

# TEXAS FORENSIC SCIENCE COMMISSION

*Justice Through Science*

SIXTH ANNUAL REPORT  
December 2016–November 2017



**TEXAS FORENSIC SCIENCE COMMISSION**  
**SIXTH ANNUAL REPORT**  
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**EXHIBIT LIST**

<b>Exhibit A</b>	<b>Copy of Texas Code of Criminal Procedure Article 38.01</b>
<b>Exhibit B</b>	<b>FY2018 Budget Plan</b>
<b>Exhibit C</b>	<b>Complaint/Disclosure Spreadsheet</b>

## **I. Introduction and Executive Summary**

This is the sixth annual report of the Texas Forensic Science Commission (“FSC” or “Commission”). The Commission is required to publish an annual report by December 1<sup>st</sup> every year 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. The fourth report covered Commission activities from December 1, 2014 through November 30, 2015. The fifth report covered Commission activities from December 1, 2015 through November 30, 2016. This report covers Commission activities from December 1, 2016 through November 30, 2017.

Texas continues to be a leader among states seeking to advance the integrity and reliability of forensic science in criminal courts and has been recognized for its successful efforts in forensic reform both nationally and internationally. This report focuses on the following key developments in the Commission’s work:

1. A description and update on the Commission’s legislatively mandated activities, including the:
  - a. Crime Laboratory Accreditation Program;
  - b. Forensic Analyst Licensure Program; and
  - c. Pending investigations of complaints and laboratory self-disclosures;
2. The status of pending discipline-specific reviews, including:
  - a. Microscopic Hair Analysis;
  - b. Bite Mark Comparison;
  - c. DNA Mixture Interpretation;
  - d. Crime Scene Investigation; and
  - e. Blood Stain Pattern Analysis;

3. Forensic development activities; and
4. A description of activities in forensic reform at the national level.

## **II. 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](mailto: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 requires crime laboratories that conduct forensic analyses to report professional negligence or professional misconduct to the Commission through its self-disclosure program.

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.
- b) **Complaints Involving Unaccredited Labs or Unaccredited Forensic Fields:** The Commission may investigate a complaint involving a crime laboratory that is not accredited by the Commission, 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) **Complaints Involving Accredited Labs and Accredited Forensic Disciplines:** 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 are 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.

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 Public Information Act until the conclusion of a Commission investigation.<sup>1</sup>

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<sup>1</sup> See Tex. Att'y Gen. OR2014-16371.

### **III. Legislative Changes and Related Initiatives**

#### **A. Administrative Attachment Move from SHSU to OCA**

Effective September 1, 2017, Senate Bill 1124 changed the Commission's administrative attachment from Sam Houston State University ("SHSU") to the Office of Court Administration ("OCA"). Though the Commission did not change locations physically, it is now part of OCA and the Commission's employees are employees of OCA. OCA provides the Commission with valuable support services such as budget management, information technology management and human resources support.

#### **B. Funding for Implementation of the Forensic Analyst Licensing Program**

In addition to moving the Commission's administrative attachment to OCA, the 85<sup>th</sup> Legislature also allocated the Commission an additional \$138,000 to implement its Forensic Analyst Licensing program for fiscal year 2018, including contracting for appropriate content management software, hiring a senior scientific advisor with forensic expertise to assist in managing the program and other items necessary to implement the program as required by law. The Commission expects to receive some revenue from licensing fees in future fiscal years, beginning in fiscal year 2019, with the expectation that the licensing program may eventually become self-sustaining. The Commission's allotted funds for fiscal year 2019 will be reduced to \$528,000 with the expectation the Commission will receive fee revenue to support the licensing program.

#### **C. Studies Regarding Use of Drug Field Test Kits and Crime Scene Investigations**

With the passage of House Bill 34, the 85<sup>th</sup> Legislature required the Commission to conduct a study regarding the use of drug field test kits by law enforcement agencies in Texas. Specifically, the Commission is required to (1) evaluate the quality, accuracy, and reliability of

drug field test kits; (2) identify any common problems with drug field test kits; (3) evaluate the availability and adequacy of training for law enforcement officers regarding the use of drug field test kits and the interpretation of the test results; and (4) develop legislative recommendations regarding the use of drug field test kits by law enforcement agencies and regarding related training for law enforcement officers. The Commission will issue its findings by December 1, 2018 as required by HB-34.

In addition to the drug field test kit study, HB-34 required the Commission to conduct a study regarding the manner in which crime scene investigations are conducted in Texas. In its second quarter this year, the Commission received a crime scene investigation laboratory self-disclosure from the Houston Forensic Science Center. The Commission voted at its May 26, 2017 meeting to review the self-disclosure as part of its crime scene investigation study and issue best practices in the field of crime scene investigations in response to the issues identified in the self-disclosure. The Commission expects to issue a report by December 1, 2018 as required by HB-34.

#### **D. Crime Laboratory Accreditation Program**

The Commission is responsible for establishing procedures, policies and practices to improve the quality of forensic analyses conducted in Texas. The Commission currently recognizes accreditation for 102 laboratories located both in and outside of Texas. Please see the accreditation [page](#) on the Commission's website for more information about the crime laboratory accreditation program, its requirements and a list of accredited labs in and outside of Texas.

#### **E. Forensic Analyst Licensing Program**

All forensic analysts in Texas are required to be licensed under Texas law 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.”

In December 2015, the Commission selected a licensing advisory committee consisting of one prosecutor, one defense attorney and seven individuals who are forensic scientists, crime laboratory directors or crime laboratory quality managers representative of city, county, state and private laboratories. For a list and biographies of the selected licensing advisory committee members, please visit the Commission’s website [here](#). The licensing advisory committee has met more than twenty times since its creation in December 2015. The Committee presented a formal rule proposal on the licensing program to the full Commission at its May 26, 2017 meeting. Commission members adopted the proposal with some changes and the licensing program's administrative rules were proposed in the Texas Administrative Code. The Commission received many comments in response to its proposed rules for the licensing program and made adjustments to the licensing requirements in response to many of the comments. Full responses were issued for each comment and addressed universally to all stakeholders. The Commission posted a new version of the revised licensing program rules for comment in the December 15<sup>th</sup> issue of the Texas Register. For developmental updates and additional information related to the Commission’s Forensic Analyst Licensure Program, please visit the website [here](#).

#### IV. Members and Budget

##### A. Appointments to Date

To date, the FSC has had 32 different Commissioners and four full-time staff members. Following is a table providing appointment and expiration dates for current members as of November 30, 2016 as well as the basis for each appointment. The Texas Constitution provides that appointees with expired terms continue to serve until they are reappointed or replaced.

<b>Current Members</b>	<b>Original Appointment</b>	<b>Basis for Appointment</b>	<b>Expiration Date</b>
Jeffrey Barnard, MD <i>Presiding Officer</i>	10/31/2011	UT—Forensic Pathology (Dallas) Art 38.01, Section 3(a)(4)	09/01/2017
Bruce Budowle, Ph.D.	11/28/2016	UNTHSC Director—Missing Persons DNA (Fort Worth) Article 38.01, Section 3(a)(7)	09/01/2018
Mark Daniel, J.D.	11/28/2016	TCDLA—Defense Counsel (Fort Worth) Article 38.01, Section 3(a)(3)	09/01/2017
Nancy Downing, Ph.D.	11/28/2016	Texas A&M Faculty— Forensic Nursing (College Station) Article 38.01, Section 3(a)(5)	09/01/2018
Jasmine Drake, Ph.D.	11/28/2016	TSU Faculty—Forensic Chemistry (Houston) Article 38.01, Section 3(a)(6)	09/01/2018
Sheree Hughes-Stamm, Ph.D	10/27/2014	SHSU Faculty—DNA & Forensic Anthropology (Huntsville) Article 38.01. Section 3(a)(8)	09/01/2018
Pat Johnson, M.S.	11/28/2016	Forensic Chemistry (Austin) Article 38.01, Section 3(a)(1)	09/01/2017

Sarah Kerrigan, Ph.D.	11/28/2016	Forensic Toxicology (The Woodlands) Article 38.01, Section 3(a)(1)	09/01/2017
Jarvis Parsons, J.D.	11/28/2016	TDCAA--Prosecutor (Tarrant) Article 38.01, Section 3(a)(2).	09/01/2017

### **B. New Staff Member**

In November 2018, the Commission hired a Senior Scientific Advisor, D. Jody Koehler, to assist the Commission and its staff with the technical aspects of the Commission's investigative, accreditation and licensing programs. Koehler has over 18 years of experience as a forensic biologist, including work as a DNA Technical Leader, DNA Section Manager, and Laboratory Manager. She currently serves as a lead assessor for the ANSI-ASQ National Accreditation Board. Koehler is a member of the American Society of Crime Laboratory Directors and the American Association of Forensic DNA Analysts and Administrators and has authored various publications on validation and analysis of forensic casework.

### **C. Annual Budget**

The FSC's annual budget was increased during the 85<sup>th</sup> Legislative Session to \$638,000 for fiscal year 2018 to support the development and implementation of the licensing program, but will be reduced to \$528,000 for fiscal year 2019 in anticipation that fee revenue will be received to offset part of the cost of administering the program. A copy of the FSC's projected budget (major categories) for FY2018 is attached as **Exhibit B**. The Commission will dedicate funds to the following critical priorities during FY2018: (1) funding of staff salary and overhead; (2) complaint and disclosure investigative activities; (3) management of the accreditation program; (4) development and implementation of the Forensic Analyst Licensing Program; (5) statewide reviews of forensic disciplines such as crime scene investigation, blood stain pattern

analysis and field drug testing; and (6) collaborative training projects with the Texas Criminal Justice Integrity Unit (“TCJIU”) and other stakeholders. **Exhibit B** provides a breakdown of projected costs in major categories.

## **V. Summary of Complaints and Disclosures**

Commission staff receives complaints from a range of sources, including but not limited to attorneys (both defense and prosecution), 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 and interested members of the public to bring issues of concern to the Commission’s attention.

### **A. Complaint/Disclosure Tally**

To date, the Commission has received a total of 203 complaints and 40 self-disclosures, and has disposed of 195 complaints and disclosures, either through dismissal, investigation and release of a report, and/or referral to another agency. Of the 179 total complaints and self-disclosures received, 63 were received from December 2, 2016 through the date of this report. The Commission currently has 12 open complaints/self-disclosures; this number includes 4 active investigations involving 7 cases, 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 lack fundamental information or simply fail to state an actual complaint for which the Commission has jurisdiction. 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).

## **VI. Summary of Pending Complaint and Self-Disclosure Investigations and Reports**

At this time, one complaint and one disclosure are pending investigation and release of a final report by the Commission: (1) a complaint by a Harris County Public Defender's Office Attorney ("HCPDO") requesting the Commission review forensic analysis and testimony related to blood spatter and gunshot residue in a cold case murder conviction; and (2) a self-disclosure by the Harris County Institute of Forensic Sciences ("HCIFS") related to an incident where a toxicologist falsely represented her credentials and training during courtroom testimony. The Commission is currently finalizing the reports for both of these cases and expects to adopt the final version in each case at its February 2, 2018 meeting. Copies of the final reports will be published on the Commission's website.

## **VII. Discipline-Specific Reviews**

### **A. Microscopic Hair Analysis**

#### **1. Background**

At its November 1, 2013 meeting, the Commission appointed an investigative panel to coordinate a review of testimony in Texas hair microscopy cases in response to a similar review conducted by the FBI. The Commission's investigative panel convened a team of subject matter experts and attorneys to develop case review criteria and review testimony in identified hair cases. The review panel 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.

#### **2. Review Criteria**

The team asked the following questions regarding the cases it reviewed:

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 was affirmative, the Commission notified interested parties of the review team's specific findings. For a complete background on the Commission's hair microscopy review, please refer to the Commission's Fifth Annual Report published on December 1, 2016.

#### **3. Case Review Process**

The Commission approved a sub-sampling approach to case identification that allowed for the generation of a reasonable number of cases for review without adding to existing laboratory backlogs. Staff requested that each laboratory provide the first 10 cases from every

decade for which the laboratory performed microscopic hair comparisons and received responses from 20 Texas labs. The lab responses were timely and thorough, but not uniform. In total, the labs submitted 693 cases to the Commission. In addition to the lab submissions, staff conducted case research on LexisNexis. Specific case submissions are described below:

- Texas DPS – 412 cases total representing 10 cases from each decade for each regional lab (est. 20% of total)
- Bexar County – 61 cases representing all positive associations from 1989 to present
- Fort Worth PD – 50 cases up to 1995
- Harris County IFS – 7 cases representing all cases from 1988 to present
- Houston PD – 65 of 220 cases where a report was issued
- Jefferson County – 51 cases representing all hair cases
- Pasadena – 8 cases representing all hair cases
- SWIFS – 36 cases representing all cases from 1991 where positive probation associations were made
- Tarrant County ME – 22 cases representing 10 per decade where hair microscopy was performed
- LexisNexis – 120 cases

Further investigation and screening of these cases was necessary to facilitate trial testimony review. In Texas, there is no central repository of information on criminal convictions or trial transcripts. Each local jurisdiction keeps its own records and does not always retain copies of trial transcripts for old cases. If post-conviction action was taken, it is possible one of the higher courts stored a transcript. Even for cases that went to trial, if no appeal was filed there is a strong likelihood the transcript was never prepared by the court reporter.

Retroactive case reviews starting with lab reports presented certain challenges. The biggest challenge was that a lab report has very limited information concerning the ultimate outcome of the criminal case. There is no information concerning whether a criminal prosecution followed, the form the prosecution took (plea or trial) or the ultimate disposition. Staff utilized several steps of screening and investigation to narrow down the list of cases to those involving positive probative associations where a conviction was obtained.

To tackle the lab submissions, the team split into two sub-teams to identify which reports contained positive probative associations. Each sub-team was assigned approximately half of the 693 lab reports for review. This first round of case screening resulted in 287 total cases where a positive probative association was made.

The LexisNexis/Westlaw list of 120 cases provided more information because it consisted of criminal convictions that were appealed where hair microscopy or hair comparison evidence was mentioned in the reported opinion. Further screening of this set of cases was necessary to determine if the cases fit the parameters of the review. Staff conducted additional investigation and greatly reduced the number of cases on this list.

The next step involved further research of the 287 positive probative association cases to determine if a criminal conviction was obtained, whether it was by plea or trial, and finally if a trial transcript was available for review. Staff meticulously investigated each case utilizing various resources. Many counties have digitized criminal case records making it easier to search for a criminal defendant in a jurisdiction. The Texas appellate courts have a robust system-wide online case search database providing information on criminal post-conviction proceedings, both at the appellate courts and at the Court of Criminal Appeals. Other publicly available resources such as the Texas Sex Offender Registry, news websites, and Google searches provided further useful information.

Staff conducted further screening and investigation of the positive probative association list and the LexisNexis/Westlaw list, narrowing the final list to 79 criminal convictions by trial where a trial transcript may be available for review. Staff requested and collected all available trial records. It is important to note not all cases on the final list had trial transcripts available for

review. Six cases on the final list did not have a trial transcript available for review, bringing the total cases available for review down to 73.

In addition to those cases that went to trial, staff determined that at least 29 cases were disposed of by plea bargain. No problematic statements of association were noted in the lab reports for these cases, and it was not possible to assess the impact (if any) the hair analysis may have had on the defendant's decision to enter a plea agreement.

The final stage of the review required the team to analyze trial testimony for the remaining cases, answer the three review criteria questions, and make notification recommendations to the Commission. Staff secured assistance with this task from Latham & Watkins's Houston office. On October 28, 2015, staff and members of the team provided training for Latham & Watkins attorneys.

#### **4. Case Review Results**

One of the first steps taken by the team and Commission staff was to identify those cases in which individuals are still incarcerated. Among those individuals, an even higher priority was to identify those individuals who are currently on death row. Because they have been sentenced to the ultimate penalty, the team felt a review of their cases should be prioritized. The team obtained laboratory reports and reviewed relevant testimony in all death penalty cases on the list while the criteria review process was still in development for other cases. The team did not want an administrative or procedural issue (*i.e.*, finalization of the criteria checklists) to delay reviews for cases in which defendants have been sentenced to death. It is important to note that because the sub-sampling approach yielded a relatively small group of cases (for example, approximately 20% at the DPS labs), the five death penalty cases reviewed do *not* necessarily represent all inmates on death row who may have had hair microscopy as a component of their cases.

However, they do represent the team's best efforts at prioritizing capital cases that appear on the list of cases collected to date within the framework of the sub-sampling approach.

Along with the five death penalty cases, the team reviewed an additional 45 cases (two cases involve two co-defendants tried jointly), totaling 50 transcript reviews. No notifiable errors were found in the five pending death penalty cases reviewed. Of the 45 reviewed non-pending death penalty cases, notifiable error was found in 22 cases and notification letters were sent to the interested parties. A final report describing the review process and conclusions will be considered by the Commission during the first quarter of 2018.

## **B. DNA Mixture Interpretation Analysis**

### **1. Background**

In May 2015, the Federal Bureau of Investigation (FBI) issued a notification to laboratories across 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 issues affecting interpretation, 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. Action Taken**

Over the past two years, the Commission has actively engaged 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 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. (See e.g., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5007818/>.)

### **3. DNA Mixture Interpretation Case Review**

In light of the Commission’s findings related to mixture interpretation protocols that may not have adequately considered certain important scientific limitations, such as allele dropout, stutter, allele stacking, allele masking and other stochastic effects, the Commission felt it prudent to initiate a statewide review of DNA mixture interpretation cases.

#### **a. Notification and Screening Process**

As part of a recommended notification process, the Commission requested all criminal DNA testing laboratories in the State provide DNA mixture lists of cases analyzed since the inception of STR testing to the affected prosecuting agencies for review and notification where appropriate. With CCA Judge Barbara Hervey’s assistance, the Commission also published a notice in Texas prison libraries describing the DNA mixture interpretation issues and providing inmates with information on submitting their case for review and/or reanalysis. For a flowchart of the complete case review process and further details, please visit the following [link](#).

#### **b. Case Review Status Update**

With the exception of Tarrant and Travis counties, which are managing their own reviews, the statewide DNA mixture interpretation case review is currently managed by Bob Wicoff, Chief of the Appellate Division of the Harris County Public Defender’s Office. The work is 100% funded by a grant from the Texas Commission on Indigent Defense. The approximate numbers (since the project’s start date of March 1, 2016) are as follows:

Total requests for review:	2,800
Cases reviewed and closed:	1,550
Cases pending recalculation:	150
Cases still in the process of being reviewed:	1,100

In Tarrant county, a total of 284 notices were sent to defendants, with 94 requests for reviews received. Attorneys were appointed on a wheel system for all requesting defendants. Of the 87 currently open cases, approximately 50% are pending responses from defense counsel, 35% are pending laboratory review and the remainder are waiting for re-testing or other resolution by attorneys. Twenty cases have been closed and 40 referrals from the statewide mixture review team have also been closed.

By focusing on a collaborative approach and triaging cases, Texas has emerged as a leader for other states that are beginning to contend with similar issues in DNA mixture interpretation and corresponding case reviews.

#### **4. Austin Police Department DNA Section Audit Report and Recommendations**

In May 2016, in response to issues identified after reviewing laboratory protocols and a sample set of DNA mixture cases from the Austin Police Department Crime Lab's DNA Section "APD", the Commission conducted an on-site audit at APD. The audit revealed a number of concerns that led laboratory management to voluntarily amend its scope of accreditation and temporarily suspend forensic DNA analysis, including biology screening. The laboratory has been working over the last 18 months to address the concerns outlined in the Commission's final audit report. In the interim, the City of Austin entered into a five-year Memorandum of Understanding with the Texas Department of Public Safety ("DPS") providing for DPS to manage the DNA section of the laboratory. The City has also worked collaboratively with stakeholders to ensure notification and retroactive review of cases as appropriate. Case reviews are handled through a legal triage process and sent to the University of North Texas Health Science Center/Center for Human Identification for re-analysis on a pro bono basis. In addition, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania law

school ("Quattrone") has been retained by the City of Austin to conduct a thorough root cause analysis of the issues identified during the Commission's audit. Quattrone will also create a report for stakeholders outlining best practices in laboratory organization, culture and management to assist the community in determining the best possible structure for the DNA laboratory when the DPS MOU expires. For a complete copy of the APD audit report, including details regarding the Commission's findings and recommendations, please visit the Commission's website [here](#).

### **C. Bite Mark Comparison Case Review**

#### **1. Background**

On February 12, 2016, the Texas Forensic Science Commission published a report on bite mark comparison in response to a complaint filed by the national Innocence Project on behalf of Steven Mark Chaney.<sup>2</sup> The Commission made two threshold observations based upon its review: 1) there is no scientific basis for stating that a particular patterned injury can be associated to an individual's dentition; and 2) there is no scientific basis for assigning probability or statistical weight to an association, regardless of whether such probability or weight is expressed numerically (e.g., "one in a million"). The Commission further concluded: 1) at the current time, the overwhelming majority of existing research does not support the contention that bite mark comparison can be performed reliably and accurately from examiner to examiner due to the subjective nature of the analysis; and 2) in addition to the foundational scientific and research issues, there are significant quality control and infrastructure differences between forensic odontology and other patterned and impression disciplines performed in accredited

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<sup>2</sup> The Commission's report may be accessed at the following link: <http://www.fsc.texas.gov/blog/2016-04-18/fsc-releases-report-forensic-bitemark-comparison-complaint-filed-national-innocence>

laboratories. Finally, the Commission recommended bite mark comparison evidence not be admitted in criminal cases in Texas unless and until the following are established: 1) criteria for identifying when a patterned injury constitutes a human bite mark; 2) criteria for identifying when a human bite mark was made by an adult versus a child; and 3) rigorous and appropriately validated proficiency testing.<sup>3</sup>

As part of its findings, the Commission recommended a case review including a multidisciplinary team of forensic odontologists and attorneys to review criminal cases potentially impacted by bite mark comparison evidence. In the months following the report's release, the Commission worked with the American Board of Forensic Odontology (ABFO) and stakeholders in the legal community to form a bite mark comparison review team to conduct a retroactive review of cases. The team was structured in a similar manner to a previous team convened to conduct a review of Texas microscopic hair comparison cases, consisting of four subject matter experts, two defense attorneys and two prosecutors. On January 27, 2017, the team held its first meeting. The team also held subsequent meetings on March 10, 2017 and September 8, 2017. All meetings were open to the public.

## **2. Case Review Process**

Because there is no central repository of bite mark cases, compiling a comprehensive list of Texas bite mark cases was not an easy task. Additionally, because bite mark comparison is typically performed outside a crime laboratory setting by dentists in private practice, a multifaceted approach is necessary to identify potentially affected cases. While forensic laboratories have LIMS systems which enable them to track and search for cases, bite mark comparison cases are typically performed by individual forensic odontologists who maintain

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<sup>3</sup> See also Att. Gen. Op. KP-0127 for discussion of admissibility of bite mark comparison evidence and Commission's discretion under articles 38.01 and 38.35 of the Texas Code of Criminal Procedure.

their own case file tracking systems. Indeed, though Commission staff made a good faith effort to identify cases, there is no way to guarantee that cases could not have been missed that the team would review if provided the opportunity.

Despite these challenges, staff had several helpful resources to consult at the outset of the project. First, staff referred to the list of Texas convictions referenced in the textbook, *Forensic Dentistry, Second Edition*, edited by Drs. Senn and Stimson. This textbook contains an appendix entitled “U.S. Federal and State Court Cases of Interest in Forensic Odontology,” that provides chronological case citations. After a close review, 22 Texas convictions were identified from the appendix.

In addition, the national Innocence Project also provided the Commission with a list of Texas bite mark comparison convictions of which they were aware. This list provided an additional six cases that were not listed in the Forensic Dentistry textbook.

In an attempt to fill any gaps left by the first two lists, staff generated a list of cases using a LexisNexis search. That search returned a total of 221 appellate decisions requiring a careful review to determine relevancy. Once this review was completed, an additional six cases were added to the master list.

In discussions with the American Board of Forensic Odontology (ABFO) leadership, staff learned that a handful of retired ABFO Diplomates had provided their personal case files to the archives at the National Museum of Health and Medicine (“NMHM”) in Silver Spring, Maryland. Staff contacted the museum for assistance in accessing information concerning Texas casework stored there. The Museum responded with short list providing very little information due to the limited nature of the archived information. The NMHM information added one

potential additional case to the list but ultimately the archived files were too limited to provide for extensive case identification.

The Harris County District Attorney's Office Conviction Integrity Unit provided the Commission with an additional two cases to add to the review. An additional two cases were provided by Dr. Paula Brumit. Upon review, it was determined that comparisons were not ultimately made in those cases. The Tarrant County Medical Examiner's Office also provided a list of cases submitted by Dr. Roger Metcalf.

Ultimately, staff identified 36 cases were for initial screening by the team. The initial list of cases compiled through the process outlined above was shortened when review parameters were set and further scrutiny was applied to the case facts. Several cases were eliminated from the list at the outset because they did not involve an identification, or because the bite marks in question were inflicted by animals. It should also be noted that the list of 36 cases includes the Steven Mark Chaney case along with two cases where the defendants were later exonerated as a result of DNA evidence, as discussed below.

### **3. Case Review Criteria**

As a threshold matter, it is critical to note that the review team's work was *limited to the review of testimony*. The team did not have access to the evidence in any case and thus did not make an assessment of the quality of the bite mark comparison performed. The team limited its analysis to whether the testimony was supportable or not.

The criteria for the transcript review were developed based on two main factors: (1) the Commission's previous experience in developing criteria for the microscopic hair comparison review; and (2) a common desire to ensure that any retroactive case review makes prudent and effective use of limited state resources. Thus, team members and Commissioners agreed to

refrain from reviewing cases solely for the purpose of identifying overstatements in testimony regardless of whether there could be any conceivable argument that the erroneous bite mark testimony impacted the case outcome. Instead, team members focused resources solely on those cases for which the defendant could have a plausible argument that flawed bite mark comparison testimony may constitute grounds for legal relief.

### Initial Screening Criteria

The first question answered by the team in approaching a given case was whether it contained a bite mark comparison that included a positive, probative association. The term was defined as follows:

The term “*positive, probative association*” means the expert expressed an association of any kind between the defendant’s dentition and the patterned injury on human skin, and that association provided information, regardless of significance, about the suspect’s connection to a criminal act.

If the answer to this question was "no," the team stopped the review. If the answer was "yes," the team proceeded to ask the following questions:

1. Was there a high-quality DNA profile or profile(s) connecting the Defendant to the crime?<sup>4</sup>
2. Were there multiple additional overwhelmingly inculpatory case facts in the form of physical evidence and/or witness testimony such that an alternative theory, explanation or suspect is not plausible?

It is important to note the team answered the second question affirmatively only when non-bite mark related case facts were abundantly clear and overwhelming. Members always erred on the side of including cases.

### Transcript Review Questions

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<sup>4</sup> By “high quality,” we are referring to single source profile(s), a simple two-person mixture, or a mixture for which a major contributor may be deduced.

If the review team answered "no" to the two preliminary screening criteria, members then proceeded to review the case transcript. After reading the transcript, the team answered the following questions:

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

If the answer to any of these questions was "yes," the panel recommended to the full Commission that notification be provided to the following potentially impacted individuals:

- Defendant and/or last known counsel;<sup>5</sup>
- Elected District Attorney for county in which case was prosecuted;
- Conviction Integrity Unit if one exists in jurisdiction;
- Court with original jurisdiction over trial;
- Texas publicly funded innocence clinics;
- President of ABFO;
- Forensic odontologist who provided testimony (unless deceased).

#### **4. Case Review Results**

Commission staff identified 36 total cases for possible transcript review. Of these, six cases were prescreened out by the staff (three of the cases were *Washington*, *Williams* and *Chaney*; two cases had no bite mark testimony; one case was a 1954 robbery involving bite mark impressions in cheese (*Doyle v. State*, 159 Tex. Crim. 310, 263 S.W.2d 779 (1954))). The team screened the remaining 30 cases and removed another 21 from transcript review after analyzing the cases under the initial screening criteria. The team reviewed five transcripts at its March 10,

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<sup>5</sup> Cases in which defendant is deceased are included in final report.

2017 meeting and recommended notification for four of the five cases. Of the cases for which notification was recommended, three resulted in the team answering all review questions affirmatively. The fourth case involved two experts providing testimony with the team answering all three review questions affirmatively for the first expert and only the first review question affirmatively for the second expert.

At its September 8, 2017 meeting, the team reviewed the remaining four transcripts at and recommended notification for three cases. Of these three cases, one involved the team answering the first and third review questions affirmatively while the team answered all three review questions affirmatively in the other two cases. It is also important to note that one case involved the team answering all three review questions affirmatively for two forensic odontologists.

#### **D. Crime Scene Investigation**

At its May 26, 2017 meeting, the Commission reviewed a self-disclosure from the Houston Forensic Science Center ("HFSC") describing issues in its Crime Scene Unit including deficiencies in documentation, collection, recovery and preservation of evidence at multiple crime scenes that led to the removal of a crime scene investigator and a technical supervisor and voted to form an investigative panel consisting of Commissioners Mr. Pat Johnson, Mr. Jarvis Parsons and Dr. Jasmine Drake. The self-disclosure highlights issues key to the integrity and reliability of crime scene investigation that are not limited to HFSC, but may be present in other Crime Scene Unit's in Texas and nationwide. Because crime scene investigation is exempt from accreditation requirements in Texas, the Commission may only investigate the disclosure for the limited purpose of issuing best practices and other recommendations. As described in paragraph III C above, the Tim Cole Exoneration Review Commission has recommended a study of crime

scene investigation practices in Texas. Investigative panel members plan to meet in the coming weeks and develop an outline for a plan for the investigation that highlights key areas of concern. Commissioners expect to issue a report in the matter before December 2018.

#### **E. Blood Stain Pattern Analysis**

Blood stain pattern analysis is currently neither subject to accreditation requirements nor exempt from accreditation requirements in Texas. However, blood stain pattern analysis evidence is being used in Texas criminal cases and by a variety of blood stain pattern analysis practitioners—at least one from an accredited laboratory, some law enforcement agencies, including DPS, and some analysts in private practice. Commissioners discussed the issue of whether blood stain pattern analysis should be subject to accreditation requirements at its November 3, 2017 meeting and voted to conduct a hearing on the state of blood stain pattern analysis and how it is used in Texas criminal cases. Commissioners and staff have invited practitioners from different backgrounds to attend the hearing, provide information on their practices and to explain the scientific underpinnings of the discipline. Commissioners plan to hold the hearing in Austin on January 22, 2018.

### **VIII. Forensic Development Activities**

#### **A. Conferences/Presentations**

Lynn Garcia, the Commission's General Counsel, represents the Commission at professional meetings and conferences regarding forensic science in Texas and nationally. For example, in July 2017, she was a plenary speaker for the National Institute of Standards and Technology International Forensic Error Symposium. The symposium is an effort by forensic scientists to modernize the industry's approach to managing error like industries such as aviation and healthcare have done in recent years. Garcia described the Texas approach to managing

forensic error, the challenges that are presented by the adversarial nature of our criminal justice system and the core values that have allowed Texas to emerge as a national leader in forensic reform.

The Commission's Senior Scientific Advisor, Jody Koehler, was invited to present at the Texas Criminal Defense Lawyers 15<sup>th</sup> Annual Forensics Program in Houston, December 14-15, 2017. Koehler will give a presentation on current issues in forensic science.

### **B. International Interest/Education for the Texas Forensic Oversight Model**

In the past year, the Commission has seen international interest in the Texas model of forensic oversight. On September 19, 2017, a group of Japanese attorneys and scientists traveled to Austin to meet with Commissioner Pat Johnson, Commission General Counsel Lynn Garcia, Court of Criminal Appeals Judge Barbara Hervey and others to discuss the Texas model of forensic oversight. On December 9, 2017, members of the Commission and staff, representatives from DPS, and Court of Criminal Appeals Judge Barbara Hervey will meet with delegates working on a forensic reform project for Kazakhstan's Ministry of Justice. DPS also plans to give the delegates a tour of its lab facilities in Austin that day.

## **IX. Forensics at the National Level**

### **A. National Commission on Forensic Science Expiration**

On April 23, 2017, the United States Attorney General's National Commission on Forensic Science's ("NCFS") charter expired and was not renewed by the current Attorney General. The NCFS summarized its accomplishments and identified work to be addressed going forward in a document titled [\*Reflecting Back – Looking Toward the Future\*](#). The NCFS was composed of approximately 30 members, including practitioners, researchers, prosecutors, defense attorneys, judges and other members of the criminal justice community. The NCFS was

responsible for providing guidance concerning the intersection between forensic science and the courtroom, as well as developing policy recommendations. The Attorney General has continued efforts to improve forensic science through an internal Department of Justice working group on the subject.

### **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. Commission member Dr. Sarah Kerrigan is a member of the Forensic Science Standards Board, the governing body for the OSAC. For a full list of members and more detailed information related to the roles of the various subcommittees click the following link <http://www.nist.gov/forensics/osacroles.cfm>.

### **C. Report by the President's Council on Science and Technology**

In September 2016, the PCAST released a report entitled *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods*. The report described research needs and progress made in a number of feature-comparison methods, echoing many of the concepts expressed in the 2009 NAS Report. The authors also referenced developments in Texas with respect to both bite mark comparison and DNA mixtures.

#### **D. NIJ Report on State Forensic Science Commissions**

In November 2016, the National Institute of Justice issued a report on state forensic science commissions in which the Texas Forensic Science Commission's activities are highlighted. The report describes how state forensic science commissions may contribute to forensic improvement through oversight and coordination of forensic science resources and provides information for states wishing to create and maintain a state forensic science commission. The report, while taking into account the differences that exist among states including governance, culture, statutes and crime lab systems, provides an overview of considerations in planning for and developing a state-level forensic commission. A copy of the report can be accessed [here](#).

#### **X. Additional Items Required in Annual Report by Statute**

##### **A. Accreditation Updates**

As part of its statutory annual report requirement, the Commission must describe any forensic method or methodology the Commission designates as part of the accreditation process for crime laboratories.<sup>6</sup> In the past year, the Commission has considered whether to exempt or subject to the accreditation process several forensic disciplines. In April 2017, the Commission adopted a rule to exempt from the accreditation process forensic odontology used for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries. Also in April 2017, the Commission adopted a rule removing the forensic discipline forensic hypnosis from being subject to accreditation requirements in Texas, because the discipline does not involve a test on physical evidence, and therefore does not meet the definition of “forensic analysis” subject to the Commission's jurisdiction.

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<sup>6</sup> TEX. CODE CRIM. PROC. art 38.01 §8(2).

At its May 26, 2017 meeting, Commissioners voted to subject "footwear and tire tread comparison" and "analysis of nucleic acids other than human DNA" to accreditation requirements. For both of these forensic disciplines, the administrative rules were unclear as to whether the disciplines were subject to accreditation requirements as a subcategory of another forensic discipline such as Forensic Biology for analysis of nucleic acids other than human DNA and Materials (Trace) for footwear and tire tread comparison, because they were not expressly mentioned.

At its November 3, 2017 meeting, Commissioners voted to conduct a hearing to assess the state of blood stain pattern analysis in Texas. Currently, blood stain pattern analysis is neither subject to accreditation requirements nor exempt from accreditation requirements. The hearing will feature experts in the field of blood stain pattern analysis both in Texas and nationally. Stakeholders in the criminal justice community including prosecutors, defense attorneys and judges will also provide input on the issue. Experts will be asked to describe the types of analyses they perform including the scientific foundation for the discipline. The Commission plans to make a recommendation about whether the discipline should be subject to accreditation requirements in 2018.

### **B. Forensic Analysis Definition**

In addition to the explanation of accreditation changes, the Commission's enabling statute also requires a report on recommendations for "best practices concerning the definition of 'forensic analysis' provided by statute or by rule." each year.<sup>7</sup> The Commission has not identified any recommendations regarding the definition of "forensic analysis." The Commission may revise its conclusion on this issue as necessary to ensure the advancement of forensic science in Texas.

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<sup>7</sup> *Id.* at §8(3).

## **XI. Open Records Requests and Open Meetings**

Pursuant to Senate Bill 1124 and the Commission's administrative attachment to the Office of Court Administration, the Commission is now part of the judicial branch of government and must comply with judicial rules related to information requests and open meetings. Because the Commission is no longer a governmental body under the Public Information Act and is now a judicial agency, the Commission's records are considered judicial records and the Commission must comply with Rule 12.6 – Access to Judicial Records.<sup>8</sup> Much of the process is the same as with the Public Information Act. A member of the public must submit a request in writing. The Commission will continue to accept requests via email at [info@fsc.texas.gov](mailto:info@fsc.texas.gov), via facsimile at 1(888) 305-2432, or via regular U.S. mail. In accordance with Rule 12, the Commission must respond within 14 days of the receipt of any records request.

With regard to the Open Meetings Act, the Commission will continue to comply with the Act in posting notice in the form of an agenda for each Commission meeting at least 7 days prior to each meeting. If you have any questions about meetings or how to submit a request to the Commission, please feel free to contact our office directly at (512) 936-0770.

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<sup>8</sup> Tex. Gov't. Code § 552.0035.

# EXHIBIT A

## [Tex. Code Crim. Proc. Art. 38.01](#)

This document is current through the 2017 Regular Session and 1st C.S., 85th Legislature

***Texas Statutes & Codes Annotated by LexisNexis® > Code of Criminal Procedure > Title 1  
Code of Criminal Procedure of 1965 > Trial and Its Incidents > Chapter 38 Evidence in Criminal  
Actions***

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

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**Sec. 1. Creation.** — The Texas Forensic Science Commission is created.

**Sec. 2. Definitions.** — 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.
- (5) “Office of capital and forensic writs” means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.
- (6) “Physical evidence” has the meaning assigned by Article 38.35.

**Sec. 3. Composition.**

- (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.

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

**Sec. 4. Duties.**

**(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).

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- (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](#).

**Sec. 4-a. Forensic analyst licensing.**

- (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.
- (b)** **[Effective January 1, 2019]** 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:

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- (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.

**Sec. 4-b. Advisory Committee.**

- (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.

**Sec. 4-c. Disciplinary Action.**

## Tex. Code Crim. Proc. Art. 38.01

- (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.

**Sec. 4-d. Crime Laboratory Accreditation Process.**

- (a) Notwithstanding Section 2, in this section "forensic analysis" has the meaning 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.

**Sec. 5. Reimbursement.** — 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.

**Sec. 6. Assistance.** — 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.

**Sec. 7. Submission.** — 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.

**Sec. 8. Annual Report.** — 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.

**Sec. 9. Administrative Attachment to Office of Court Administration.**

(a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The Office of Court Administration of the Texas Judicial System shall provide administrative support to the commission as necessary to enable the commission 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), the Office of Court Administration of the Texas Judicial System does not have any authority or responsibility with respect to the duties of the commission under this article.

**Sec. 10. Open Records Limitation.** — 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

## Tex. Code Crim. Proc. Art. 38.01

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.

**Sec. 11. Report Inadmissible As Evidence.** —A written report prepared by the commission under this article is not admissible in a civil or criminal action.

**Sec. 12. Collection of Certain Forensic Evidence.**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.

**Sec. 13. Texas Forensic Science Commission Operating Account.**The Texas Forensic Science Commission operating account is an account in the general revenue fund. The commission shall deposit fees collected under Section 4-a for the issuance or renewal of a forensic analyst license to the credit of the account. Money in the account may be appropriated only to the commission for the administration and enforcement of this article.

## History

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Acts 2005, 79th Leg., ch. 1224 (H.B. 1068), § 1, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 782 (S.B. 1238), §§ 1—4, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), §§ 8, 9, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), §§ 1—7, effective September 1, 2015; am. [Acts 2017, 85th Leg., ch. 1115 \(S.B. 298\), § 1](#), effective September 1, 2017; am. [Acts 2017, 85th Leg., ch. 212 \(S.B. 1124\), § 1](#), effective September 1, 2017; 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(4), effective September 1, 2017.

Annotations

## Notes

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### STATUTORY NOTES

#### Editor's Notes.

A former art. 38.01, Rules of Common Law, as added by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1 was repealed by the Texas Court of Criminal Appeals pursuant to Acts 1985, 69th Leg., ch. 685 (H.B. 13), § 9.

Acts 2013, 83rd Leg., ch. 782 (S.B. 1238), § 7 provides: “The term of a person appointed under former Subdivision (3), Subsection (a), Section 3, [Article 38.01, Code of Criminal Procedure](#), as that law existed immediately before the effective date of this Act [September 1, 2013], expires September 1, 2014, and the governor shall appoint a person to fill each vacancy on that date in accordance with Subdivisions (7) and (8), Subsection (a), Section 3, [Article 38.01, Code of Criminal Procedure](#), as amended by this Act. On the expiration of a term under former Subdivision (1) or (2), Subsection (a), Section 3, [Article 38.01, Code of Criminal Procedure](#), as that law existed immediately before the effective date of this Act, the governor shall appoint a person to fill each vacancy in accordance with Subdivision (1), (2), (3), (4), (5), or (6), Subsection (a), Section 3, [Article 38.01, Code of Criminal Procedure](#), as amended by this Act, as applicable.”

Acts 2013, 83rd Leg., ch. 782 (S.B. 1238), § 8 provides: “Not later than December 1, 2014, the Texas Forensic Science Commission shall submit the first annual report required by Section 8, [Article 38.01, Code of Criminal Procedure](#), as added by this Act.”

#### Effect of amendments.

**2013 amendment**, rewrote Section 2, which read: “Definition. —In this article, ‘forensic analysis’ has the meaning assigned by Article 38.35(a).”; in Section 3, rewrote (a), pertaining to the composition of member in the commission and rewrote (b), which read: “Each member of the commission serves a two-year term. The term of the members appointed under Subsections (a)(1) and (2) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsection (a)(3) expires on September 1 of each even-numbered year.”; in Section 4, substituted “a crime laboratory may” for “accredited laboratories, facilities, or entities” in (a)(1), added “professional” after “negligence or” in (a)(1), (a)(2), and (a)(3), substituted “a crime laboratory” for “all laboratories, facilities, or entities” in (a)(2), substituted “a crime laboratory” for “an accredited laboratory, facility, or entity” in (a)(3), added (a-1), (b)(1)(D), (b)(1)(E), (b)(1)(F), (b-1), (b-2), (f), and (g), in the introductory language of (b), added “If the commission conducts” and “of a crime laboratory that is accredited by the Department of Public Safety under [Section 411.0205, Government Code](#), pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation”; substituted “crime laboratory” for “laboratory, facility, or entity” in (d), and substituted “Subsection (b), (b-1), or (b-2)” for “Subsection (b)(1)” throughout (d) and (e); added Sections 8 through 11; and made related changes.

**2015 amendment**, by ch. 1215, added Section 2(5) and Section 4(h).

**2015 amendment**, by ch. 1276, in Section 2, substituted “commission under this article” for “public safety director of the Department of Public Safety under [Section 411.0205\(b-1\)\(2\), Government Code](#), as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) of that code” in (1) and added (5); substituted “five names” for “10 names” in (a)(4), (a)(5), (a)(6), and (a)(8) of Section 3; substituted “under this article” for “by the Department of Public Safety under [Section 411.0205, Government Code](#)” in the introductory language of (b) and (b-1) of Section 4; added Sections 3-a, 4-a, 4-b, and 4-c.

**2017 amendment by S.B. 298, § 1**, added Section 13.

**2017 amendment by H.B. 1124, § 1**, in Section 9, substituted “Office of Court Administration” for “Sam Houston State University” in the section heading; substituted “the Office of Court Administration of the Texas Judicial System” for “Sam Houston State University” at the end of (a); in (b), substituted “The Office of Court Administration of the Texas Judicial System” for “The Board of Regents of the Texas State University System” at the beginning, and added “enable the commission” following “necessary to”; and substituted “the Office of Court Administration of the Texas Judicial System does not have” for “neither the Board of Regents of the Texas State University System nor Sam Houston State University has” in (c).

**2017 amendment by S.B. 1488, § 24.001(4)**, redesignated Section 2, subdivision (5), as added by Acts 2015, ch. 1276 (S.B. 1287), as Section 2, subdivision (6).

## LexisNexis® Notes

## Case Notes

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### Notes to Unpublished Decisions

#### Criminal Law & Procedure: Bail: Conditions of Release

*Unpublished decision*: Habeas corpus was properly denied; the court did not abuse its discretion by increasing defendant's bail after he tested positive for marijuana because, even assuming that [Tex. Code Crim. Proc. Ann. art. 38.35](#) applied to bail proceedings and required evidence demonstrating that the entity conducting the drug test was accredited by the commission, defendant did not satisfy his burden at the hearing. [Ex parte Bernal, No. 10-16-00403-CR, 2017 Tex. App. LEXIS 4494 \(Tex. App. Waco May 17, 2017\)](#).

## Opinion Notes

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### LexisNexis® Notes

#### OPINIONS OF ATTORNEY GENERAL

##### Investigative Authority.

By the plain language of Tex. Code Crim. Proc. Ann. art. 38.01, § [4\(a\)\(3\)](#), the Texas Forensic Science Commission does not have investigative authority over evidence tested or offered into evidence before September 1, 2005. Tex. Op. Att'y Gen. GA-0866 (2011).

The Forensic Science Commission's investigative authority under Tex. Code Crim. Proc. Ann. art. 38.01, § [4\(a\)\(3\)](#) is limited to those laboratories, facilities, or entities that were accredited by the Department of Public Safety at the time the forensic analyses took place. Tex. Op. Att'y Gen. GA-0866 (2011).

The Forensic Science Commission ("FSC") may not investigate fields of forensic analysis expressly excluded from the statutory definition of "forensic analysis"; forensic analysis that is neither expressly included nor excluded, but that falls under the generic definition of "forensic analysis" found in [Tex. Code Crim. Proc. Ann. art. 38.35\(a\)\(4\)](#), is generally subject to FSC investigation, assuming all other statutory requirements are satisfied. Tex. Op. Att'y Gen. GA-0866 (2011).

A court would likely conclude that (1) "forensic analysis" as defined in [Tex. Code Crim. Proc. Ann. art. 38.35](#), from a crime laboratory that is neither accredited by the Forensic Science Commission nor exempt from accreditation by statute or administrative rule is inadmissible in a criminal action in a Texas court under art. 38.35(d)(1); and (2) the Commission may refrain from granting an exemption from accreditation under [Tex. Code Crim. Proc. Ann. art. 38.01](#), subpart (4-d)(c) in its reasonable discretion. 2017 Tex. Op. Att'y Gen. KP-0127.

A court would likely conclude that, pursuant to [Tex. Code Crim. Proc. Ann. art. 38.01](#), subpart 4(a)(2), a crime laboratory must report professional negligence or professional misconduct pertaining to forensic analyses in all disciplines-not just those that are accredited-to the Commission. 2017 Tex. Op. Att'y Gen. KP-0127.

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# EXHIBIT B

# FSC FY18 Budget Forecast

8-Aug-17

	Budget	Actual	Variance
<b>Budget</b>	\$ 638,000.00	\$ 638,000.00	\$ -
	-	-	-
<b>Total Budget</b>	<b>\$ 638,000.00</b>	<b>\$ 638,000.00</b>	<b>\$ -</b>
<b>Expenses</b>			
<b>Fixed Costs</b>			
Employee Salaries			
Director/General Counsel	\$ 125,897.12	\$ -	\$ 125,897.12
Assistant Director (Attorney V)	\$ 91,536.00	\$ -	\$ 91,536.00
Senior Program Specialist	\$ 95,000.00	\$ -	\$ 95,000.00
Licensing Specialist Support (through OCA/JBCC)	\$ 45,000.00	\$ -	\$ 45,000.00
Administrator/Paralegal	\$ 59,528.00	\$ -	\$ 59,528.00
General Operating Expenses	29,170.00	-	29,170.00
<b>Total Fixed Costs</b>	<b>\$ 446,131.12</b>	<b>\$ -</b>	<b>\$ 446,131.12</b>
<b>Semi Variable Costs</b>			
Member Travel Reimbursement (includes LAC)	\$ 27,000.00	\$ -	\$ 27,000.00
Employee Travel	6,000.00	-	6,000.00
Conference Fees	2,780.00	-	2,780.00
Overnight Rooms (includes LAC and panel meetings)	25,000.00	-	25,000.00
Administrative Fee to OCA (IT, HR, Procurement, Etc.)	30,000.00	-	30,000.00
Mail/FedEx	1,500.00	-	1,500.00
<b>Total Semi Variable Costs</b>	<b>\$ 92,280.00</b>	<b>\$ -</b>	<b>\$ 92,280.00</b>
<b>Highly Variable Costs</b>			
Office Supplies	\$ 2,000.00		\$ 2,000.00
Forensic Development (Training)	3,550.00	-	3,550.00
Investigative Costs (includes retaining SMEs for investigations)	10,000.00	-	10,000.00
Discipline Specific Reviews	8,500.00	-	8,500.00
Licensing Program (includes software, exam development, etc.)	72,538.88	-	72,538.88
<b>Total Highly Variable Costs</b>	<b>\$ 96,588.88</b>	<b>\$ -</b>	<b>\$ 96,588.88</b>
<b>Total Expenses</b>	<b>\$ 635,000.00</b>	<b>\$ -</b>	<b>\$ 635,000.00</b>

# EXHIBIT C

<b>FSC Case No.</b>	<b>Status</b>	<b>Complainant</b>	<b>Subject Entity</b>	<b>Forensic Discipline(s)</b>	<b>Disposition/Report</b>
1000.09.01	Closed	Todd Willingham	Tx State Fire Marshall Corsicana	Arson	Final Report Issued 4/15/11
1001.09.02	Closed	Brandon Lee Moon	DPS El Paso	Serology	Final Report Issued 6/30/11
1002.09.03	Closed	Robert J. Seitz	SWIFS	Serology; ballistics	Dismissed
1003.09.04	Closed	Ismael Padilla	SWIFS	DNA	Dismissed
1004.09.06	Closed	Bruce Garrett	Ft. Worth PD	Serology	Dismissed
1005.09.08	Closed	Harley Winland	Houston PD Crime Lab	Trace Evidence; Firearms	Dismissed
1006.09.10	Closed	Dedra Wilson	Ellis County ME	Autopsy	Dismissed
1007.09.11	Closed	Jerry Don Hartless	Medical Examiner Lufkin	Autopsy	Dismissed
1008.09.12	Closed	Eustorgio Resendez	Hidalgo County ME	Autopsy; Serology	Dismissed
1009.09.13	Closed	Christopher Kingerly	Houston PD Crime Lab	DNA	Dismissed
1010.09.14	Closed	Preston Hughes	Houston PD Crime Lab	Serology	Dismissed
1011.09.15	Closed	Anonymous	SWIFS	Quality Assurance	Dismissed
1012.09.18	Closed	Johnnie Propes	Plano PD Lab	Ballistics; trace evidence	Dismissed
1013.09.19	Closed	Harsha Pherwani	Lab Corp Dallas	Toxicology	Dismissed
1014.09.20	Closed	Cynthia Robinson	SWIFS	Autopsy	Dismissed
1016.10.02	Closed	Ronald Holleman	Dallas County DA	Police Report	Dismissed
1021.10.21	Closed	Charles Cupp	Harris County ME	Autopsy	Dismissed
1024.10.25	Closed	Cecily Hamilton	Austin PD Crime Lab	Quality Assurance	Final Report Issued 9/8/11
1025.10.22	Closed	Jimmy Todd	SWIFS	DNA	Dismissed
1026.10.23	Closed	Charles Frederick	Orange Co. Sheriff's Dept	Ballistics	Dismissed
1028.10.26	Closed	Eric Holmes	Harris County ME	Toxicology; Autopsy	Dismissed
1029.10.27	Closed	Sonia Cacy	Bexar County ME	Gas chromatography	Dismissed
1033.10.28	Closed	Luis A. Luera	Unknown Tarrant Co.	Hair/DNA	Dismissed
1034.11.03	Closed	John Edward Weeks	DPS Austin	DNA Report	Dismissed
1035.11.01	Closed	Tarrance Whitlock	SWIFS	Trace Evidence	Dismissed
1036.11.02	Closed	Robert Lee Helm	SWIFS	Trace Evidence/Firearms	Dismissed
1037.11.04	Closed	Rojean Gibson	Waco Fire Department	Arson	Dismissed
1039.11.05	Closed	Mario L. Cockerham	Ft. Bend Co. Sheriff/Dep. Pikett	Dog scent line up	Dismissed
1040.11.10	Closed	Randal Caraway	Tarrant Co. ME	Toxicology; Autopsy	Dismissed
1041.11.07	Closed	Debra Stephens	Austin PD Crime Lab	Quality Assurance	Dismissed
1042.11.08	Closed	Brian W. Devening	Forensic DNA & Drug Testing Services, Inc	Toxicology	Dismissed
1043.11.09	Closed	Jeffery W. Cooksey	DPS Waco	Controlled Substance	Dismissed
1044.11.11	Closed	Nat'l Innocence Project	El Paso PD Crime Lab	Controlled Substance	Final Report Issued 8/23/12
1045.11.12	Closed	Michael McDade	Linda James	Handwriting Analysis	Dismissed
1048.11.14	Closed	Jose G. Castillo	Edna, Texas Fire Department	Arson	Dismissed
1049.11.13	Closed	Thomas Florence	UNT Health Science Center	DNA	Dismissed
1050.12.01	Closed	Debra Stephens	APD Crime Lab	Controlled substance	Final Report Issued 10/23/12
1051.12.02	Closed	Michael Cruthird	SWIFS	Autopsy	Dismissed

			McClennan Co., TX;-Forensic Science		
1052.12.05	Closed	Anthony Melendez	Assoc. of California	DNA	Dismissed
1055.12.04	Closed	Jackie Wilson	DPS - Houston	DNA	Dismissed
1059.12.07	Closed	Debra Firo	DPS-Corpus Christi	Trace evidence, Firearms	Dismissed
1060.12.08	Closed	Maynard Roberts	Texoma Medical Center	General Testimony	Dismissed
1061.12.09	Closed	Joseph Desmoreaux	DPS- Houston	DNA	Dismissed
1062.12.10	Closed	Pourner Rodney	Ector County DA's Office	DNA	Dismissed
1063.12.11	Closed	Larry Yoakum	Unknown	Controlled Substance	Dismissed
1064.12.12	Closed	Merlon Hines	DPS - Austin	DNA	Dismissed
			DNA Diagnostics, Inc./Dr. Melba		
1065.12.13	Closed	Ken Murphy	Ketchum	DNA	Dismissed
1067.13.01	Closed	Rhonda Austin	NMS Lab, PA	Toxicology; Autopsy	Dismissed
1068.13.03	Closed	Eugene Ellis	Houston PD Crime Lab	Serology; DNA	Dismissed
1069.13.04	Closed	Kenneth Starkey	ExperTox	Controlled Substance	Dismissed
1070.13.05	Closed	Leslie J. Williams	Lubbock Co. DA	Trace Evidence; DNA	Dismissed
1071.13.06	Closed	Gustavo Mireles	DPS- McAllen	DNA; fingerprints	Dismissed
1072.13.07	Closed	Iran Hawkins	DPS- Garland	Controlled Substance	Dismissed
1073.13.08	Closed	Che Hutchinson	DPS- Abilene	Controlled Substance	Dismissed
1074.13.09	Closed	Robert Barganski	Christus Spohn Hosp Corpus Christi	Gunshot Wounds	Dismissed
1075.13.10	Closed	Jesse Eldridge	SWIFS	Trace Evidence	Dismissed
1076.13.11	Closed	Cordell Johnson	DPS - Austin	Controlled Substance	Dismissed
1078.13.12	Closed	Barton Ray Gaines	Ft. Worth PD Forensic Science Lab	Ballistics	Dismissed
1079.13.13	Closed	Larry M. Roche	Tarrant County- lab not specified	Blood Alcohol	Dismissed
1081.14.01	Closed	George Robert Powell III	Bell County	Digital Evidence	Final Report Issued 4/18/16
1082.14.02	Closed	Alonzo Fuller	Bexar County ME	DNA	Dismissed
1083.14.03	Closed	Philippe Padiou	Baylor Col of Medicine- Genetics Lab	DNA	Dismissed
1084.14.04	Closed	Theodore Levee	Unknown	Medical Testimony	Dismissed
1085.14.05	Closed	Dempsey Sutton	Unknown	DNA	Dismissed
1086.14.06	Closed	Teddy Robinson	Lubbock General Hospital/UMCHSC	Autopsy	Dismissed
1088.14.08	Closed	Frank Blazek for Joshua Ragston	SWIFS	Firearms/tool marks	Final Report Issued 4/19/16
1089.14.09	Closed	Richard E. Gambles	DPS- Lubbock	Judicial Misconduct	Dismissed
1092.14.12	Closed	George Scharmen	DPS- Austin	Record Request	Dismissed
1097.14.17	Closed	Rene Rivas	Cameron Co. DA	Request for DNA Testing	Dismissed
1099.14.19	Closed	Roxanne Maddex	Bexar County ME	Records request	Dismissed
1102.14.22	Closed	Gregory Bowman	NMS Lab, PA	Autopsy; blood assay	Dismissed
1103.15.01	Closed	Sharieff H. Dean	Orchid Cellmark	DNA	Dismissed
1104.15.02	Closed	James P. Taylor (City of Pearsall)	Pearsall PD	Evidence Room	Dismissed
1105.15.03	Closed	Deandra Grant	IFL	Blood Alcohol	Dismissed
1106.15.04	Closed	James Legate	Bexar County Forensic Science Center	GSR	Dismissed
1107.15.05	Closed	Stephanie Beckendam	DPS- Austin	Blood Alcohol	Dismissed

1108.15.06	Closed	Curtis Adams Nat'l Innocence Project for Steve	Bexar County ME	DNA	Dismissed
1109.15.07	Closed	Chaney	None Specified	Bite Mark Analysis	Final Report Issued 4/19/16
1110.15.08	Closed	Eloy Redd	Harris Co. Childrens Assessment Center	SANE	Dismissed
1111.15.09	Closed	James E. Wilcox	DPS- Waco	DNA	Dismissed
1112.15.10	Closed	Stevie L. Davis	DPS- Garland	BAC/gas chromatograph	Dismissed
1113.15.11	Closed	Rodney Hazlip	DPS- Houston	Blood Alcohol	Dismissed
1114.15.12	Closed	Jeff Sailus	TFSC	Procedural	Dismissed
1115.15.13	Closed	Angella Nickerson for Raphael Holiday	Dr. John DeHaan	Arson	Dismissed
1116.15.14	Closed	Jackie Wilson	DPS- Houston	DNA	To DNA Triage Team
1117.15.15	Closed	Darius Elam	DPS- Houston	DNA	To DNA Triage Team
1118.15.16	Closed	Mario L. Cockerham	SE Tx Forensic Science Center (defunct)	Autopsy; dog scent lineup	Dismissed
1119.15.17	Closed	Debra Stephens	Austin PD Crime Lab	Controlled Substance	Dismissed
1120.15.18	Closed	Jason Spence	Walter Reaves	DNA	Dismissed
1121.15.19	Closed	Randy Virgil Echols	DPS- Waco	DNA	To DNA Triage Team
1122.15.20	Closed	Roger L. McCluer	Dr. Vincent Di Maio	Trial testimony in murder case	Dismissed
1123.15.21	Closed	D. Jarnyl Brown	Ft. Worth PD Crime Lab	Ballistics	Dismissed
1124.15.22	Closed	Guadalupe Padilla	DPS- Austin	DNA	Dismissed
1125.15.23	Closed	Melvin Pinion	Tarrant Co. Criminal District Court	Video Tapes	Dismissed
1126.16.01	Closed	Catrice Nelson for Frederick Ervin	Jasper County	DNA; general	Dismissed
1127.16.02	Closed	Chaz Rodgers	IFL Euless	Ballistics	Dismissed
1128.16.03	Closed	James Downs	DPS- Austin, El Paso, Lubbock	DNA; latent prints; trace evidence	Dismissed
1129.16.04	Closed	Carlos V. de la O	Bexar Co. FSC	DNA- paternity	Dismissed
1130.16.05	Closed	Marlin Wayne Webb	Dr. Suzanna Dana	Blood spatter	Dismissed
1131.16.06	Closed	Lawrence James, Jr.	DPS- Houston	DNA	Dismissed
1132.16.07	Closed	Shannon Mark Douthit	SWIFS	Ballistics	Dismissed
1133.16.08	Closed	Edrick Dunn	DPS Lubbock	DNA	To DNA Triage Team
1134.16.09	Closed	Victoria Kujala	Ft. Worth PD Crime Lab	Hostile work environ; retaliation	Dismissed
1135.16.10	Closed	Charles Ray Hayes	McClennan Co. Jail	Blood Sugar Test	Dismissed
1136.16.11	Closed	Leonard Charles Hicks	Child Assessment Center, Houston	Forensic Interview	Dismissed
1137.16.12	Closed	Anonymous	Houston Forensic Science Center	Toxicology	Dismissed
1138.16.13	Closed	Laura Jenkins for Roy Adams, Jr.	Alpert; Peerwani; Garland PD	Blood Alcohol	Dismissed
1139.16.14	Closed	Cross, Kevin L.	SWIFS and analyst Kerri Kwist	Blood analysis	To DNA Triage Team
1140.16.15	Closed	Wynn, Eric	DPS Garland	DNA (STR) analysis	To DNA Triage Team
1141.16.16	Closed	Lenox, Robert W.	DPS Garland	EMIT (enzyme multiplied immunoassay technique)	Dismissed
1142.16.17	Closed	Watson Jr., Van	DPS - Houston	DNA	To DNA Triage Team
1143.16.18	Closed	Escalante, Damian	Bexar County Forensic Science Center	DNA	To DNA Triage Team
1144.16.19	Closed	Anderson, Eric D.	Dr. Ann Simms	Trial testimony in sexual abuse case	Dismissed
1145.16.20	Closed	Leonard, Isreal	SWIFS; Dr. Joni McClain	Toxicology; trial testimony	Dismissed

1146.16.21	Closed	Moreno, Juan A.	University Health System, San Antonio	DNA	Dismissed
1147.16.22	Closed	Furtado, Christopher Ty	Dr's Campbell, Loomis, Reese	Bite Mark Analysis; DNA	To Bite Mark Team
1148.16.23	Closed	Gerland, Eric	Valley Baptist Medical Center	Medical Malpractice	To DNA Triage Team
1149.16.24	Closed	de la Rosa, Paulo	Children's Medical Center of Dallas	Physical Exam	Dismissed
1150.16.25	Closed	McCain, Greg	Dr. Leah Lamb	Physical Exam	Dismissed
1151.16.26	Closed	Tienda Jr., Ronnie	Charles Clow	Ballistics; expert testimony at trial	Dismissed
1152.16.27	Closed	Black, Victor Jewell	SWIFS	Contamination of Evidence; DNA	To DNA Triage Team
1153.16.28	Closed	Drummer, Cornell	Dr. Vincent Di Maio	Ballistics	Dismissed
1154.16.29	Closed	Garcia, Daniel Lopez	Harris County Forensic Science Center	Toxicology, Autopsy, Ballistics	Dismissed
1155.16.30	Closed	Smith, Collin	DPS - Austin	Ballistics	Dismissed
1156.16.31	Closed	Hunt, Kenneth	Harris County IFS	DNA	To DNA Triage Team
1157.16.32	Closed	Hooks, Ray Dale	DPS- Tyler	BAC	Dismissed
1158.16.33	Closed	Rogers, Dennis Wayne	DPS- Garland	Serology; DNA	Dismissed
1159.16.34	Closed	Reyes, Jr., Reynaldo	Bexar Co. Criminal Investigation Lab	DNA	To DNA Triage Team
1160.16.35	Closed	Webb, Clinton & John	UNTHSC	DNA	To DNA Triage Team
1161.16.36	Closed	Dunnavant, Catherine	DPS- Garland	Controlled Substance	Dismissed
1162.16.37	Closed	Gruenfelder, Daniel	Dr. Clarice Grimes	Sexual Assault	Dismissed
1163.16.38	Closed	Pinkerton, Romeo	SWIFS	DNA	To DNA Triage Team
1164.16.39	Closed	Sanders, Del Ray	DPS- Houston	Hair, Blood, Trace	Dismissed
1165.16.40	Open	Clark, Norma	Harris County IFS, HPD, HCSD	Blood spatter, GSR	Accepted for Investigation
1166.16.41	Closed	Moreno Jr., Valentin	Dr. A.J. Alamia	Forensic Psychology	Referred to Nat'l IP
1167.16.42	Closed	Kennemur, Kevin	Yoakum County Hospital	Blood Alcohol	Dismissed
1168.16.43	Closed	Sanchez, Rodys S.	Harris County IFS	DNA	To DNA Triage Team
1169.16.44	Closed	Dawson, Julius T.	Children's Medical Center of Dallas	Rape kit (DNA)	To DNA Triage Team
1170.16.45	Closed	Anonymous	All DPS Texas Labs	Toxicology	Dismissed
1171.16.46	Closed	Aekins, Donald	APD Crime Lab	DNA	To DNA Triage Team
1172.16.47	Closed	Nix, Thomas E.	Tx Ranger Steven L. Black	Forensic Hypnosis	Dismissed
1173.16.48	Open	Tyler Flood for HCCLA	HCIFS/Fessessework Guale	Toxicology	
1174.16.49	Closed	Sosa, David	HPD/HCIFS	Ballistics	Dismissed
1175.16.50	Closed	Ludwig, Ronald David	Private investigator fr DC	John O'Neal	Dismissed
1176.16.51	Closed	Gonzales, David	DPS Austin	Blood/DNA	Dismissed
1177.16.52	Closed	Resendez, Eustorgio	DPS Austin	Ballistics/DNA	Dismissed
1178.16.53	Closed	Jones, De'Voderick R.	SWIFS	DNA	Dismissed
1179.16.54	Closed	Gulley, Britney	SWIFS	Firearms/Tool Marks	Referred to Dallas Co CIU
1180.16.55	Closed	Carrizales, Gilbert	Children's Hospital Corpus Christi	Sexual Assault exam by dr	Dismissed
1181.16.56	Open	Reaves, Walter for Joe Bryan	Robert Thorman (expert witness)	Blood spatter	Tabled
1182.16.57	Closed	Decker, Rex A. for Travis D. Gray	SWIFS	Autopsy	Dismissed
1183.16.58	Closed	Wilson III, William	James Miller/HFSC	Analysis for presence of gasoline	Dismissed
1184.16.59	Closed	Stout, Jeffrey	None specified	Sexual assault exam	Dismissed
1185.16.60	Closed	Davis, James	Garland PD	Blood draw	Dismissed

1186.16.61	Closed	Dodson, Theodis	Tarrant County ME	DNA	To DNA Triage Team
1187.16.62	Closed	Griffin, Derrick L.	Dr. James Bruce of Lufkin	Autopsy	Dismissed
1188.16.63	Closed	Jackson, Robert Charles	Cornea Associates of Dallas	Eye Examination	Dismissed
1189.16.64	Closed	Johnson, Kevin Lamar	"Observation Only"	"Entities of Law	To DNA Triage Team
1190.16.65	Closed	Stephens, Debra	Blood Alcohol Procedure	APD	Dismissed
1191.16.66	Closed	Morgan, Pascal	DNA	Megan Clemens (FBI)	To DNA Triage Team
1192.16.67	Closed	Bennett, Billy Ray	DNA	HCIFS	To DNA Triage Team
1193.16.68	Closed	Moreland, Thomas	DNA	UNTHSC; DPS Houston	Dismissed
1194.16.69	Open	Richards, Dilyn	Blood Alcohol	DPS - Garland/Curt Youngkin	Pending
1195.16.70	Closed	Gray, Dale	Autopsy	SWIFS	Dismissed
1196.16.71	Closed	Alejandro, Danny R.	Ballistics	Harris Co SD	Dismissed
1197.16.72	Closed	Pierson, Arthur Lee	Psyche Eval	CPS Ft. Worth	Dismissed
17.04	Open	Gefrides, Lisa	Forensic Biology	Houston FSC	Pending
17.05	Closed	IPOT for Cedric Millage	DPS Austin	CODIS Upload/DNA	Dismissed
17.06	Closed	Danny R. Alejandro	Harris Co SD/Jill Dupre	Ballistics	Dismissed
17.07	Closed	Turner, Bronwen	Harris Co ME	None	Dismissed
17.08	Closed- to DNA	Kelton Yates	Houston FSC	DNA/Blood	To DNA Triage Team
17.09	Closed- to DNA	Kenneth Wayne Washington	Harris County IFS	Serology/DNA	To DNA Triage Team
17.10	Closed	Christopher Boulds	None specified	Handing of transcript	Dismissed
17.11	Closed- to DNA	Michael Aaron Jayne	APD Crime Lab	Fingerprints/DNA	Dismissed
17.13	Closed	Anthony D. Hill	Expert Witness Max Courtney	Crime Scene Reconstruction	Referred to Tarrant Co CIU
17.14	Closed- to SFMO	William Mark Gibson	Waco Fire Marshal Jerry Hawk	Arson	Referred to SFMO
17.15	Open	Jason Omar Moreno	None Specified	DNA	Pending
17.16	Closed	Billy Joe Booker	IFL; Analysts Feller & Lemon	Blood Alcohol	Dismissed
17.19	Closed	Blake Allen Thain	Harris Co SD/Matthew Clements	Ballistics	Dismissed
17.20	Closed	Erick Johnson	ME Dr. Stephen K. Wilson	Cause of Death	Dismissed
17.21	Closed	Reynaldo Cobio Cervantes	DPS McAllen/Joe Marchan	Blood Typing	Dismissed
17.23	Closed	Travis Ghant	SANE Alice Linder/Scott & White	Sexual Assault Exam	Referred to Mike Ware
17.24	Closed	Roy Louis Smithwick, Jr.	Bexar Co Forensic Science Ctr	Serology/Ballistics	Dismissed
17.29	Closed	Cornell Jackie Drummer	Bexar Co Forensic Science Ctr	Ballistics	Dismissed
17.30	Closed- to DNA	Hymon A. Walker	Houston PD (HFSC), Identigene	DNA	To DNA Triage Team
17.31	Closed- to DNA	Daniel D. Garcia	Bexar Co CIL	DNA	To DNA Triage Team
17.32	Closed- no lab	Samuel M. Ward	Kerrville PD Lab (non-existent)	Controlled Substance	Dismissed
17.33	Closed- no lab	Maizumi,Manuel Luis	Kerrville PD	Controlled Substance	Dismissed
17.34	Closed	Jane Caldwell for Christopher Aric Radke	SWIFS	DNA/Blood	Dismissed
17.35	Closed	Benjamin James Patterson	DPS Waco	Biological Evidence	Dismissed
17.36	Closed	Tarrance Daron Whitlock	SWIFS	GSR	Dismissed
17.37	Closed	Ava Newman	National Screening Center	DNA (Paternity)	Dismissed
17.39	Closed- to SFMO	Brandon Ray Morgan	Harris Co IFS	Toxicology	To SMFO
17.40	Closed	Eugenio Lopez Rodriguez	Unknown	Unknown	Dismissed

17.41	Closed	Rolando Gomez Reyes	Valley Baptist Hospital	Physical Exam	Dismissed
17.42	Closed	Maurice E. LaVoie	Madison Co Prosecutor	DNA	Dismissed
13.06	Closed	Gustavo Lopez Mireles	DPS McAllen	DNA	Dismissed
17.46	Closed	Quang Tran	SWIFS/Heather Thomas	Firearms/Tool Marks	Dismissed- to Dallas Co
17.49	Closed	David Wayne Isenhower	Harris Co SD/Deputy J. Ortiz	Blood spatter	Dismissed
17.51	Closed	Timothy Strong	SWIFS	Toxicology	Dismissed
17.52	Closed	Gary Hill	SWIFS	DNA (Paternity)	To Dallas Co CIU 10/3/17
17.54	Open	Roger L. McCluer	Hill Co DA Nicole Crain	General	
17.55	Open	Tony Chavez	Tarrant Co. ME	DNA	

#### LABORATORY SELF-DISCLOSURES

FSC Case No.	Status	Reporter	Laboratory	Forensic Discipline(s)	Disposition
2000.12.01	Closed	Tarrant County ME	Tarrant County ME	Serology	Final Report Issued 10/17/12
2001.12.02	Closed	DPS Houston	DPS -Houston	Controlled substance	Final Report Issued 4/7/13
2002.14.01	Closed	Quality Director	IFL	Firearms/Tool Marks	Final Report Issued 11/4/15
2003.14.02	Closed	Lab Manager	DPS - Austin	Toxicology-Blood Alcohol	No Further Action
2015.14.10**	Closed	Lab Analyst	Houston FSC	Serology	Final Report Issued 1/26/15
2004.14.03	Closed	Lab Manager	DPS - Garland	DNA	No Further Action
2005.14.04	Closed	Lab Director	SWIFS	Controlled substance	No Further Action
2006.14.05	Closed	Lab Manager	Houston Police Department Crime Lab	DNA	No Further Action
2007.14.06	Closed	Lab Manager	IFL	Blood Alcohol	No Further Action
2008.14.07	Closed	Lab Manager	DPS - Tyler	Controlled substance	No Further Action
2009.14.08	Closed	Lab Manager	DPS - Austin	Breath Alcohol	No Further Action
2010.14.09	Closed	Lab Manager	DPS - El Paso	Controlled substance	No Further Action
			DPS Houston Breath Alcohol Calibration		
2011.15.01	Closed	Lab Manager	Lab	Breath Alcohol Testing	No Further Action
2012.15.02	Closed	Lab Director	APD Crime Lab	Crime Scene Reporting	No Further Action
			Corpus Christi PD Forensic Services		
2013.15.03	Closed	Lab Director	Division	Missing evidence (bullet fragment)	No Further Action
				Controlled substance (missing	
2014.15.04	Closed	Lab Manager	DPS Abilene	evidence)	No Further Action
2016.15.05	Closed	Assistant Laboratory Director	DPS Weslaco	Latent Prints	No Further Action
			Corpus Christi PD Forensic Services		
2017.15.06	Closed	Forensic Services Supervisor	Division	Latent Prints (re-opened)	No Further Action
2018.16.01	Closed	Lab Director	APD Crime Lab	Failed prof test-serial no restoration	No Further Action
2019.16.02	Open	Quality Director	Harris Co IFS	Toxicology	Accepted for Investigation
2020.16.03	Closed	Lab Manager	Bexar Co CIL	Firearms/Tool Marks	No Further Action
2021.16.04	Closed	General Counsel	Houston FSC	Controlled substance	No Further Action

2022.17.01	Closed	General Counsel	Houston FSC	DNA Analysis	No Further Action
2023.17.02	Closed	General Counsel	Houston FSC	Latent Prints	No Further Action
2024.17.03	Closed	General Counsel	Houston FSC	Toxicology- ELISA drug screen	No Further Action
17.12	Closed	Lab Director	NMS Labs	Toxicology	No Further Action
17.17	Closed	Lab Director	NMS Labs	Toxicology	No Further Action
17.18	Closed	Lab Manager	Tarrant County ME	Toxicology	No Further Action
17.22	Open	Houston FSC	HFSC	Crime Scene Unit	Accepted for Investigation
17.25	Closed	Jefferson Co Regional CL	Jefferson Co RCL	Drug Chemistry	No Further Action
17.26	Closed	DPS El Paso	DPS - El Paso	Lost Evidence	No Further Action
17.27	Closed	DPS Midland	DPS Midland	Barcode malfunction; lost evidence	No Further Action
17.28	Open	DPS Garland	DPS - Garland	C Youngkin/Bld Alc	Accepted for Investigation
17.38	Closed	Jefferson Co Regional CL	Jefferson Co RCL	Drug Chemistry	No Further Action
17.44	Closed	DPS Tyler	DPS Tyler	Contr subst- destruction of evidence	No Further Action
17.45	Closed	DPS Tyler	DPS Tyler	Contr subst- LIMS Error	No Further Action
17.47	Closed	Houston FSC	Houston FSC	Toxicology	No Further Action
17.48	Closed	Houston FSC	Houston FSC	DNA Evidence Handling	No Further Action
17.50	Closed	Houston FSC	Houston FSC	CODIS	No Further Action
17.53	Open	Houston FSC	Houston FSC	Latent Prints	