

**Texas Forensic Science Commission
Quarterly Meeting Minutes**

The Texas Forensic Science Commission (Commission) met in person and by video conference on October 20, 2023, at the Barbara Jordan State Office Building at 1601 Congress Avenue, Room 2.034, Austin, Texas 78701.

Members Present: Jeffrey Barnard, M.D., Presiding Officer
Patrick Buzzini, Ph.D.
Michael Coble, Ph.D.
Mark Daniel, J.D.
Nancy Downing, Ph.D.
Jasmine Drake, Ph.D.
Sarah Kerrigan, Ph.D.
Jarvis Parsons, J.D.
Erika Ziemak

The following members attended the Quarterly Commission meeting through a Zoom video conference: Dr. Nancy Downing, Dr. Jasmine Drake, and Jarvis Parsons, J.D.

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Tomlin, Associate General Counsel
Robert Smith, Senior Staff Attorney
Veena Mohan, Assistant General Counsel
Steve Miller, Multimedia Producer
Rodney Soward, Program Specialist
Cristabel Bodden, Executive Assistant

During this meeting, the Commission considered and took action on the following items. The Commission took breaks as necessary.

1. Call meeting to order. Roll call for members. Excuse any absent board members.

Barnard called the meeting to order at 9:02 a.m. Commissioners were present as indicated above.

Barnard welcomed new Commission member, Erika Ziemak, appointed by the Governor to the Forensic Science Commission.

Garcia introduced Ziemak and provided an overview of her background.

2. Review and adopt minutes from July 21, 2023 Commission quarterly meeting.

MOTION AND VOTE: *Kerrigan moved to adopt the meeting minutes draft. Daniel seconded the motion. The Commission adopted the motion by a unanimous vote.*

3. Office administrative update (FY2024 first quarter budget status report; updates from conferences and trainings attended by staff; update on status of launch of

database functions, including crime laboratory accreditation status and search functions as well as Organization of Scientific Area Committees (OSAC) Registry implementation). (General Counsel Garcia/Associate General Counsel Tomlin)

Garcia reviewed the budget report provided in the commissioner's meeting materials and provided an update on office administrative, budget, and database functions. Staff continues to work with database developers at the Office of Court Administration in further developing the OSAC Registry implementer search function of the Commission's database.

MOTION AND VOTE: *Daniel moved to adopt the budget as reflected in the meeting materials. Parsons seconded the motion. The Commission unanimously adopted the motion.*

4. Discuss and consider complaints and laboratory self-disclosures pending from July 21, 2023 quarterly meeting and new complaints and laboratory self-disclosures received through September 29, 2023, as detailed below.

Self-disclosures pending from July 21, 2023:

1. No. 23.07; Fort Worth Police Department Crime Laboratory (Seized Drugs)

A self-disclosure by the Fort Worth Police Department Crime Laboratory (FWPDCL) reporting a proficiency testing issue that raised larger concerns about the laboratory's method for quantitation of delta-9 tetrahydrocannabinol (THC) in plant material using liquid chromatography mass spectrometry (LCMS). The laboratory underwent a surveillance assessment by its accrediting body, ANSI National Accreditation Board (ANAB) in August 2023. ANAB shared the Commission's concerns regarding the laboratory's quantitation method and related validation. After the assessment, the laboratory voluntarily removed quantitative measurement of botanicals from its scope of accreditation. The laboratory notified affected stakeholders regarding the issues identified and the change in accreditation scope.

MOTION AND VOTE: *Daniel moved to take no further action due to the removal of the method from the laboratory's scope, notification to stakeholders, and re-training of drug chemists on proper method validation. Coble seconded the motion. The Commission unanimously adopted the motion.*

2. No. 23.18; City of Austin Forensic Science Department (Firearms/Toolmarks)

A self-disclosure by the City of Austin Forensic Science Department reporting three instances where an analyst released a firearm trajectory PowerPoint presentation without the conclusions in the presentations undergoing technical or administrative review.

MOTION AND VOTE: *Daniel moved to table the self-disclosure pending receipt of additional information requested by Commission staff. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

Self-disclosures received as of September 29, 2023:

3. No. 23.21; Department of Public Safety – Lubbock (Firearms/Toolmarks)

A self-disclosure by the Department of Public Safety (Lubbock) reporting an incident in its firearms section where the laboratory discovered an analyst, due to a visual acuity issue, documented the composition as “copper” for metals that were “copper” or “brass” and relied on any necessary corrections to be made by the technical reviewer during the review process.

MOTION AND VOTE: *Daniel moved to take no further action given the results of the DPS Office of Inspector General report, the laboratory’s own internal investigation, and the retroactive case review conducted by the laboratory. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

4. No. 23.42; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in its seized drugs section where five delta-9 THC quantitation cases were reported where the parameters for the positive control were within the range set for the one-point quantitation procedure but were out of range for the calibration curve procedure. Currently, the one-point quantitation procedure is being used to determine the THC concentration while the calibration curve procedure is being used as an additional quality control (QC) check.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective action taken by the laboratory, as well as anticipated personnel changes. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

5. No. 23.45; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident where an analyst failed to promptly comply with a defense subpoena for laboratory records based on her supervisor’s belief that a former laboratory director had indicated records should not be provided to defense attorneys directly, but rather should go to prosecutors who would then determine what must be disclosed.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective action taken by the laboratory, as well as anticipated personnel changes. Drake seconded the motion. The Commission unanimously adopted the motion.*

6. No. 23.47; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in the laboratory’s seized drugs section where the laboratory discovered it has been using a microbalance with a 5 mg weight for a quality check when the acceptable range for that quality check is between 5.001-5.005 mg.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective action taken by the laboratory, as well as anticipated personnel*

changes. Buzzini seconded the motion. The Commission unanimously adopted the motion.

7. No. 23.54; Harris County Institute of Forensic Science (Forensic Biology/DNA)

A self-disclosure filed by the Harris County Institute of Forensic Science (HCIFS) reporting an incident of contamination between unrelated cases caused by carryover from a Sharpie® marker used to identify stains on clothing items in both cases.

HCIFS Quality Manager, Michal Pierce, addressed the Commission to discuss the quality incident and provide additional details on the root cause and corrective action in the matter.

The laboratory agreed to meet with forensic biology experts on the Commission to determine whether the issue needs to be further addressed statewide with other laboratories.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective action taken by the laboratory. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

Drake left the meeting at 9:36 a.m. and returned at 9:38 a.m.

8. No. 23.57; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in the laboratory's seized drugs section where the laboratory discovered analysts were disposing their original observation notes after transcribing them.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective action taken by the laboratory, as well as anticipated personnel changes. Parsons seconded the motion. The Commission unanimously adopted the motion.*

9. No. 23.59; Intermountain Forensics (Forensic Biology/DNA)

A self-disclosure by Intermountain Forensics reporting several incidents involving a particular employee which led to the end of their employment with the laboratory, including a switched sample and reagent blank, documentation inconsistent with the case record, and non-forensic evidence samples for genetic genealogy shipped to the incorrect location.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory and the fact that this person's work on Texas cases was limited to M-Vac collection and did not include any analysis or interpretation. Coble seconded the motion. The Commission unanimously adopted the motion.*

10. No. 23.60; University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA)

A self-disclosure by the University of North Texas Health Science Center – Center for Human Identification reporting an incident where the laboratory discovered a discrepancy involving the recording of information used to calculate the solution (commonly referred to as the “master mix”) that is used in the extraction portion of the laboratory’s male DNA screening process.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Kerrigan seconded the motion. Coble and Ziemak recused. The Commission unanimously adopted the motion.*

11. No. 23.41; Department of Public Safety – Austin (Seized Drugs)

A self-disclosure by the Department of Public Safety – Austin reporting an incident in its seized drugs section where the laboratory identified missing drug evidence mailed via Federal Express from the Department of Public Safety – Austin laboratory to NMS Labs, Inc.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Parsons seconded the motion. The Commission unanimously adopted the motion.*

12. No. 23.46; Department of Public Safety – Tyler (Seized Drugs)

A self-disclosure by the Department of Public Safety – Tyler reporting an instance of lost seized drug evidence after analysis but before the return of the evidence to temporary storage or the evidence vault.

MOTION AND VOTE: *Daniel moved to take no further action given the laboratory’s investigation and inability to determine a definitive root cause. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

13. No. 23.50; Department of Public Safety Crime Laboratory System (Toxicology; Blood Alcohol)

A self-disclosure by the Department of Public Safety Crime Laboratory System reporting an incident in the Garland laboratory’s evidence section where the laboratory discovered two blood tubes sent to the Houston regional laboratory were broken with only a small amount of blood still left inside the kit upon arrival at the Houston laboratory.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Parsons left the meeting at 10:00 a.m. and returned at 10:02 a.m.

14. No. 23.53; Department of Public Safety – Lubbock (Seized Drugs)

A self-disclosure filed by the Department of Public Safety – Lubbock reporting an instance of missing drug evidence contained in a brown bag that was contained in a

box (with other items of evidence) and damaged while in the custody of the shipping provider, Federal Express.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Coble seconded the motion. Parsons abstained. The Commission unanimously adopted the motion.*

15. No. 23.56; Department of Public Safety – Garland (Toxicology; Blood Alcohol)

A self-disclosure by the Department of Public Safety – Garland reporting where the laboratory discovered two missing blood alcohol kits shipped via Federal Express from the Garland laboratory back to the customer after the laboratory was by the District Attorney’s office stating that the evidence could not be located for court.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

16. No. 23.58; Department of Public Safety – Houston (Materials (Trace))

A self-disclosure the Department of Public Safety Houston reporting an incident in its Materials (Trace) section where an analyst lost a small paint chip while attempting to cross section it for analysis.

MOTION AND VOTE: *Daniel moved to take no further action given the root cause analysis and corrective actions taken by the laboratory. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

Complaints Received since September 29, 2023

17. No. 23.55; Tillman, Troy (Houston Forensic Science Center; Forensic Biology/DNA)

A complaint filed by defendant Troy Tillman alleging that because the Houston Police Department Crime Laboratory was a “faulty” lab and an analyst named Chu “came into contact” with his case, everything was contaminated.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the case was reviewed and closed by the DNA Mixture Review Team in 2017, and the broad, conclusory allegations of contamination do not warrant further investigation. Parsons seconded the motion. The Commission unanimously adopted the motion.*

Staff Dismissals of Complaints Received since September 29, 2023

Daniel provided a brief synopsis of complaints dismissed by Commission staff.

1. No. 23.44; Ge, Jinaye (University of North Texas Health Science Center – Center for Human Identification; Human Resources Issue/No Jurisdiction)

MOTION AND VOTE: *Daniel moved to accept staff's complaint dismissal recommendation as presented. Kerrigan seconded the motion. Coble recused. The Commission unanimously adopted the motion.*

2. No. 23.48; Sims, Laura (Harris County Institute of Forensic Science; Autopsy/Pathology/No Jurisdiction)

MOTION AND VOTE: *Daniel moved to accept staff's complaint dismissal recommendation as presented. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

3. No. 23.49; Bowden, Nichole (Harris County Institute of Forensic Science (Autopsy/Pathology/No Jurisdiction)

MOTION AND VOTE: *Daniel moved to accept staff's complaint dismissal recommendation as presented. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

- 5. Discuss status of crime laboratory accreditation program, including:**
- a. Accreditation activities, communications and reports received since July 21, 2023, quarterly meeting.**

Tomlin reviewed a quarterly report of accreditation activities and communications from crime laboratories accredited by the Commission. The quarter included 11 reported accreditation activities—5 successful surveillance assessments or continuations of accreditation, 5 reassessments and renewals of accreditation, and 1 laboratory report of an inactive status of accreditation due to staffing issues.

Garcia stated this quarter staff looked into two labs accreditation activities with questions about some of the nonconformities—Quality Forensic Toxicology and RJ Lee Group. Buzzini assisted with the review of the RJ Lee Group and staff followed up with A2LA on Quality Forensic Toxicology. Buzzini agreed RJ Lee Group in this case sufficiently addressed the nonconformities identified in the assessment. With regard to Quality Forensic Toxicology, staff discussed the issues in the deficiency report with A2LA and would like to follow up with A2LA assessor on the number of and nature of the deficiencies cited in the report.

Parsons left the meeting at 10:11 a.m. and returned at 10:13 a.m.

- b. Summary of reported non-consensus proficiency testing results from accredited crime laboratories. (General Counsel Garcia/Associate General Counsel Tomlin)**

Tomlin reported there were 11 non-consensus proficiency testing activities this quarter. No action was required on this agenda item.

- 6. Discuss updates from licensing advisory committee, including:**
- a. Report on licenses issued and renewed;**

Tomlin gave an update on the current number of licenses and renewals to date. The Commission currently has 1,245 licensees. Next year, 705 licensees will transition to expiration dates on the last day of their birth month.

b. Report from October 19, 2023, Licensing Advisory Committee meeting action items;

Tomlin reported on activities from the Licensing Advisory Committee's meeting the day before. Five new committee members met. The Committee elected a new Chair, Sandy Parent, and a Vice-chair, Dr. Kelley Wouters.

Tomlin stated that the Committee discussed and made recommendations on agenda items 5b, 5c, and 5d, action items needed for the Commission to make decisions.

c. Update on voluntary licensure requirements, including discussion of possible proposed rulemakings on changes and additions to voluntary licenses for latent prints and new voluntary licenses for crime scene investigation and crime scene reconstruction analysts; and

Garcia and members review a rulemaking covering latent print processing and crime scene disciplines for voluntary licensure. Garcia explained these disciplines have been anticipating voluntary licensure eligibility for the last few years. The current version of the rulemaking draft covers 3 categories of crime scene licensure—including crime scene processing technician, crime scene investigation analyst and crime scene reconstruction, and two subcategories of license specialty for crime scene—including bloodstain pattern analysis and shooting reconstruction that includes requirements receptive to feedback from the community stakeholders including the Texas Rangers, DPS and other law enforcement agencies.

The Commission considered the proposed rule which will be published for public comment, revisions and any suggested during the public comment process.

MOTION AND VOTE: *Parsons moved to accept staff's proposed amendments to Commission rules 651.202 and 651.222 regarding adding voluntary licenses for the following categories: latent print processing technician, crime scene technician, crime scene investigation analyst, crime scene reconstruction analyst, crime scene reconstruction analyst with specific recognition in bloodstain pattern analysis, and crime scene reconstruction analyst with specific recognition in shooting incident reconstruction, subject to suggested non-substantive revisions from the Office of the Governor, Texas Register, and commission staff. Drake seconded the motion. The Commission unanimously adopted the motion.*

d. Update from August 25, 2023 meeting regarding possible Latent Print/Crime Scene Model Training Academy in collaboration with Department of Public Safety and Texas Division of the International Association for Identification and discussion of possible rulemakings related to the training programs as necessary. (General Counsel Garcia/Associate General Counsel Tomlin)

Garcia reported on a stakeholder meeting to develop a pilot Latent Print/Crime Scene Model Training Academy. Garcia stated that the idea behind the Academy is that it could include all the coursework the group feels is important to the crime scene discipline and at its conclusion, participants can be qualified to get the voluntary license in any of the categories. Through this partnership, the Academy could teach concepts that are at the intersection between science and the law.

7. Update regarding complaint #21.27 University of Colorado, National Innocence Project on behalf of Nanon Williams (Houston PD/Houston Forensic Science Center) (Firearms/Toolmarks).

This complaint is from the National Innocence Project and other attorneys regarding the Nanon Williams case and the firearms issue in the case. Staff and the Commission initially delayed this until the release of the National Institute Standards and Technology's (NIST) Scientific Foundation Review. The review has still not been released. The Commission directed staff to move forward with its review and report on the complaint. Staff will shift its focus to concluding this investigation in the next two quarters.

8. Review and possible adoption of final investigative report regarding complaint #22.16 Harris County Public Defender's Office on behalf of Webster, Joseph (Ron Smith & Associates; Friction Ridge).

Garcia thanked Buzzini for his participation in the report and investigation and also recognized the late Mr. Ron Smith for his contributions to the investigation and report.

Smith provided an overview, case facts, and recommendations in a PowerPoint presentation on the Friction Ridge Examination.

Buzzini thanked Dr. Glenn Langenburg for his forensic expertise with more than 20 years of experience in casework, teaching, research, and commitment to the discipline.

MOTION AND VOTE: *Daniel moved to adopt the final investigative report. Buzzini seconded the motion. The Commission unanimously adopted the motion.*

9. Discuss current forensic development training and education projects, including:
a. November 2-3, 2023, DNA training for lawyers and judges with the Court of Criminal Appeals, Texas Center for the Judiciary, Texas District and County Attorneys Association, Texas Criminal Defense Lawyers Association;

Garcia reported on the upcoming DNA training for lawyers and judges. The Commission is co-sponsoring the event along with the Texas Court of Criminal Appeals, Texas Center for the Judiciary, Texas Criminal Defense Lawyers Association, and the Texas District & County Attorneys Association.

Garcia is working closely with Judge Hervey in planning the event. The group created a detailed crime scene scenario to communicate concepts in a practical way.

b. Laboratory manager certification (Levels 1 and 2) by National Forensic Leadership Academy;

Garcia stated they are in the middle of this certification training for levels 1 and 2. The program concludes with a Capstone course in Austin, TX on November 16th and 17th.

Garcia emphasized that the Forensic Science Commission would cover the cost of the course, but attendees are responsible for their travel expenses to the Capstone.

c. Hosting of first meeting of National Association of State Forensic Boards: November 16-17, 2023; and

Garcia stated that the National Association of State Forensic Boards meetings will occur concurrently with the National Forensic Leadership Academy meetings in the same building at the Barbara Jordan Conference Center.

The purpose of this meeting is for those states that already have some form of board or commission to come together to discuss what their respective entities look like and to exchange ideas for forensic governance.

d. December 7-8, 2023 meeting with DNA laboratories to discuss DNA mixture profile interpretation, with focus on analyst testimony.

Garcia stated that the DNA mixture meeting will be held at the Texas Rangers Museum in Waco, TX. This meeting is an extension of the previously held DNA Suitability for Interpretation meeting. The focus of this particular meeting is to facilitate discussion of testimony.

10. Discuss and propose rule amendments, including changes responsive to the 88th Legislature's HB 3506 concerning the timeline for removal of elimination samples from laboratory DNA QA databases.

Garcia explained the first proposed rule is in response to HB 3506, which was passed during the most recent legislative session. The bill was in response to an issue that emerged in San Francisco, California where the laboratory maintained a local database for quality assurance purposes and retained profiles for an extended period, sometimes over years.

In one case, a woman had been sexually assaulted, a sexual assault exam was administered, and the profile was added to that local database. Time passed, and a property crime occurred. The police connected the evidentiary DNA profile from the property crime to the profile of the sexual assault victim from the prior case.

There was significant concern regarding this development as many advocates believed it could have a chilling effect on a victim's willingness to report sexual assault.

Garcia relayed the bill authors wanted to prevent this issue from occurring in Texas. The Texas Legislature mandated that the Commission create a rulemaking to limit retention of certain profiles to no more than 90 days. The proposed rule tracks the law.

MOTION AND VOTE: *Kerrigan moved to propose the amendments to rule 651.211 subject to non-substantive revisions from the Office of the Governor and non-substantive changes from*

the Texas Register and commission staff. Downing seconded the motion. The Commission unanimously adopted the motion.

Garcia stated the second proposed rule is one the Commission voted on in the previous quarter to change license renewals from every two years to coincide with the applicant's birth month. This set of rules contains an inconsistency that needs clarification in that parts of the rules concerning who is eligible to sit for the forensic analyst exam. Before the voluntary program, there were only 2 types of individuals who could sit for the general exam, those who are employed by an accredited lab and students who could demonstrate they had certain proctoring capabilities at their higher education campuses. In order to make the voluntary program work, the clarification must include anyone who is eligible and applying for the voluntary licenses. To fix this internal inconsistency, the rule proposes two changes. The first is to withdraw the vote the Commission took in the previous quarter and replace it with this edit. The second is the motion to propose the new version.

MOTION AND VOTE: *Daniel moved to withdraw the vote taken on July 21, 2023, to propose amendments to Sections 651.207 and 651.208 of the Commission rules. Coble seconded the motion. The Commission unanimously adopted the motion.*

MOTION AND VOTE: *Daniel moved to propose the amendments to Sections 651.207 and 651.208 of the Commission's rules regarding changing license expiration dates to the licensee's birthdate as proposed by staff at this meeting, subject to suggested non-substantive revisions from the Office of the Governor, Texas Register, and commission staff. Coble seconded the motion. The Commission unanimously adopted the motion.*

11. Presentation from Mark Stolorow regarding national and Texas-based implementation efforts and related tools for forensic science service providers seeking to implement OSAC Registry standards.

Mark Stolorow addressed the Commission and shared a presentation regarding national and Texas-based implementation efforts and related tools for forensic science service providers.

Stolorow stated OSAC is celebrating its 10-year anniversary. Stolorow conveyed that the most important message he brings is that OSAC is not the implementation police but is promoting voluntary standards implementation in the forensic science community.

Parsons left the meeting at 11:32 a.m. and returned at 11:39 a.m.

12. Update from the Texas Association of Crime Laboratory Directors.

Peter Stout, President of the Texas Association of Crime Lab Directors (TACL D), addressed the Commission. The TACL D will meet again in January 2024 in coordination with the Commission's quarterly meeting.

13. Consider proposed agenda items for next quarterly meeting.

Staff will include all discussed items on the next quarterly meeting agenda and circulate the proposed agenda for additions.

14. Schedule and location of future panel and quarterly meetings, including January 26, 2024 and April 2024 quarterly meetings.

The next Commission meeting will be held on January 26, 2024. The date for the April meeting will be April 26, 2024.

15. Hear public comment.

Staff noted no public comment other than that noted throughout the agenda.

16. Adjourn.

MOTION AND VOTE: *Daniel moved to adjourn the meeting at 12:12 p.m. Parsons seconded the motion. The Commission unanimously voted to adjourn the meeting.*

Date Commission approved the minutes as submitted:

January 26, 2024