other recommendations that are relevant, as determined by the commission.

(b-2) If the commission conducts an investigation of a forensic analysis under Subsection (a-1), the investigation must include the preparation of a written report that contains:

(1) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;

(2) best practices identified by the commission during the course of the investigation; and

(3) other recommendations that are relevant, as determined by the commission.

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(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 crime laboratory investigated under this section pay any costs incurred to ensure compliance with Subsection (b), (b-1), or (b-2).

(e) The commission shall make all investigation reports completed under Subsection (b), (b-1), or (b-2) available to the public. A report completed under Subsection (b), (b-1), or (b-2), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

(f) The commission may not make a determination of whether professional negligence or professional misconduct occurred or issue a finding on that question in an investigation initiated under Subsection (a-1) or for which an investigation report may be prepared under Subsection (b-1).

(g) The commission may not issue a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission under this article.

(h) The commission may review and refer cases that are the subject of an investigation under Subsection (a)(3) or (a-1) to the office of capital and forensic writs in accordance with [Section 78.054\(b\), Government Code](#).

**Sec. 4-a. Forensic analyst licensing**

(a) Notwithstanding Section 2, in this section:

(1) “Forensic analysis” has the meaning assigned by [Article 38.35](#).

(2) “Forensic analyst” means a person who on behalf of a crime laboratory accredited under this article technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(b) A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license. The commission by rule may establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission.

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

(d) The commission by rule shall:

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

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

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

(f) The commission shall issue a license to an applicant who:

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

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

(3) pays the required fee.

**Sec. 4-b. Advisory committee**

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the licensing of forensic analysts under Section 4-a.

(b) The advisory committee consists of nine members as follows:

(1) one prosecuting attorney recommended by the Texas District and County Attorneys Association;

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- (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 the commission from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.
  
- (c) The commission shall ensure that appointments under Subsection (b)(3) include representation from municipal, county, state, and private crime laboratories that are accredited under this article.
  
- (d) 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. An advisory committee member may not serve more than two consecutive terms. 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) The advisory committee shall elect a presiding officer from among its members to serve a one-year term. A member may serve more than one term as presiding officer.
  
- (f) The advisory committee shall meet annually and at the call of the presiding officer or the commission.
  
- (g) An advisory committee member is not entitled to compensation. A member is entitled 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) Chapter 2110, Government Code, does not apply to the advisory committee.

**Sec. 4-c. Disciplinary action**

- (a) On a determination by the commission that a license holder has committed professional misconduct under this article or violated this article or a rule or order of the commission under this article, the commission may:
  - (1) revoke or suspend the person's license;
  
  - (2) refuse to renew the person's license; or
  
  - (3) reprimand the license holder.
  
- (b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the license holder to:

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- (1) report regularly to the commission 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 the commission in those areas that are the basis of the probation.
- (c) The commission shall give written notice by certified mail of a determination described by Subsection (a) to a license holder who is the subject of the determination. The notice must:
- (1) include a brief summary of the alleged misconduct or violation;
  
  - (2) state the disciplinary action taken by the commission; and
  
  - (3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of disciplinary action, or both.
- (d) Not later than the 20th day after the date the license holder receives the notice under Subsection (c), the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.
- (e) If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under Subsection (a) that the license holder committed professional misconduct or violated this article or a commission rule or order under this article. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

**Sec. 4-d. Crime laboratory accreditation process**

- (a) Notwithstanding Section 2, in this section “forensic analysis” has the meaning assigned by [Article 38.35](#).
  
- (b) The commission by rule:
  - (1) shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; and



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

(b-1) As part of the accreditation process established and implemented under Subsection (b), the commission may:

(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;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(b-2) The commission may 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) A laboratory, facility, or entity that must be accredited under this section shall, as part of the accreditation process, agree to consent to any request for cooperation by the commission that is made as part of the exercise of the commission's duties under this article.

(c) The commission by rule may 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 the commission determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or the type of analysis, examination, or test performed by the laboratory;

(2) the type of analysis, examination, or test performed by the laboratory is admissible under a well-established rule of evidence or a statute other than [Article 38.35](#);

(3) the type of analysis, examination, or test performed by the laboratory is routinely conducted outside of a crime laboratory by a person other than an employee of the crime laboratory; or

(4) the laboratory:

(A) is located outside this state or, if located in this state, is operated by a governmental entity other than the state or a political subdivision of the state; and

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(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established under Subsection (b).

(d) The commission may 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) The commission may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) If the commission provides a copy of an audit or other report made under this section, the commission may charge \$6 for the copy, in addition to any other cost permitted under Chapter 552, Government Code, or a rule adopted under that chapter.

**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.

**Sec. 8. Annual Report**

Not later than December 1 of each year, the commission shall prepare and publish a report that includes:

(1) a description of each complaint filed with the commission during the preceding 12-month period, the disposition of each complaint, and the status of any complaint still pending on December 31;

(2) a description of any specific forensic method or methodology the commission designates as part of the accreditation process for crime laboratories established by rule under this article;

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

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(4) developments in forensic science made or used in other state or federal investigations and the activities of the commission, if any, with respect to those developments; and

(5) other information that is relevant to investigations involving forensic science, as determined by the presiding officer of the commission.

**Sec. 9. Administrative attachment to Office of Court Administration**

(a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The Office of Court Administration of the Texas Judicial System shall provide administrative support to the commission as necessary to enable the commission to carry out the purposes of this article.

(c) Only the commission may exercise the duties of the commission under this article. Except as provided by Subsection (b), the Office of Court Administration of the Texas Judicial System does not have any authority or responsibility with respect to the duties of the commission under this article.

**Sec. 10. Open records limitation**

Information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under Chapter 552, Government Code, until the conclusion of an investigation by the commission under Section 4.

**Sec. 11. Report inadmissible as evidence**

A written report prepared by the commission under this article is not admissible in a civil or criminal action.

**Sec. 12. Collection of certain forensic evidence**

The commission shall establish a method for collecting DNA and other forensic evidence related to unidentified bodies located less than 120 miles from the Rio Grande River.

**Sec. 13. Texas Forensic Science Commission operating account**

The Texas Forensic Science Commission operating account is an account in the general revenue fund. The commission shall deposit fees collected under Section 4-a for the issuance or renewal of a forensic analyst license to the credit of the account. Money in the account may be appropriated only to the commission for the administration and enforcement of this article.

**Credits**

Added by Acts 2003, 78th Leg., ch. 698, § 4, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 1224, § 1, eff. Sept. 1, 2005. Amended by Acts 2005, 79th Leg., ch. 1224, § 3, eff. Sept. 1, 2005; Acts 2013, 83rd Leg., ch. 782 (S.B.1238), §§ 1 to 4, 6, eff. June 14,

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2013; Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), §§ 8, 9, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), §§ 1 to 3, 5 to 7, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), § 4. Redesignated Sec. 4-d from V.T.C.A., Government Code § 411.0205 by Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), § 5, eff. Sept. 1, 2015. Amended by Acts 2017, 85th Leg., ch. 212 (S.B. 1124), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(4), eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 1115 (S.B. 298), § 1, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 574 (S.B. 284), § 1, eff. Sept. 1, 2019.

**Footnotes**

1 V.T.C.A., Government Code § 78.051 et seq.

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Current through legislation effective May 13, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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