

## WESTLAW

## NOTES OF DECISIONS (2)

Investigations

Vernon's Texas Statutes and Codes Annotated  
Code of Criminal Procedure (Refs & Annos)  
Title 1. Code of Criminal Procedure of 1965

**Art. 38.01. Texas Forensic Science Commission**

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2015 (Approx. 8 pages)  
CHAPTER FIFTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS (ACTS & ANNOS)

Effective: September 1, 2015

Vernon's Ann. Texas C.C.P. Art. 38.01  
Formerly cited as V.T.C.A., Government Code § 411.0205

**Art. 38.01. Texas Forensic Science Commission**

Currentness

**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.<sup>1</sup>

<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.

**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, 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.

## Editors' Notes

### RESEARCH REFERENCES

#### Treatises and Practice Aids

Goode, Wellborn & Sharlot, 2A Tex. Prac. Series ART. 38.01, **Texas Forensic Science Commission**.

Goode, Wellborn & Sharlot, 2A Tex. Prac. Series ART. 38.35, **Forensic Analysis of Evidence; Admissibility**.

### Relevant Notes of Decisions (2)

[View all 2](#)

Notes of Decisions listed below contain your search terms.

### Investigations

The **Forensic Science Commission** is authorized to investigate incidents occurring before the creation of the **commission** but is prohibited from considering evidence that was tested or offered into evidence prior to the date of establishment of the **commission**. Tex. Atty. Gen. Op., No. GA-0866 (2011).

Neither article 38.01 of the Code of Criminal Procedure nor Attorney General Opinion GA-0866 limit any investigative authority that may be vested in the **Science Advisory Workgroup** or the State Fire Marshal's Office. Tex. Atty. Gen. Op., No. GA-1048 (2014).

### Footnotes

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

Vernon's Ann. Texas C. C. P. Art. 38.01, TX CRIM PRO Art. 38.01  
Current through the end of the 2015 Regular Session of the 84th Legislature

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