

**Texas Forensic Science Commission  
Minutes from July 16, 2021 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via Zoom at 9:00 a.m. on Friday, July 16, 2021 as authorized under Government Code section 551.125 pursuant to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster and July 1, 2021 extended proclamation affecting all counties in Texas due to the Coronavirus (COVID-19), as well as the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act.

Members of the Commission were present as follows:

Members Present: Jeffrey Barnard (Presiding Officer)  
Bruce Budowle  
Patrick Buzzini  
Michael Coble  
Mark Daniel  
Nancy Downing  
Jasmine Drake  
Sarah Kerrigan  
Jarvis Parsons

Members Absent: None

Staff Present: Lynn Garcia, General Counsel  
Leigh Tomlin, Associate General Counsel  
Robert Smith, Senior Staff Attorney  
Kathryn Adams, Commission Coordinator

**1. Call meeting to order. Roll call for members.**

The Commission's virtual meeting convened via live broadcast on Zoom at 9:00 a.m. Presiding Officer Barnard called the roll. Commissioners were present as indicated above.

**2. Instructions for public participation and meeting process.**

Tomlin gave instructions for public comment during the meeting. Members of the public were permitted to make public comment throughout the meeting and during the designated public comment item on the agenda.

**3. Review and adopt minutes from April 16, 2021 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Daniel moved to adopt the minutes draft. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**4. Office administrative update (FY2021 budget status report and FY2022 budget projections; discuss staff attendance/presentations at various conferences; update on database project with Office of Court Administration IT).**

Garcia reviewed the Commission's FY2021 budget status report and FY2022 budget projections. Garcia explained the need for a temporary staff position to oversee the implementation of the Commission's new database and address other administrative items.

**MOTION AND VOTE:** *Buzzini moved to adopt the FY2022 budget projections, including the hiring of a temporary administrative staff member. Parsons seconded the motion. The Commission unanimously adopted the motion.*

Garcia updated Commissioners on the database project currently being developed by the Office of Court Administration's IT program development group. The team is developing an online platform to provide better access to Commission data, including information regarding accredited labs, licensees, self-disclosures, complaints, quality incidents, and OSAC Registry Standards implementation. The team hopes to launch the site in 6-8 weeks. Selected crime laboratories will participate in testing of the system in the coming weeks.

Garcia reported on two separate presentations given in the past week, one for Stetson University and one for a Michigan task force seeking to create a state oversight body similar to the Texas Commission. Tomlin reported on her presentation at the June International Association for Identification annual conference. Tomlin received positive feedback from IAI conference participants practicing in unaccredited forensic disciplines who are interested in achieving voluntary licensure and taking the General Forensic Analyst Licensing Exam.

**5. Discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through July 2, 2021.**

**Disclosures Pending from April 16, 2021**

1. No. 21.04; Houston Forensic Science Center (Forensic Biology/DNA)

A self-disclosure by the Houston Forensic Science Center reporting a complaint from a former employee who communicated concerns to a current employee regarding another current Forensic Biology/DNA staff member. The laboratory's investigation yielded no evidence to support the alleged misconduct. However, in reviewing its evidence examination/screening process, the laboratory identified risk inherent to the process of determining that an item has a "negative" result because negative items do not proceed to DNA analysis and the negative result is not subject to independent verification.

Houston Forensic Science Center Quality Director, Erika Ziemak, updated commissioners on the progress of the laboratory's case review. In total, the laboratory is recalling 23 cases within the designated five-year period affected, targeting approximately 15% of all casework with negative results. Reanalysis is complete in over 20 of the cases and the reported results are consistent with the original analyses in those cases.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Parsons seconded the motion. The Commission unanimously adopted the motion.*

2. No. 21.15; Houston Forensic Science Center (Latent Prints)

A self-disclosure by the Houston Forensic Science Center reporting an incident in its latent prints section where the laboratory identified discrepancies between case records and data stored in AFIS during the laboratory's review of a latent print corrective action.

**MOTION AND VOTE:** *Drake moved to take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Budowle seconded the motion. The Commission unanimously adopted the motion.*

3. No. 21.19; Bexar County Criminal Investigation Laboratory (Seized Drugs)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in its seized drugs section where during a routine post-sampling check of his sampling area, an analyst found one small Ziplock bag containing drug evidence on the floor beneath his chair.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Budowle seconded the motion. The Commission unanimously adopted the motion.*

Disclosures Received as of July 2, 2021

4. No. 21.22; Tarrant County Medical Examiner's Office Crime Laboratory (Forensic Biology/DNA)

A self-disclosure by the Tarrant County Medical Examiner's Crime Laboratory describing an incident in its Forensic Biology Unit where, following the quantitation step of DNA typing, an analyst switched four victim reference buccal swab DNA extract tube lids and processed the wrong case number through DNA typing due to the error.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Parsons seconded the motion. The Commission unanimously adopted the motion.*

5. No. 21.23; Tarrant County Medical Examiner's Office Crime Laboratory (Forensic Biology/DNA; CODIS)

A self-disclosure by Tarrant County Medical Examiner's Office Crime Laboratory reporting an incident in its Forensic Biology Unit where the CODIS administrator performed a performance check of the recently updated CODIS software 9.0 rather than a full validation as prescribed in the latest FBI QAS. The laboratory identified 16 affected cases and determined that no amended reports were necessary.

Tarrant County Medical Examiner's Office Quality Director Jody Klann briefly addressed the Commission to confirm the Commission's understanding of the self-disclosure.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review, and corrective actions by the laboratory. Drake seconded the*

*motion. The Commission unanimously adopted the motion.*

6. No. 21.24; Department of Public Safety Austin (Digital/Multimedia)

A self-disclosure by Department of Public Safety Austin reporting an incident in its Digital/Multimedia Evidence Unit where an analyst in the section received an unsatisfactory assessment for audio enhancement proficiency test that raised concerns about the quality of the examiner's work product.

Brady Mills addressed the Commission to explain there were 43 cases total worked by the subject analyst reviewed by the laboratory. Eleven needed additional re-working by another qualified analyst. Thirty are pending review and the remaining case did not have anything probative prompting a re-work. Thus far, the laboratory has not identified any issues in 13 of the re-worked cases. Mills further explained the type of work conducted by the subject analyst is typically part of the investigative process by law enforcement and not work that is introduced at trial. The analyst is no longer employed by the laboratory.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis and corrective actions by the laboratory and because the particular type of work at issue is used to assist in the investigative stage of a criminal case rather than work presented at trial. Parsons seconded the motion. The Commission unanimously adopted the motion.*

7. No. 21.30; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by Jefferson County Regional Crime Laboratory reporting an incident in its Seized Drugs section where an analyst found a single white round tablet on the wet laboratory floor after having stepped on the tablet.

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

8. No. 21.34; Jefferson County Regional Crime Laboratory (Seized Drugs)

A self-disclosure by Jefferson County Regional Crime Laboratory reporting an incident in its Seized Drugs section where evidence in a case reported as methamphetamine should have been reported as phencyclidine. The laboratory discovered additional errors by the same technical reviewer after a review of casework by both the analyst and technical reviewer.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Drake seconded the motion. The Commission unanimously adopted the motion.*

9. No. 21.38; University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA; CODIS)

A self-disclosure by University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) disclosing an incident in its Forensic Biology section where the

laboratory recorded a specimen after comparison in its State DNA Index System (SDIS) as a “no match” and later, in April 2021, the laboratory discovered the specimen should have been recorded as a valid match.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Parsons seconded the motion. The Commission unanimously adopted the motion.*

\*Commissioners Budowle and Coble recused from discussion and vote on this item.

10. No. 21.41; NMS Labs (Seized Drugs)

A self-disclosure by NMS Labs reporting an incident in its Seized Drugs section where, during qualification of a new GCMS instrument for hemp-marihuana differentiation, the laboratory noted higher rates of CBD to THC conversion than during the original validation. NMS Labs also noted that any laboratory performing a similar method could experience similar challenges in CBD to THC conversion.

**MOTION AND VOTE:** *Daniel moved to accept the self-disclosure for investigation to issue recommendations and establish best practice guidelines regarding hemp-marihuana differentiation using a GCMS instrument. Drake seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Daniel moved to establish an investigative panel consisting of commissioners Drake, Buzzini, and Kerrigan. Downing seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Kerrigan moved to add commissioner Parsons to the investigative panel consisting of commissioners Drake, Buzzini, and Kerrigan. Daniel seconded the motion. The Commission unanimously adopted the motion.*

The investigative panel for this self-disclosure consists of commissioners Parsons, Drake, Buzzini and Kerrigan.

11. No. 21.42; Department of Public Safety (Forensic Biology/DNA)

A self-disclosure by Department of Public Safety Austin reporting an incident in its Forensic Biology/DNA section where an analyst accidentally lost a hair sample that another analyst in the Materials/Trace section had identified as suitable for DNA testing.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Coble seconded the motion. The Commission unanimously adopted the motion.*

\*Commissioner Parsons recused from discussion and vote on this agenda item.

12. No. 21.43 University of North Texas Health Science Center – Center for Human Identification (Forensic Biology/DNA; mtDNA)

A self-disclosure by University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) disclosing an incident in its Forensic Biology section where the laboratory discovered differences between an mtDNA profile produced by the laboratory and the FBI mtDNA profile for the same case.

**MOTION AND VOTE:** *Daniel moved to take no further action on the self-disclosure given the root cause analysis, case review and corrective actions by the laboratory. Drake seconded the motion. The Commission unanimously adopted the motion.*

\*Commissioners Budowle and Coble recused from discussion and vote on this item.

13. No. 21.12; Glen Dale Horner (Houston Police Department/Houston Forensic Science Center; Forensic Biology/DNA)

A complaint against the former Houston Police Department laboratory by defendant Glen Dale Horner alleging the report from a DNA analysis conducted in his 1998 case is missing.

**MOTION AND VOTE:** *Daniel moved dismiss the complaint and direct the laboratory to report any observations regarding the archived case record to the appropriate stakeholders in the criminal justice system. Budowle seconded the motion. The Commission unanimously adopted the motion.*

14. No. 21.25; Brooks, Randall (Fort Worth Police Department Crime Laboratory; Serology)

A complaint by defendant Randall Brooks alleging prosecutors and the Fort Worth Police Department Crime Laboratory failed to disclose the results of the analysis of a sexual assault kit swab.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint because the Commission does not have jurisdiction over disclosure compliance by the State and the reported court decisions are inconsistent with the claim. Drake seconded the motion. The Commission unanimously adopted the motion.*

15. No. 21.26; Pride, Derek (Department of Public Safety Midland; Seized Drugs)

A complaint by defendant Derek Pride alleging DPS Midland denied his right to confront witnesses, because there were two seized drug analyses conducted which produced “two different weights.”

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint because the Commission does not have jurisdiction over the admission of affidavits in a criminal case and because differing weights are expected in the sequential analysis of drugs during retesting. Drake seconded the motion. The Commission unanimously adopted the motion.*

16. No. 21.31; Gutierrez, Roland (Department of Public Safety Houston; Seized Drugs)

A complaint by defendant Roland Gutierrez questioning why witnesses at his trial testified about the odor of cocaine in the courtroom, but at an earlier trial of a codefendant, a different analyst did not offer the same or similar testimony concerning the same evidence.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint for failure to allege professional negligence or misconduct related to a forensic analysis. Drake seconded the motion. The Commission unanimously adopted the motion.*

17. No. 21.32; Harris County Public Defender's Office on behalf of defendant Theodore Schmidt (Dr. Melba Ketchum; Wildlife (Canine) DNA)

A complaint by the Harris County Public Defender's Office on behalf of defendant Timothy Schmidt, alleging Dr. Melba Ketchum committed misconduct when she testified in a criminal case regarding the results of canine DNA analysis because her laboratory was not accredited at the time the analysis was performed. The complaint also alleges Dr. Ketchum failed to estimate the frequency of the relevant DNA sequence(s) in the general canine population, thereby giving incomplete and misleading information to the trier of fact.

The subject of the complaint, Dr. Melba Ketchum briefly addressed the commission regarding the complaint. Ketchum asserted that UC Davis, the other laboratory that offered its opinion in the case, was also not accredited at the time of testing though they obtained accredited later that year in July. Ketchum asserted that her laboratory participated in proficiency testing and adhered to accreditation standards at the time, but could not obtain full accreditation at the time due to delays by ASCLD/LAB (now ANAB). Ketchum detailed her background and qualifications in DNA testing and explained she is now retired. Ketchum described a local dog DNA database her laboratory kept for comparisons and issuance of reports with regard to statistics of similar mitochondrial DNA in canines. Commissioners explained Dr. Ketchum would have an opportunity to be interviewed by the investigative panel.

**MOTION AND VOTE:** *Daniel moved to accept the complaint for investigation to determine whether the allegations of misconduct are supported. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**MOTION AND VOTE:** *Daniel moved to establish an investigative panel consisting of commissioners Daniel, Budowle and Coble. Drake seconded the motion. The Commission unanimously adopted the motion.*

18. No. 21.39; Johnson, Jerry (DPS Lubbock; Materials/Trace)

A complaint by defendant Jerry Johnson alleging the microscopic hair comparison testimony at his trial was invalid.

**MOTION AND VOTE:** *Daniel moved to refer the complaint to the Commission's Hair Microscopy Panel. Budowle seconded the motion. The Commission unanimously adopted the motion.*

In addition to the above complaints and self-disclosures, staff dismissed the following 3 complaints:

- 21.28: a complaint filed by defendant Melvin Nicholas seeking information regarding the evidence against him in a pending criminal case in Hays County. Case dismissed for failure to allege negligence or misconduct related to forensic analysis of physical evidence.
  - 21.29: a complaint filed by defendant Cyrus Gray III seeking information regarding the evidence against him in a pending criminal case in Hays County. Case dismissed for failure to allege negligence or misconduct related to forensic analysis of physical evidence.
  - 21.36: a complaint filed by defendant Charles Lee alleging law enforcement collected DNA samples from him on two different occasions. The defendant made a prior complaint dismissed by the Commission (19.47). Case dismissed for failure to allege negligence or misconduct related to forensic analysis.
- 6. Discuss status of crime laboratory accreditation program, including accreditation non-conformances and reports received since April 16, 2021 quarterly meeting; discuss development of sample quality assurance documents for quality incidents and corrective actions; discuss and vote on rulemakings.**

Tomlin reported on accreditation non-conformances and reports received since the April 16, 2021 quarterly meeting. The Commission reviewed seven accreditation related events this quarter, including two continuations of accreditation, three audits and corresponding renewals of accreditation, two reductions in the scope of forensic disciplines offered by a laboratory and one nonconformance/disclosure reported by a laboratory.

**7. Discuss licensing advisory committee update, including:**

**a. Update on licenses issued and renewed;**

Staff reported there are currently 1,241 licensees, consisting of 5 blanket, 226 non-interpretive (de minimis), 10 provisional, 995 regular, 3 regular/uncommon forensic analysis, and 2 temporary.

**b. Review memorandum of licensing-related nonconformances and reports:**

Commissioners and staff discussed a memorandum of licensing-related events that occurred this quarter, including two instances in which the laboratories mistakenly had analysts conducting forensic analysis without being fully licensed.

**c. Review outstanding licensing rules and any proposed rule concepts for approval, including discussion and vote on:**

**i. Revisions to license expiration policy;**

Commissioners reviewed a license expiration policy clarifying the status and requirements for licensure where an analyst or technician fails to renew a license on time.

**MOTION AND VOTE:** *Parsons moved to adopt the rulemaking addressing the license expiration policy for forensic analysts and technicians. Daniel seconded the motion. The Commission unanimously adopted the motion.*



**ii. Edits to crime scene investigation definition; and**

Commissioners reviewed a rulemaking clarifying the scope of activities covered by the term ‘crime scene investigation’ in the Commission’s administrative rules.

**MOTION AND VOTE:** *Buzzini moved to adopt the rulemaking clarifying the scope of activities covered by the term crime scene investigators which further clarifies which crime laboratory employees are eligible to take the General Forensic Analyst Licensing Exam. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**iii. Crime Scene Investigators eligibility for the licensing exam.**

Commissioners discussed and voted on a draft administrative rule provides eligibility to take the General Forensic Analyst Licensing Exam for crime scene investigators, crime laboratory managers and administrators and latent print processors and examiners.

**MOTION AND VOTE:** *Daniel moved to adopt the rulemaking providing exam eligibility for crime scene investigators, crime laboratory managers and administrators and latent print processors and examiners. Budowle seconded the motion. The Commission unanimously adopted the motion.*

**d. Remote exam security/proctoring software agreement with SHSU.**

Tomlin reported on the implementation of remote exam proctoring for the Commission’s General Forensic Analyst and Technician exams. Exams are proctored through Sam Houston State University’s Blackboard system using the exam security software Respondus. SHSU has also offered the same services to the other court licensing programs at the Judicial Branch Certification Commission (JBCC), the Commission’s sister agency. Staff hopes to launch the option for remote testing before the end of the month.

**e. General Forensic Analyst Licensing Exam II Update.**

Tomlin gave an update on the status of the development of the second iteration of the General Forensic Analyst Licensing Exam. Exam Committee volunteers from the Commission’s Licensing Advisory Committee have developed a new syllabus, objectives and lists of study materials and readings for each exam topic covered by the exam. The Committee is currently working on recording videos for sections without video training content. Commission staff plans to distribute study materials for a pilot of the new exam primarily to forensic analysts practicing in disciplines not currently required to be accredited or licensed, including document examiners, digital/multimedia analysts, and the crime scene investigators, latent print processors or examiners, and crime laboratory managers covered in the draft rulemaking approved today that permits these candidates to take the exam. Staff plans to distribute the reading materials for the pilot exam sometime in early August so that candidates can begin preparing for the exam. The Commission will use data from the pilot exam to work with psychometricians in assessing whether the exam is a good measure of the material the Commission wants to convey.

**8. Update from investigative panel regarding Southwestern Institute of Forensic Sciences (Firearms/Toolmarks) self-disclosure #21.17.**

The panel and Garcia gave a brief update on the status of the investigation. Panel members met in June to discuss the focus of the investigation. The analyst who is the subject of the complaint has not responded to the Commission's notice and request for an interview. The investigative panel plans to have a draft report for approval at the Commission's October quarterly meeting.

\*Commission Vice Chair Drake assumed the role of Chair on this agenda item and Presiding Officer Barnard recused from discussion and vote on this item.

**9. Review and adopt final report from investigative panel regarding Fort Worth Police Department Crime Laboratory complaint #20.47.**

Members discussed the draft report presented by staff and the investigative panel. Members also discussed responses to the report by the subject laboratory director and the complainant.

**MOTION AND VOTE:** *Kerrigan moved to approve the final report draft for publication. Drake seconded the motion. The Commission unanimously adopted the motion.*

**10. Update from investigative panel regarding Expertox complaint #20.55.**

Garcia gave a brief update on the investigative panel's progress. Members discussed the hiring of expert Dr. Timothy Rohrig to review the technical aspects of the investigation.

**MOTION AND VOTE:** *Daniel moved to approve the contract to hire Dr. Rohrig to review the case for the Commission. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

**11. Update from investigative panel regarding Armstrong complaint #20.60.**

Garcia and members of the investigative panel presented a draft final report in the investigation.

**MOTION AND VOTE:** *Kerrigan moved to approve the final report draft for publication. Budowle seconded the motion. The Commission unanimously adopted the motion.*

**12. Update re: forensic science related legislation filed to date (87<sup>th</sup> Session).**

See item 13 below.

**13. Update from Texas Association of Crime Laboratory Directors, including an update on the collaborative work groups discussing implementation of OSAC Registry standards, plan in collaboration with NIST for implementation of OSAC Registry standards and hiring of project manager.**

Peter Stout, President of the Texas Association of Crime Laboratory Directors, gave an update from the TACLD's July 15, 2021. Stout reviewed all state legislative bills potentially affecting crime laboratory operations in Texas. Stout also addressed data he acquired from a survey of laboratories regarding issues laboratories in Texas have identified with respect to the conversion

of CBD to THC. Stout will share a summary document of the responses with commissioners and staff.

**14. Consider proposed agenda items for next quarterly meeting.**

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

**15. Schedule and location of future panel and quarterly meetings, including July 16, 2021 quarterly meeting.**

The Commission will meet for its next quarterly meeting October 22, 2021 in person in Austin, Texas. Staff will determine a date for the Commission's January 2022 quarterly meeting.

**16. Hear public comment.**

Commissioners addressed no additional public comments other than that noted throughout the agenda.

**17. Adjourn.**

**MOTION AND VOTE:** *Kerrigan moved to adjourn the meeting. Parsons seconded the motion. The Commission unanimously adjourned at 11:50 a.m.*