

The Texas Forensic Science Commission (“Commission”) proposes amendments to 37 Tex. Admin. Code §651.5 and §651.7 to remove “collection” and “trajectory determination” from the list of forensic disciplines subject to Commission accreditation requirements and to add "crime scene reconstruction including bloodstain pattern analysis and trajectory determination" to the list of forensic disciplines exempt from Commission accreditation requirements . The amendment is necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, §§651.5 and 651.7 to reflect adoptions made by the Commission at its February 2, 2018 quarterly meeting. The adoptions were made in accordance with the Commission’s accreditation authority to subject or exempt from the crime laboratory accreditation process a type of analysis, examination, or test as described in Tex. Code. Crim. Proc. art. 38.01§ 4-d(b).

**Fiscal Note.** Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs on municipalities in rural communities.

**Public Benefit/Cost Note.** Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be sufficient and accurate notification of the forensic disciplines subject to and exempt from Commission accreditation requirements.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the rule as proposed.

**Takings Impact Assessment.** Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**Government Growth Impact Statement.** Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposed rule exempts certain forensic disciplines from forensic oversight and in turn reduces the Commission’s oversight authority related to these disciplines. The proposed rule does not create a new regulation. The proposed limits existing Commission regulations as they pertain to these two particular forensic disciplines. The proposed rules decrease the number of laboratories subject to the rule’s applicability. The proposed rule positively affects the state’s economy because it proposes a reduction in regulation.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or [leigh@fsc.texas.gov](mailto:leigh@fsc.texas.gov). Comments must be received by April 17, 2018 to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-d.

Cross reference to statute. The proposal affects 37 Tex. Admin. Code §651.7.

<rule>

### §651.5

a) Forensic analysis/recognized accreditation. This section describes a discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline or category of analysis. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following categories: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following categories: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following categories: collection, DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following categories: [collection, ]physical comparison, determination of functionality, length measurement, serial number restoration, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, [trajectory determination,] product (make/model) determination, and individual characteristic database;

(5) Document Examination. Categories of analysis may include one or more of the following categories: document authentication, physical comparison, and product determination;

(6) Materials (Trace). Categories of analysis may include one or more of the following categories: [collection, ]physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue (collection and qualitative determination), footwear and tire tread (collection, enhancement, physical comparison and product (make/model) determination), and fire debris and explosives (qualitative determination); or

(7) other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the sections indicated herein.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

#### §651.7

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations; or
- (12) other discipline or category of analysis so determined by the Commission, including those identified and listed at the Commission's website.

(b) A request for exemption shall be submitted in writing to the Commission.

(c) This subsection describes a discipline, category of analysis, or procedure that does not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for which recognized accreditation is inappropriate or unavailable. Accordingly, accreditation is not required for the following:

- (1) forensic photography;

(2) non-criminal paternity testing;

(3) non-criminal testing of human or nonhuman blood, urine, or tissue;

(4) a crime scene investigation team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection or preservation of physical evidence and the activity is not integral to an expert examination or test;

(5) crime scene reconstruction including bloodstain pattern analysis and trajectory determination;

(6)[(5)] forensic psychology, including profiling, memory analysis and other forms of forensic psychology;

(7)[(6)] other evidence processing or handling that is excluded under §651.2(2) of this subchapter; or

(8)[(7)] other discipline or category of analysis as so determined by the Commission.