

## **BILL ANALYSIS**

Senate Research Center  
86R11118 AJZ-D

S.B. 1331  
By: Hinojosa  
Criminal Justice  
4/22/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2005, the Texas Legislature created the Forensic Science Commission. The commission has three main responsibilities: accrediting entities that perform forensic analysis, licensing individual forensic examiners, and investigating allegations of professional negligence and misconduct in forensic science.

The commission's responsibilities have evolved from 2005 to the present time. The purpose of this bill is to clarify and harmonize language in the commission's enabling statute as well as related admissibility rules concerning forensic analysis.

S.B. 1331 formalizes a requirement that the commission adopt a code of professional responsibility for forensic analysts. This is consistent with other judicial branch agencies that perform licensing functions as well as other licensed professions.

S.B. 1331 harmonizes the definitions set forth in two related sections of the Code of Criminal Procedure—38.01 and 38.35—with respect to certain types of forensic analyses that are exempt from the accreditation rules by statute. This is also consistent with Attorney General Opinion KP-0127 related to the laboratory reporting requirements that follow from the definitions.

Finally, S.B. 1331 adds a provision requiring the commission to conduct criminal background checks before granting licenses, which is consistent with other judicial branch agencies and important considering the position of trust that forensic analysts occupy in the criminal justice system.

As proposed, S.B. 1331 amends current law relating to the regulation of individuals and entities that conduct forensic analyses, examinations, and tests.

### **RULEMAKING AUTHORITY**

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

Rulemaking authority previously granted to the commission is modified in SECTION 4 (Article 38.01, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2, Article 38.01, Code of Criminal Procedure, by adding Subdivision (4-a) to define "forensic examination or test not subject to accreditation."

SECTION 2. Amends Article 38.01, Code of Criminal Procedure, by adding Section 3-b, as follows:

Sec. 3-b. CODE OF PROFESSIONAL RESPONSIBILITY. (a) Requires the Texas Forensic Commission (commission) to adopt a code of professional responsibility to regulate the conduct of persons, laboratories, facilities, and other entities regulated under this article.

- (b) Requires the commission to publish the code of professional responsibility adopted under Subsection (a).
- (c) Requires the commission to adopt rules establishing sanctions for code violations.
- (d) Requires the commission to update the code of professional responsibility as necessary to reflect changes in science, technology, or other factors affecting the persons, laboratories, facilities, and other entities regulated under this article.

SECTION 3. Amends Sections 4(a), (a-1), (b-1), and (c), Article 38.01, Code of Criminal Procedure, as follows:

(a) Requires the commission to:

- (1)–(2) makes no changes to these subdivisions;
- (3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of:
  - (A) the results of a forensic analysis conducted by a crime laboratory;
  - (B) an examination or test that is conducted by a crime laboratory and that is a forensic examination or test not subject to accreditation; or
  - (C) testimony related to an analysis, examination, or test described by Paragraph (A) or (B).

(a-1) Authorizes the commission to initiate an investigation of a forensic analysis or a forensic examination or test not subject to accreditation, without receiving a complaint submitted through the reporting system implemented under Subsection (a)(1) (relating to development and implementation of a reporting system to report professional negligence or professional misconduct), if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the analysis, examination, or test would advance the integrity and reliability of forensic science in this state, rather than authorizing the commission to 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-1) Authorizes the investigation to include the preparation of a written report that contains certain information, if the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited under this article or the investigation involves a forensic examination or test not subject to accreditation, rather than if the investigation is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science.

(c) Authorizes the commission by contract to delegate the duties described by Subsections (a)(1) and (3) and Sections 4-d(b)(1), (b-1), and (d) (relating to a crime laboratory accreditation process) to any person the commission determines to be qualified to assume those duties.

SECTION 4. Amends Sections 4-a(c) and (d), Article 38.01, Code of Criminal Procedure, as follows:

(c) Authorizes the commission by rule to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation, rather than authorizing the

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

(d) Adds minimum standards for character and fitness, including consideration of an applicant's criminal history and any other information that may indicate whether the person possesses the requisite honesty, trustworthiness, or integrity to be a license holder to a list of qualifications for a license that the commission is required by rule to establish.

SECTION 5. Amends Section 4-d(b-1), Article 38.01, Code of Criminal Procedure, to add establishing standards to a list of actions that the commission is authorized to take as part of the accreditation process established and implemented under Subsection (b).

SECTION 6. Effective date: September 1, 2019.