Texas Forensic Science Commission

Justice Through Science

FOURTH ANNUAL REPORT
November 2013–November 2014

TEXAS FORENSIC SCIENCE COMMISSION
FOURTH ANNUAL REPORT
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I. Introduction and Executive Summary

Welcome to the fourth annual report of the Texas Forensic Science Commission ("FSC" or "Commission"). The Commission is required to publish an annual report each year by December 1st in accordance with its statute. (*See* **Exhibit A**, Tex. Code Crim. Proc. art 38.01, § 8.) The first annual report provided a historical assessment of the Commission's work since the agency was created in 2005, covering Commission decisions through the April 2012 meeting. The second report covered Commission activities from May 1, 2012 through November 1, 2013. The third report covered Commission activities from November 2, 2013 through November 30, 2014. This report covers Commission activities from December 1, 2014 through November 30, 2015.

Texas continues to be a leader among states seeking to advance the integrity and reliability of forensic science in criminal courts. This report focuses on the following key developments in the Commission's work:

1. The Commission's legal duties, investigative scope and 84th Legislature changes, including:

    a. Crime Laboratory Accreditation Program;
    b. Forensic Analyst Licensure Program; and
    c. Rio Grande Identification Project;

2. Complaints and laboratory self-disclosures filed and their status;

3. Pending discipline-specific reviews, including:

    a. Microscopic Hair Analysis
    b. Bite Mark Analysis
    c. DNA Mixture Interpretation

4. Forensic development activities; and

5. A description of developments in forensic reform at the national level.

II. Texas Forensic Science Commission Legal Duties and Investigative Scope

A. Historical Perspective

For a complete historical perspective on the creation and evolution of the Texas Forensic Science Commission, please see Section II of our first annual report, which may be obtained on the Commission's website, or by emailing Commission staff at info@fsc.texas.gov.

B. Investigative Jurisdiction

The Commission is responsible for implementing a system through which crime laboratories may report professional negligence or professional misconduct. The Commission must require crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct to the Commission. The Commission achieves this goal through a self-disclosure program, which has increased in volume as laboratories become familiar with the self-disclosure process.

The Commission may also investigate complaints received from outside parties, or initiate an investigation on its own depending on the circumstances. The statute divides the Commission's investigative responsibilities into the following three categories:

a) **Investigations Initiated by the Commission:** The Commission may *initiate an investigation* of a forensic analysis *for educational purposes without receiving a complaint* if the Commission *determines by majority vote* that the investigation *would advance the integrity and reliability of forensic science* in Texas. A current example in this category is the Commission's statewide review of hair microscopy cases described below.

b) **Complaints Involving Unaccredited Labs or Unaccredited Forensic Fields:** The Commission may *investigate a complaint involving a crime laboratory* that is not accredited by DPS, or *conduct an investigation in response to an allegation involving a forensic method or methodology that is not an accredited field of forensic science.*

c) **<u>Complaints Involving Accredited Labs and Accredited Forensic Disciplines:</u>** As with the current version of the statute, the Commission is also charged with investigating allegations of professional negligence or misconduct against *accredited crime laboratories* involving *accredited forensic disciplines.*

For the first two investigative categories set forth above, Commission reports *may not contain a finding of negligence or misconduct*, and the reports must be limited to: (1) observations regarding the integrity and reliability of the forensic analysis conducted; (2) best practices identified during the course of the investigation; and (3) other relevant recommendations, as determined by the Commission.

However, under the third category of investigations involving accredited crime laboratories and accredited forensic disciplines, Commission reports must be more extensive. Required categories per the Commission's statute include: (1) a description of the alleged negligence or misconduct; (2) whether negligence or misconduct occurred; (3) any corrective action required of the laboratory; (4) observations regarding the integrity and reliability of the forensic analysis conducted; (5) best practices identified during the course of the investigation; (6) other relevant recommendations, as determined by the Commission; and (7) the methods and procedures used by the Commission to identify the items listed above.

In addition, the statute provides that reports may include: (1) retrospective reexamination of other forensic analyses conducted by the laboratory that may involve the same kind of negligence or misconduct; and (2) follow-up evaluations of the laboratory to review: (a) implementation of any corrective action required; or (b) conclusion of any retrospective reexamination.

The Commission may not issue a finding relating to the guilt or innocence of any party in a civil or criminal trial involving conduct investigated by the Commission. Commission reports are not admissible in a civil or criminal action. Information filed or obtained as part of a

complaint or laboratory self-disclosure is not subject to release under the PIA until the conclusion of a Commission investigation.[1]

C. 84th Legislature Changes

1. Crime Laboratory Accreditation Program

In June 2015, the Legislature expanded the scope of the Commission's responsibilities by passing SB-1287. *See Tex. S.B. 1287, 84th Leg., R.S. (2015).* SB-1287 transferred Texas' Crime Laboratory Accreditation Program oversight from the Texas Department of Public Safety to the Texas Forensic Science Commission. In response to the legislation, the Commission established an accreditation process for crime laboratories and other entities conducting forensic analyses for use in criminal proceedings. As part of its accreditation mandate, the Commission is responsible for establishing procedures, polices and practices to improve the quality of forensic analyses conducted in Texas. Please see the accreditation page on our website for more information about the Commission's crime laboratory accreditation program and its requirements.

2. Forensic Analyst Licensure Program

SB-1287 also requires the Commission to establish licensing programs for forensic disciplines subject to accreditation in Texas. *See Tex. S.B. 1287, 84th Leg., R.S. (2015).* The Commission may also by rule establish voluntary licensing programs for disciplines not subject to accreditation. Forensic analysts in Texas are required to be licensed by January 1, 2019. The term "forensic analyst" is limited by statute to "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." As

[1] *See* Tex. Att'y Gen. OR2014-16371.

parts of its licensure initiative, the Commission is required to select a licensing advisory committee to consist of one prosecutor, one defense attorney and seven individuals who are either forensic scientists, crime laboratory directors or crime laboratory quality managers. The licensing advisory committee will be selected by Commissioners based on nominations received from the Texas Association of Crime Laboratory Directors ("TACLD"), the Texas Criminal Defense Lawyers Association ("TCDLA") and the Texas District and County Attorneys Association ("TDCAA") at a December 2, 2015 meeting in Austin, Texas. Names of those candidates selected will be published on the Commission's website here by the Monday following that meeting. For developmental updates and additional information related to the Commission's Forensic Analyst Licensure Program, please link to our website here.

3. Rio Grande Identification Project

In response to growing concerns about the unidentified remains of migrants and other deceased individuals found near the Texas border with Mexico, the 84th Texas Legislature required the Commission to develop a method for collecting forensic evidence related to the unidentified bodies located less than 120 miles from the Rio Grande River in Texas. *See Tex. S.B. 1287, 84th Leg., R.S. (2015).* In accordance with its new legislative mandate, the Commission is working with stakeholders to develop a systematic plan for proper forensic evidence collection of biological material that may help identify the individuals found along the border. The University of North Texas Center for Human Identification ("Center") has a longstanding relationship with medical examiners and pathologists in South Texas and provides anthropological services to assist in identifying missing persons found near border counties. The Center has agreed to work with the Commission and other stakeholders, including Texas State University, Baylor University, the Texas Department of Public Safety, the Office of the

Governor, the FBI, human rights advocacy groups and local law enforcement partners in developing a process for the collection and testing of forensic evidence related to unidentified remains currently awaiting anthropological exams and unidentified remains that may be discovered in the future.

On September 28, 2015, the Commission hosted a collaborative session with stakeholders in Edinburg, Texas to develop a strategy for the processing and identification of human remains. A memorandum outlining action items that extended from the meeting can be found here. The meeting was a first, but significant step in the process for ultimately establishing best practices in Texas for the collection and processing of unidentified human remains along our Southern border. Please follow updates on the Commission's Rio Grande Identification project here.

III. Texas Forensic Science Commission Members and Budget

A. Appointments to Date

To date, the FSC has had 25 different Commissioners and three full-time staff members. For each Commissioner currently serving, following is a table providing appointment and expiration dates as well as the basis for appointment. The Texas Constitution provides that appointees with expired terms continue to serve until they are reappointed or replaced.

Current Members	Original Appointment	Basis for Appointment	Expiration Date
Richard Alpert, Esq.	10/31/2011	TDCAA--Prosecutor (Tarrant) Article 38.01, Section 3(a)(2).	09/01/2015
Jeffrey Barnard, MD	10/31/2011	UT—Forensic Pathology (Dallas) Art 38.01, Section 3(a)(4)	09/01/2015
Vincent Di Maio, MD *Presiding Officer*	10/31/2011	Forensic Pathology (San Antonio) Article 38.01, Section 3(a)(1)	09/01/2015
Arthur Eisenberg, Ph.D	10/30/2006	UNTHSC Director—Missing Persons DNA (Fort Worth) Article 38.01, Section 3(a)(7)	09/01/2016

Robert Lerma, Esq.	10/31/2011	TCDLA—Defense Counsel (Brownsville) Article 38.01, Section 3(a)(3)	09/01/2015
Nizam Peerwani, MD	9/1/2009	Chief Medical Examiner (Tarrant, Parker, Johnson, & Denton counties) Article 38.01, Section 3(a)(1)	09/01/2015
Harvey Kessler, DDS, MS	3/27/2014	Texas A&M Faculty—Oral Pathology (Dallas) Article 38.01, Section 3(a)(5)	09/1/2016
Ashraf, Mozayani, Ph.D	3/27/2014	TSU Faculty—Forensic Toxicology (Houston) Article 38.01, Section 3(a)(6)	09/1/2016
Sheree Hughes-Stamm, Ph.D	10/27/2014	SHSU Faculty—DNA & Forensic Anthropology (Huntsville) Article 38.01. Section 3(a)(8)	09/1/2016

B. Annual Budget

The FSC's budget was increased during the 83rd Legislative Session to $500,000 per year, and remained at the same level during the 84th Legislative Session. A copy of the FSC's projected budget (major categories) for FY2016 is attached as **Exhibit B.** The Commission will dedicate funds to the following critical priorities during FY2016: (1) funding of staff salary and overhead; (2) complaint and disclosure investigative activities; (3) statewide DNA mixture interpretation review and related training initiatives; (4) statewide bite mark analysis review; (5) wrap-up of the statewide hair microscopy review; (6) collaborative training projects with the Texas Criminal Justice Integrity Unit ("TCJIU"); (9) other state and national forensic development initiatives; and (10) administrative expenses and office-space reorganization including minor construction. **Exhibit B** provides a breakdown of projected costs in major categories.

IV. Summary of Complaints and Disclosures

Commission staff receives complaints from a range of sources, including but not limited to current inmates and their families/friends, national advocacy groups, former laboratory employees, other laboratories and interested members of the public. The Commission relies upon accredited crime laboratories, interested members of the public, and its own commissioners to bring issues of concern to the Commission's attention.

A. Complaint/Disclosure Tally

To date, the Commission has received a total of 126 complaints and 17 self-disclosures, and has disposed of 131 complaints and disclosures, either through dismissal, investigation and release of a report, and/or referral to another agency. Of the 143 total complaints and self-disclosures received, 25 were received from December 2, 2014 through the date of this report. The Commission has 10 complaints/self-disclosures currently pending for consideration and 2 active pending investigations, not including the discipline-specific reviews described in Section VII below. A complete spreadsheet detailing the disposition and status of each complaint is provided at **Exhibit C**.

B. Complaint/Disclosure Screening Process

Pursuant to Section 3 of the Commission's Policies and Procedures, the Commission's Complaint and Disclosure Screening Committee conducts an initial review of complaints and disclosures before each meeting. After discussion, the Committee makes a recommendation on what further action (if any) is merited for each complaint or self-disclosure received. The Committee's opinion is presented to the full Commission for consideration and deliberation during the quarterly meeting.

As previously described, the Commission may only review allegations of professional negligence or misconduct for those cases involving accredited crime laboratories and accredited forensic disciplines. The Commission receives many complaints falling outside those statutory requirements, and typically will only review cases involving unaccredited disciplines and entities if a majority of the Commission determines the review would be an effective use of public resources and is likely to benefit the criminal justice system in Texas. Many complaints are dismissed because they do not meet these standards. Other complaints are dismissed because they are incoherently written, lacked fundamental information or simply fail to state an actual complaint. Finally, the Commission must dismiss any complaint involving the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician. *See* TEX. CODE CRIM. PROC. 38.01, § 2(4).

V. Summary of Pending Investigations for Which Reports Are Currently in Drafting Stage

At this time, one complaint and one disclosure are pending release of final reports by the Commission: (1) a complaint by inmate George R. Powell, III regarding the reliability of the digital video analysis and related expert testimony used in his criminal case; and (2) a complaint by defense attorney Frank Blazek, alleging conflicting conclusions by a firearms analyst at the Southwestern Institute of Forensic Sciences ("SWIFS"). Reports on both of these cases will be reviewed at the Commission's quarterly meeting on February 12, 2016.

VI. Investigative Reports Released since December 2015

A. Houston Forensic Science Center – Analyst Self-Disclosure (Blood Alcohol)

On June 4, 2014, an analyst in the toxicology section of the Houston Forensic Science Center ("HFSC") filed a disclosure with the Commission. The disclosure describes a blood alcohol case in which the submitting officer mislabeled the evidence, the analyst mistakenly

signed off on a report with the wrong name for technical and administrative review, the section interim manager signed off on both technical and administrative review without noticing the error, and the report was made accessible to the client. Though the client never accessed the report, the analyst raised concerns regarding the lab's subsequent failure to issue a timely amended report and to take appropriate corrective action pursuant to the laboratory's operating procedures and accreditation standards. The analyst also raised concerns about management's decision to remove her from casework as well as a perceived failure by management to provide a performance action plan so the analyst could resume casework. The analyst raised additional concerns regarding case file documentation and communication of the non-conformance to the customer.

At its October 2014 quarterly meeting, the Commission voted to issue a finding of professional negligence for the laboratory's failure to issue a timely amended report and appropriate corrective action in the incident described in the analyst's disclosure. Commissioners also raised concerns about the culture in the laboratory's toxicology section, and the importance of encouraging continual improvement and transparency regarding non-conformances. Commissioners raised further concerns regarding a perceived lack of scientific leadership in the toxicology section, as well as the potential chilling effect of the section manager's response to concerns on future analyst disclosure. For a copy of the final investigative report, please visit the Commission's website here.

B. Integrated Forensic Laboratories –Self-Disclosure (Firearms/Tool Marks)

On April 10, 2014, IFL disclosed a nonconformance in the laboratory's firearms/tool marks section. An IFL firearms examiner issued a report that excluded a group of cartridge cases as having been fired from a group of five firearms provided for examination by the

submitting agency. In response to questions raised by the agency, the examiner re-analyzed his work and confirmed a match to one of the five firearms he had originally excluded. In its investigation, the Commission discovered the examiner had grouped the items by bunter marks and then made decisions regarding exclusions using appropriate individual characteristics. However, after the examiner reviewed the first four guns and associated all four with a bunter mark group, he experienced difficulty in comparing the fifth gun with the fifth bunter mark group. The examiner did not go back and make the appropriate individual characteristic comparison between the fifth bunter mark group and guns 1-4, but rather reported in his notes that he had eliminated the fifth bunter mark group with guns 1-5, without providing a written basis or justification for this analytical conclusion in his case notes.

The Commission unanimously voted to accept the IFL disclosure for investigation at its August 1, 2014 meeting. At its October 2014 meeting, Commissioners voted to hire John Murdock, a renowned firearm and tool marks expert to review the issues in the case. Murdock's findings were presented to the Commission at its August 2015 meeting. In his report, Murdock found the main issue in this case was the failure of the examiner to compare the fifth group against guns 1-4, and to clearly describe the basis for his exclusion. The errors were compounded by the technical reviewer/verifier for the case not recognizing the absence of the examiner's rationale in the case notes (or suggesting to the examiner that the fifth group should be compared against guns 1-4).

At its October 2, 2015 quarterly meeting, members adopted findings and recommendations in a report published on the Commission's website here. The recommendations included suggestions for best practices in all laboratories accredited in Texas with firearm/tool mark analysis sections.

VII. Discipline Specific Reviews

A. Microscopic Hair Analysis

1. Background

The Federal Bureau of Investigation (FBI) has been in the process of reviewing testimony in criminal cases containing microscopic hair comparisons with positive associations made by its examiners before 1999. The FBI has conducted this review to ensure that testimony at trial properly reflected the limits of the underlying science. For several decades, the FBI assisted state and local crime laboratories in training hair examiners, including many examiners in Texas, by providing a one-week course on microscopic hair analysis.

The fact that Texas examiners received some of their training from the FBI *does not necessarily mean* they made statements of concern similar to those in the FBI review. Nonetheless, Texas crime laboratory directors determined the most prudent course would be to review a sampling of cases at the state and local level to determine whether the issues identified by the FBI are also present in testimony provided by examiners from Texas laboratories.

2. Texas Review

On April 21, 2013, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) released a memorandum to all accredited crime laboratories describing the FBI review and encouraging (but not requiring) state and local crime laboratories to review microscopic hair comparison reports and associated testimony made by their examiners. ASCLD/LAB noted the forensic science community's ethical obligation to "take appropriate action if there is potential for, or there has been, a miscarriage of justice due to circumstances that have come to light, incompetent practice or malpractice."

At its quarterly meeting on July 12, 2013, the Texas Forensic Science Commission discussed the FBI review and the ASCLD/LAB memorandum. Commission staff then sent a survey to Texas laboratories to identify the number of laboratories that performed microscopic hair analysis and assess what level of resources would be needed to review their cases.

At its November 1, 2013 meeting, the Commission appointed an investigative panel to coordinate a case review. The panel held an initial meeting at the Department of Public Safety Regional Crime Laboratory in Houston on November 22, 2013, during which members sought input on the best way to approach the review from Texas laboratories that have performed microscopic hair analysis.

At its January 10, 2014 meeting, the panel reported to the full Commission regarding the feedback received at the November meeting of crime laboratory directors in Houston. The Commission instructed the panel to bring together subject matter experts and attorneys in the form of a Hair Microscopy Review Team for the purpose of advising the panel and the full Commission on a process and criteria for reviewing cases.

3. The Hair Microscopy Review Team

The Hair Microscopy Review Team consists of subject matter experts nominated by the Texas Association of Crime Laboratory Directors as well as defense attorneys, prosecutors and a representative from the Innocence Project of Texas. The team consists of the following individuals:

1. Sandy Parent (Texas Department of Public Safety)
2. Baldwin Chin (Harris County District Attorney's Office)
3. Deborah Lind (Pasadena Police Department Crime Laboratory)
4. Michael Martinez (Bexar County Crime Laboratory)
5. Jack Roady (Galveston County Criminal District Attorney)
6. Melissa Valadez (Department of Public Safety Crime Laboratory)
7. Bruce Anton (Innocence Project of Texas)
8. Bob Wicoff (Harris County Public Defender's Office)

4. Scope of Review

The review team's scope of work is to advise the Commission regarding the following areas: (1) review process flow; (2) review criteria; (3) individual case reviews and outcomes; and (4) educational lessons learned from the review. The review team does not make decisions for or represent the panel or the Commission as a whole. All guidance offered by the review team is subject to deliberation at panel meetings and full Commission meetings that are open to the public.

The review panel has limited its review of cases to those in which an individual was convicted of a crime, there was a positive, probative association made by a hair examiner in a laboratory report, the association was in any way significant to the outcome, and the examiner provided subsequent testimony as an expert witness at trial. The team asks the following questions regarding the cases it reviews:

1. Did the report or testimony contain a statement of identification?
2. Did the report or testimony assign probability or statistical weight?
3. Did the report or testimony contain any other potentially misleading statements or inferences?

If the answer to any of these questions is affirmative, the Commission will notify interested parties of the review team's specific findings.[2] The Commission is working collaboratively with the Texas Criminal Justice Integrity Unit under the leadership of Texas Criminal Court of Appeals Judge Barbara Hervey to ensure a robust notification protocol is established for any cases for which the review team identifies potential issues with the laboratory

[2] *The Commission is not a court of law and therefore will not make any legal determinations regarding the materiality of the reports and/or testimony reviewed to any specific criminal case outcome. To the extent the review raises potential legal issues in individual criminal cases, those issues will be resolved by Texas courts of competent jurisdiction. If the Commission identifies deficiency in the microscopic hair analysis results or testimony provided in a given case, that fact alone should not be interpreted as a commentary on the guilt or innocence of any individual.*

report and/or expert testimony rendered at trial. The notification protocol will ensure, to the extent possible, that all affected parties are notified regarding the review team's findings.

5. Case Review Status

Under a sub-sampling approach agreed upon by stakeholders, state and local labs submitted a total of 693 cases representing an estimated one-quarter of the total hair microscopy cases conducted statewide. Research on LexisNexis and Westlaw resulted in a second list of 120 cases. The Hair Review Team reviewed the lab reports to screen for only those cases where a positive probative association was made. Positive probative association screening reduced the list of 693 cases down to 287 total cases.

Commission staff is actively screening the 287 cases involving positive probative associations to identify those cases where a conviction was obtained, and more specifically, where the hair examiner offered testimony at trial. Cases where testimony has been provided are identified and trial transcripts are actively being requested for review. To date, the Hair Review Team has reviewed trial testimony in five death penalty cases and six non-death penalty cases. No notifiable errors were found in the five reviewed death penalty cases. Of the six reviewed non-death penalty cases, notifiable error was found in five cases and notification letters have been sent to the interested parties.

Volunteer attorneys from Latham & Watkins, LLP in Houston are assisting the review team with transcript screening for cases with positive, probative associations. Commission staff attorney Nick Vilbas and Hair Review Team members Melissa Valadez and Bob Wicoff provided transcript review training at Latham & Watkins on October 28, 2015. At this time, ten cases are assigned to Latham & Watkins for review and summary. As transcripts are obtained further cases will be assigned to Latham & Watkins for review and summary, assisting the Hair

Review Team with making timely recommendations concerning the testimony provided by Texas hair microscopy examiners in Texas courtrooms.

B. DNA Mixture Interpretation Analysis

1. Background

In May 2015, the Federal Bureau of Investigation (FBI) issued a notification to laboratories around the country stating it had identified certain errors in the database used by laboratories to calculate DNA match statistics in criminal cases. As described on the FSC's website here, the statistical impact of those errors was minimal as demonstrated through empirical studies at the national and state level.

In an abundance of caution, Texas laboratories notified prosecutors they would re-calculate statistics for any case using the corrected data. Some prosecutors requested new reports reflecting the re-calculations, particularly for cases currently scheduled for trial. The reports confirmed the statistical insignificance of the FBI database errors.

However, when the amended reports were issued some prosecutors noticed a significant difference in statistical results for a few of their cases, such as a change from an inclusion or "cannot be excluded" result with an accompanying population statistic to an inconclusive result, or a major change in a population statistic. When the affected prosecutors inquired how this type of change could be possible when the FBI database issues were supposed to be *statistically minimal*, they were informed the changes were attributable not to the FBI database corrections but rather to changes in mixture interpretation protocols over time.

While some variation in laboratory interpretation policies and protocols is acceptable and to be expected, mixture interpretation protocols in years past may not have adequately considered certain important scientific limitations, such as allele dropout, stutter, allele stacking,

allele masking and other stochastic effects. To be clear, this is by no means isolated to Texas but rather an issue in laboratories nationwide and it does not impact every laboratory or every case involving DNA analysis. Some cases may have a significantly changed statistic when reviewed, some may have minor and insignificant changes while others may have no changes at all.

2. Plan Moving Forward

The Commission is actively working with stakeholders including representatives from the Texas District and County Attorney's Association, the Texas Criminal Defense Lawyer's Association, the Office of the Governor, Office of the Attorney General, the Texas Commission on Indigent Defense, the various law school innocence clinics, the forensic laboratories, the Center for the Judiciary, the Criminal Justice Integrity Unit and others to ensure the accurate and appropriate implementation of mixture interpretation principles and protocols, notification of potentially affected defendants, triage of casework and establishment of county resources for indigent defense in cases that may have been impacted. The Commission has also sought and received guidance from the some of the best experts on DNA issues in the world (click here for brief biographies).

Not all DNA cases will have changed statistics and not all changed statistics will be material to the case outcome. By focusing on a collaborative approach and triaging cases, Texas will provide a leadership role for other states that are beginning to contend with similar variations in DNA mixture interpretation.

C. Bite Mark Analysis

1. Background on Complaint

On July 22 2015, the National Innocence Project filed a complaint on behalf of Steven Mark Chaney regarding the forensic odontology sub-discipline of bite mark analysis. Mr.

Chaney was convicted of Murder in Dallas County on December 14, 1987, and sentenced to life in prison. Two forensic odontologists provided testimony matching Mr. Chaney's teeth to a bite mark on the body of one of the victims. The Commission heard the complaint at the August 14, 2015 meeting, and voted unanimously to form an investigative panel consisting of Commissioners Kessler, Di Maio, Mozayani and Alpert.

2. Bite Mark Panel First Meeting (Dallas)

The Bite Mark Comparison Review Panel held its first meeting on September 16, 2015, in Dallas, Texas, at the Dallas County District Attorney's Office. The meeting involved the first response to the complaint by American Board of Forensic Odontology ("ABFO") members Dr. David Senn and Dr. Roger Metcalf. The meeting largely involved determining the parameters and logistics of conducting the review, the need to obtain further information and research concerning the science of bite mark comparisons and how best to obtain case information for review.

3. Chaney Case Outcome

On October 12, 2015, Steven Chaney's conviction was set aside by a Dallas Court after the District Attorney's office agreed that the bite mark evidence offered against Chaney was unreliable. This came after Dr. Jim Hales submitted an affidavit stating his original bite-mark comparison testimony has been invalidated and he no longer supports his original findings. Mr. Chaney was released pending further investigation and litigation of his actual innocence claim.

4. Bite Mark Analysis Review Status

The Bite Mark Review Panel held its second meeting on November 16, 2015, in Fort Worth, Texas at the Tarrant County District Attorney's Office. The Panel heard individual presentations from Dr. David Senn and Dr. Frank Wright concerning the appropriate use, role

and limitations of bite mark evidence and discussions of the areas of agreement and disagreement with the complainant and others. Drs. Iain Pretty and Adam Freeman gave a presentation regarding their Construct Validity of Bite Mark Assessments using the ABFO Decision Tree study originally presented at the American Academy of Forensic Sciences Annual Scientific Meeting February 2015, including discussions of lessons learned, scientific implications, action items and opinions regarding next steps. The Panel also heard from Mr. Peter Bush concerning the current context of research in bite mark analysis and a discussion of the various studies he has conducted on bite mark analysis. An initial list of 33 Texas bite mark comparison cases was discussed along with efforts to identify any additional Texas cases.

The Bite Mark Review Panel will hold its next meeting on February 11, 2015 in Austin, Texas at which point members will discuss the presentations from the November meeting and propose next steps and the drafting of recommendations.

VIII. Status of Arson Case Review

The Commission continues to receive updates from the Texas State Fire Marshal's Office ("SFMO) on its review of arson cases. The review resulted from 17 recommendations issued by the Commission in April 2011. The review is a collaborative, ongoing process involving stakeholders from the scientific, law enforcement and legal communities. The SFMO reports the majority of cases where the SFMO conducted an arson investigation have been reviewed. For locally investigated arson cases, the SFMO relies on local authorities to send the cases to the team for review. The SFMO will continue to review any arson cases it receives as part of its ongoing commitment to quality control, education and training in fire and arson investigation.

IX. Forensic Development Activities

A. Root Cause Analysis Training

On June 2, 2015, the Commission brought FBI senior scientists Carey T. Oien and Marc A. LeBeau to Austin for a full day to train over 50 Texas laboratory employees on problem solving and root cause analysis issues in crime laboratories. The training included live exercises and scenario-based problems common to crime laboratories. Instructors taught attendees strategic approaches to problem solving in the laboratory and how to conduct a root cause analysis to determine cause. The Commission distributed additional follow up material after the training sessions and received positive feedback from examiners who attended the program.

B. Cognitive Factors Training

On June 25, 2015, the Commission brought renowned neuroscientist and cognitive bias expert Itiel Dror to train over 25 Texas forensic scientists on cognitive bias and forensic decision-making in crime laboratories. Attendees learned practical suggestions for preventing some of the cognitive bias that occurs in the forensic decision-making process. Dror provided scenario-based examples and descriptions of common problems with cognitive bias in criminal forensic laboratories. The Commission received positive feedback from examiners who attended the program.

C. Integrity and Ethics in the Crime Lab

This year, the Commission developed a scenario-based course entitled "Integrity in the Crime Laboratory: A Scenario-Based Discussion" that provides real-life examples of ethical challenges that may arise in a crime laboratory. The Commission is also working together with Sam Houston State University and the Texas Association of Crime Laboratory Directors to develop additional courses including discipline-specific training, with the goal of providing cost-

effective options for continuing education across the state. Additional information will be posted on the Commission's website as the training programs are developed.

D. Fire and Arson Investigator Training

As part of a forensic development initiative, the Commission funded a portion of a fire and arson investigators training hosted by Sam Houston State University and the Collin County Fire and Arson Investigators Association in October 2015. The course provided one of only two fire death investigation courses in the country using human case studies and live burn exercises. More than 60 fire marshals, attorneys and investigators from across the country attended the five-day program at the Southeast Texas Applied Forensic Science Facility in Huntsville, Texas. The program provided a variety of information on fire science, fire death investigations and forensic science with the goal of filling "gaps in understanding" between fire scientists and fire investigators.

E. DNA Mixture Trainings (AFDAA and DNA Experts)

The Commission provided training by Dr. Bruce Budowle of the University of North Texas Health Science Center for approximately 20 DNA analysts during the annual AFDAA meeting on July 31, 2015. The focus of the discussion was lessons learned and case examples from an audit of the Washington, DC crime laboratory regarding issues in mixture interpretation raised by the United States Attorney's office. From November 19-20, 2015, the Commission offered a subsequent training for 60 DNA analysts on technical issues in mixture interpretation. Faculty included Dr. Bruce Budowle, Dr. John Buckleton (New Zealand ESR and visiting scientist at NIST) and Dr. Simone Gittelson (NIST). The Commission has also provided Web-based training for TCDLA and TDCAA and is in the process of planning regional DNA mixture training for attorneys at various sites throughout Texas, along with periodic Web-based updates

with the hopes of reaching as many interested people as possible. Training initiatives are a collaborative effort and possible with the input and financial support of the Texas Court of Criminal Appeals, which administers grant money for training in the criminal justice system.

X. Forensic Reform at the National Level

A. National Commission on Forensic Science

In February 2013, the U.S. Department of Justice ("DOJ") and the U.S. Department of Commerce's National Institute of Standards and Technology ("NIST") established a National Commission on Forensic Science ("NCFS"). The NCFS is composed of approximately 30 members, including practitioners, researchers, prosecutors, defense attorneys, judges and other members of the criminal justice community. The NCFS is responsible for providing guidance concerning the intersection between forensic science and the courtroom, as well as developing key policy recommendations. Two representatives from Texas were appointed to the NCFS, The Honorable Judge Barbara Hervey from the Texas Court of Criminal Appeals, and Dr. Vincent J. Di Maio, former Chief Medical Examiner of Bexar County and Presiding Officer of the Texas Forensic Science Commission. For a full list of members and more information about the NCFS's work thus far, please visit http://www.justice.gov/ncfs.

B. Organization of Scientific Area Committees

In February 2014, the National Institute for Standards and Technology and the U.S. Department of Justice announced the formation of the Organization of Scientific Area Committees ("OSAC") to strengthen forensic science standards in the United States. The OSAC is a collaborative body of 500 forensic science practitioners and other stakeholders tasked with supporting the development and promulgation of forensic science standards and guidelines, and to ensure a sufficient scientific basis exists for each forensic discipline. Many representatives

from Texas have been selected for OSAC subcommittees. For a full list of members and more detailed information related to the roles of the different subcommittees click the following link http://www.nist.gov/forensics/osacroles.cfm.

XI. Additional Items Required in Annual Report by Statute

There are two items in the Commission's statute for which the Commission does not have any recommendations at this time. The first is "a description of any specific forensic method or methodology the Commission designates as part of the accreditation process for crime laboratories..."[3] The second involves recommendations for "best practices concerning the definition of 'forensic analysis' provided by statute or by rule".[4] The Commission has not identified any disciplines, methods or methodology that should be recommended for accreditation that are not already covered by the Commission's accreditation program. Similarly, the Commission has not identified any recommendations regarding the definition of "forensic analysis". The Commission reserves the right to amend its position on these issues as necessary to ensure the advancement of forensic science in Texas.

XII. Meeting Broadcasts and Public Information Act Requests

The Commission began live-streaming its meetings in July 2013. Members of the public may now watch quarterly meetings online at www.fsc.texas.gov/meetings. Though live-streaming of meetings is not required under Texas law, the Commission plans to offer this service for as many quarterly meetings as possible to encourage public participation and transparency. Note that previously recorded Commission meetings may also be accessed on the Commission's website.

[3] TEX. CODE CRIM. PROC. art 38.01 § 8.
[4] *Id.*

Pursuant to the Public Information Act, Texas Government Code, Chapter 552, the Texas Forensic Science Commission accepts public information requests for information currently existing in its records. The Commission accepts requests via email at info@fsc.texas.gov, via facsimile at 1(888) 305-2432, or via regular U.S. mail. You may access the public information request form on the Commission's website at http://www.fsc.texas.gov/pia-requests.

If you have any questions about meeting broadcasts or how to submit a public information request to the Commission, please feel free to contact our office.

EXHIBIT A

Article
38.47. Evidence in Aggregation Prosecution for Fraud or Theft Committed With Respect to Numerous Medicaid or Medicare Recipients.
38.48. Evidence in Prosecution for Tampering With Witness or Prospective Witness Involving Family Violence.
38.49. Forfeiture by Wrongdoing.
38.50. Retention and preservation of toxicological evidence of certain intoxication offenses.

Art. 38.01. Texas Forensic Science Commission

Creation

Sec. 1. The Texas Forensic Science Commission is created.

Definitions

Sec. 2. 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.

Text of Sec. 2(5), as added by Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 8

(5) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.[1]

Text of Sec. 2(5), as added by Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), § 1

(5) "Physical evidence" has the meaning assigned by Article 38.35.

Composition

Sec. 3. (a) 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.

Rules

Sec. 3-a. The commission shall adopt rules necessary to implement this article.

Duties

Sec. 4. (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;

(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.

(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.

Forensic Analyst Licensing

Sec. 4–a. (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.

Text of Sec. 4–a(b) effective January 1, 2019

(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:

(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.

Advisory Committee

Sec. 4–b. (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;

(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.

Disciplinary Action

Sec. 4-c. (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:

(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) Disciplinary proceedings of the commission are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

Crime Laboratory Accreditation Process

Sec. 4-d. (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

(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

(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.

Reimbursement

Sec. 5. 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.

Assistance

Sec. 6. 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.

Submission

Sec. 7. 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.

Annual Report

Sec. 8. 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;

(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.

Administrative Attachment to Sam Houston State University

Sec. 9. (a) The commission is administratively attached to Sam Houston State University.

(b) The Board of Regents of the Texas State University System shall provide administrative support to the commission as necessary 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), neither the Board of Regents of the Texas State University System nor Sam Houston State University has any authority or responsibility with respect to the duties of the commission under this article.

Open Records Limitation

Sec. 10. 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.

Report Inadmissible as Evidence

Sec. 11. A written report prepared by the commission under this article is not admissible in a civil or criminal action.

Collection Of Certain Forensic Evidence

Sec. 12. 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.

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

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

EXHIBIT B

FSC FY16 Budget Forecast

10-Aug-15

	Budget	Actual	Variance
FY 16 Budget			
Budget	$ 500,000.00	$ 500,000.00	$ -
	-	-	-
Total Budget	$ 500,000.00	$ 500,000.00	$ -
Expenses			
Fixed Costs			
Employee Salaries	$ 244,448.00	$ -	$ 244,448.00
General Operating Expenses	14,724.29	-	14,724.29
Potential New Hires	54,166.00	-	54,166.00
Total Fixed Costs	$ 313,338.29	$ -	$ 313,338.29
Semi Variable Costs			
Member Travel Reimb. (incl. Advisory)	$ 36,000.00	$ -	$ 36,000.00
Employee Travel	12,000.00	-	12,000.00
Employee Conference Fees	2,000.00	-	2,000.00
Meeting Sp & OVN Rooms (incl. Advisory)	18,000.00	-	18,000.00
Minor construction costs	18,000.00	-	18,000.00
IT Services	6,000.00	-	6,000.00
Website Dev. & Main.	5,500.00	-	5,500.00
Database Management	5,000.00	-	5,000.00
Intern	3,000.00	-	3,000.00
Mailing/FedEx	2,200.00	-	2,200.00
Total Semi Variable Costs	$ 107,700.00	$ -	$ 107,700.00
Highly Variable Costs			
Office Supplies	$ 7,500.00	$ -	$ 7,500.00
Forensic Development (Training)	20,000.00	-	20,000.00
Subject Matter Experts	40,000.00	-	40,000.00
Discipline Specific Reviews (Travel)	11,461.71	-	11,461.71
Total Highly Variable Costs	$ 78,961.71	$ -	$ 78,961.71
Total Expenses	$ 500,000.00	$ -	$ 500,000.00
Net Income	**$ -**	**$ 500,000.00**	**$ 500,000.00**

EXHIBIT C

TFSC Complaint Assignment Table

Complaint Date	Complainant/Lab	Forensic Disciplines Investigated	Subject of Complaint	Status (A=Accepted, D=Dismissed, P=Pending, NFA= No Further Action)	Investigative Panel Participants (*=Chair)	Final Report Released to public and all interested parties (Y/N), DATE, Notes
8/13/08	National IP Willingham/Willis	Arson	State Fire Marshal's Office, City of Corsicana	A	Kerrigan, Bradley, Peerwani, Evans	Y: 4/15/11, 10/28/11
8/13/08	National IP for Brandon Lee Moon	Serology	DPS (El Paso)	A	Eisenberg, Evans, Farley	Y: 9/9/11
10/6/08	Seitz, Robert J.	Serology, Ballistics, Autopsy	SWIFS	D juris (Date)		
10/13/08	Padilla, Ismael	DNA	SWIFS	D juris (Date)		
9/13/09	Garrett, Bruce	Serology	Fort Worth PD	D juris (Date)		
9/27/08	Winland, Harley	Trace evidence, Firearms	Houston PD Crime Lab	D juris (Date)		
12/12/08	Wilson, Dedra	Autopsy	Ellis County	D Juris (Autopsy)		
2/17/07	Hartless, Jerry Don	Autopsy	Lufkin ME	D Juris (Aut)(D)		
12/9/08	Resendez, Eustorgio	Serology, Autopsy	Hidalgo County	D Juris (D)		
12/18/08	Kingerly, Christopher	DNA	Houston PD Crime Lab	D Juris (SM)		
1/27/09	Hughes, Preston	Serology	Houston PD Crime Lab	D Juris (D)		
6/10/09	SWIFS Anon/Nulf	General allegations re: quality assurance issues	SWIFS	D Merit		
11/6/09	Propes, Johnnie	Ballistics, Trace evidence	Plano PD	D Juris (D)		
9/16/09	Pherwani, Harsha	Toxicology	LabCorp	D Juris (D)		
10/5/09	Robinson, Cynthia	Autopsy	SWIFS	D Juris (D)(SM)		
10/11/10	Holleman, Ronald	Police reporting error	Dallas County DA	D Juris (D)(SM)		
5/5/10	Cupp, Charles	Autopsy	Harris County Medical ME	D Juris (SM)		
7/8/10	Hamilton, Cecily	General allegations re: quality assurance issues	Austin PD Crime Lab	A	Kerrigan, Eisenberg, Evans	Y: 4/14/11
6/30/10	Todd, Jimmy	DNA	SWIFS	D Juris (D)		
7/30/10	Frederick, Charles	Ballistics	Orange County Sheriff's Department	D Juris (D)		
9/19/10	Holmes, Eric	Toxicology, Autopsy	Harris County ME	D Juris (D)(SM)		
9/28/10	Cacy, Sonia	GC/MS testing for accelerant	Bexar County ME	D Juris (D)		
11/3/10	Luera, Luis A.	DNA	Fort Worth PD Crime Lab	D Juris (SM-request)		
12/23/10	Weeks, John Edward	DNA	DPS (Austin)	D Juris (SM-request)		
3/7/11	Whitlock, Tarrance	Trace evidence	SWIFS	D Juris (D)		
1/10/11	Helm, Robert Lee	Trace evidence, Firearms	SWIFS	D Juris (D)		

TFSC Complaint Assignment Table

3/29/11	Gibson, Rojean	Arson	Waco Fire Department	Referred: IPOT		
4/19/11	Cockerham, Mario L.	Dog Scent Line-up	Dpty Sheriff Pikett	D Juris (SM)		
4/13/11	Caraway, Randal	Toxicology, Autopsy	Tarrant County ME	D Juris (D)(SM)		
4/18/11	Stephens, Debra	General allegations re: quality assurance/human resources	Austin PD Crime Lab	D Juris (SM)		
6/27/11	Devening, Brian W.	Toxicology	Forensic DNA & Drug Testing Services, Inc.	Referred (SM)		
4/11/11	Cooksey, Jeffery W.	Controlled substance	DPS (Waco)	D: merit		
9/4/11	Nat'l IP for Saloom, Stephen	Controlled substance	EPPDCL	A	Kerrigan, Eisenberg, Alpert	Y: 7/27/12
10/3/11	Mcdade, Michael	Digitial Evidence, Handwriting Analysis, Forensic Photography	FBI	Referred: IPOT		
12/22/11	Castillo, Jose G.	Arson	Edna, Texas Fire Department	D Juris (SM)		
12/7/11	Florence, Thomas	DNA	UNT Health Science Center	D Juris (SM)		
2/9/12	Stephens/IFL	Controlled substance	APD Crime Lab	A	Barnard, Alpert, Hampton	Y: 10/5/12
2/23/12	Cruthird, Michael	Autopsy	SWIFS	D Juris (SM) (D)		
3/21/12	Melendez, Anthony	DNA	McClennan County-Forensic Science Assoc. of California	D - Juris (D) and California Lab		
4/23/12	Wilson, Jackie	DNA	DPS - Houston	D- Juris (D)		
8/10/12	Firo, Debra	Trace evidence, Firearms	DPS-Corpus Christi	D Juris (SM)		
8/23/12	Roberts, Maynard	General Testimony	Texoma Medical Center	D (Juris (SM)		
9/18/12	Desormeaux, Joseph	DNA	DPS - Houston	D Juris (SM)		
10/1/12	Rodney, Pourner	DNA	Ector County DA's Office	D Juris (SM)		
10/16/12	Yoakum, Larry	Controlled substance	Tarrant County ?	D Juris (SM)		
11/12/12	Hines, Merlon	DNA	DPS - Austin	D Juris (SM)		
11/30/12	Ken Murphy; New Hanover Co. Sheriff	DNA	DNA Diagnostics, Inc./Dr. Melba Ketchum	D Juris (SM)		
1/17/13	Austin, Rhonda	Toxicology, Autopsy	NMS Lab, PA	D Juris (SM)		
4/1/13	Ellis, Eugene	serology/DNA	Houston PD Crime Lab	D Juris (SM)		
5/3/13	Starkey, Kenneth	Controlled substance	ExperTox, Inc. Deer Park, TX	D Juris (SM)		
5/9/13	Williams, Leslie J.	Trace evidence, DNA	Lubbock County District Attorney's Office	D Juris (SM)		
7/8/13	Mireles, Gustavo	DNA, fingerprints	DPS - McAllen	D Juris (SM)		
7/15/13	Hawkins, Iran	Controlled Substance	DPS - Garland	D Juris (SM)		
7/31/13	Hutchinson, Che	Controlled substance	DPS - Abilene	D Juris (SM)		
8/15/13	Barganski, Robert	Autopsy	Christus Spohn Memorial Hospital - Corpus Christi	D Juris (SM)		

TFSC Complaint Assignment Table

8/19/13	Eldridge, Jesse	Hair Microscopy	SWIFS	D Juris (SM)		
8/30/13	Johnson, Cordell	Controlled substance	DPS - Austin	D Juris (SM)		
	SWIFS Disclosure					
10/23/13	Gaines, Barton Ray	Ballistics	Fort Worth PD Crime Lab	D Juris (SM)		
11/8/13	Roche, Larry M	Toxicology	Tarrant County ME	D Juris (SM)		
2/11/14	Parsons, Tamara for Powell	Digital Evidence, Video	Knox & Associates; Bell County Tx	A	Barnard, Kessler, Lerma	
2/11/14	Fuller, Alonzo	DNA	Bexar County ME	D Juris (SM)		
2/14/14	Padieu, Phillipe	DNA	Baylor Dept of Molecular and Human Genetics	D Juris (SM)		
2/25/14	Levee, Theodore	Medical Evidence/Testimony	Lab not given	D Juris (SM)		
3/10/14	Sutton, Dempsey Lee	DNA	None specified	D Juris (SM)		
4/1/14	Robinson, Teddy	Autopsy	Dr. Ralph Erdman	D Juris (SM)		
4/24/14	Blazek, Frank	Firearms/Tool Marks	SWIFS	A	Di Maio, Kerrigan, Alpert	
5/13/14	Gambles, Richard E.	DNA	DPS - Lubbock	D Juris (SM)		
5/27/14	Scharmen, George	Breath Alcohol	DPS - Austin	NFA		
8/25/14	Rivas, Rene	DNA	Cameron County DA's Office	D		
9/22/14	Maddex, Roxanne	DNA, Autopsy	Bexar County ME	D		
10/8/14	Bowman, Gregory	Toxicology, Autopsy	NMS Lab, PA	D		
1/2/15	Dean, Sharieff H.	DNA	Orchid Cellmark - Dallas	D		
6/9/15	Grant, Deandra	GC-FID Blood	IFL	D		
6/19/15	Legate, James	Gunshot Residue	Bexar Co. FSC	D		
6/19/15	Bekendam, Stephanie	Blood Alcohol; DWI	Wichita Co.	D		
7/15/15	Adams, Curtis	DNA	Bexar Co. ME Regional Crime Lab	D		
7/22/15	Nat'l IP for Steven Mark Chaney	Bitemark Analysis	Individual/Lab not specified	A	Di Maio, Alpert, Kessler, Mozayani	
7/28/15	Redd, Eloy	Sexual Assault	Harris County SANE	D		
8/4/15	Wilcox, James E.	Sexual Assault	DPS Waco	D		
8/21/15	Davis, Stevie L.	Blood Alcohol; DWI	DPS Garland	D		
8/21/15	Hazlip, Rodney	Blood Alcohol; DWI	DPS Houston	D		
8/24/15	Sailus, Jeff	Procedural complaint	TFSC	D		
9/1/15	Nickerson, Angella	Arson	John DeHaan	D		

TFSC Complaint Assignment Table

9/18/15	Wilson, Jackie	DNA	DPS Houston/Lisa Harmon	P		
9/23/15	Elam, Darius	DNA; Fingerprints	DPS Houston/Ashley Kibbe	P		
9/28/15	Cockerham, Mario	Autopsy; Dog Scent Lineup	SE Tx Forensic Center/Dr. Patricia J. Moore	P		
10/15/15	Stephens, Debra	Controlled Substance	APD	P		
10/23/15	Spence, Jason	DNA	Walter Reaves	P		
10/5/15	Echols, Randy Virgil	DNA	DPS Waco	P		
11/13/15	McCluer, Roger L.	Trial Testimony	Dr. Vincent Di Maio	P		
11/15/15	Brown, D. Jarnyl	Ballistics	Ft. Worth PD Crime Lab	P		

Lab Disclosure Assignment Table

Date	Laboratory	Forensic Discipline(s)	Subject of Disclosure	Status (A=Accepted,	Investigative Panel Participants (*=Chair)	Final Report Released to public and all interested
4/2/12	Tarrant County ME	Serology	Tarrant County ME	A	Eisenberg, Lerma, Adams	Y: 10/5/12
6/29/12	DPS Houston	Controlled substance	DPS -Houston	A	Kerrigan, Lerma, Peerwani	Y: 4/5/13
4/11/14	IFL	Firearms/Tool Marks	IFL	A	Mozayani, Barnard, Lerma	
5/20/14	DPS - Austin	Toxicology-Blood Alcohol	DPS - Austin	NFA		
6/4/14	HFSC (Gooden)	Serology	Houston Forensic Science Center	A	Alpert, Peerwani, Kerrigan	Y:1/23/15
6/18/14	Brake - DPS Garland	DNA	DPS - Garland	NFA		
6/18/14	SWIFS	Controlled substance	SWIFS	NFA		
7/31/14	Houston PD	DNA	Houston Police Department Crime Lab	NFA		
8/5/14	IFL	Blood Alcohol	IFL	NFA		
8/12/14	DPS Tyler	Controlled substance	DPS - Tyler	NFA		
9/22/14	DPS - Austin	Breath Alcohol	DPS - Austin	NFA		
9/22/14	DPS El Paso	Controlled substance	DPS - El Paso	NFA		
3/11/15	DPS Houston	Breath Alcohol Testing	DPS Houston Breath Alcohol Calibration Lab	NFA		
9/9/15	APD	Crime Scene Reporting	APD Crime Lab	P		
8/28/15	Corpus Christi PD	Missing evidence (bullet fragment)	Corpus Christi PD Forensic Services Division	P		
10/13/15	DPS Abilene	Controlled substance (missing evidence)	DPS Abilene	P		
11/11/15	Brady Mills	Latent Prints	DPS Weslaco	P		