



J26 History and Recent Revisions to the Policies Regarding Testimony of Forensic Document Examiners in the State of Texas

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Learning Overview: After attending this presentation, attendees will have an understanding of the policies and procedures set forth by the Texas Legislature throughout the years and the impact on forensic document examiners stating their expert opinions for the courts in Texas.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by providing information to attendees about the Texas Forensic Science Commission (TFSC), the past and recent updates to laws governing testimony of experts in the state, and the effect of these policies on forensic document examiners when testifying in Texas.

In 2005, the TFSC was established during the 79th Texas Legislative Session. It is the TFSC's responsibility to investigate professional negligence and misconduct that may impact the quality of results for forensic analyses in accredited laboratories, facilities, or entities. Passed in May 2005, House Bill 1068 (HB-1068) set forth that Chapter 38 of the Code of Criminal Procedure will be amended. The addition of Article 38.01 discusses in detail the creation, composition, and further duties of the Commission.

HB-1068 also details the amendments to Article 38.35, Code of Criminal Procedure: Forensic Analysis of Evidence; Admissibility. The accreditation of laboratories and the law surrounding the admissibility of evidence fell under the Government Code 411.0205. The Texas Legislature stated that forensic analysis of physical evidence and expert testimony relating to the evidence would not be admissible in criminal court unless the crime laboratory was accredited at the time of analysis.

Later in 2013, Senate Bill 1238 (SB-1238) was passed by the Texas Legislature. It provided updates to the responsibility of the Commission. Now, the Commission is able to investigate claims of professional negligence and misconduct involving forensic disciplines that are exempt from accreditation.

With the implementation of Senate Bill 1287 (SB-1287) in June 2015 at the 84th Texas Legislative Session, the responsibility of accrediting crime laboratories was transferred from the Texas Department of Public Safety to the TFSC. This became effective September 1, 2015. The bill also requires that all practicing forensic analysts be licensed in the State of Texas starting January 1, 2019. Some forensic disciplines are exempt from this licensing requirement if they are also exempt from the Commission accreditation requirement by administrative rule.

Throughout the years, amendments to Texas Administrative Code, Rule 651.7 would exclude particular forensic disciplines from the accreditation requirement by the administrative rule. In January 2019, the TFSC met to discuss the constitutionality of Forensic Document Examination being included in the accreditation policy. The only three examiners in the State of Texas able to meet the legal requirements set forth by HB-1068 were in the Texas Department of Public Safety Crime Laboratory system. Defense attorneys in particular were taking issue with the fact that they could not hire their own expert witnesses. When the TFSC reconvened in May 2019, it was decided that it was not constitutional to uphold HB-1068 and Forensic Document Examination was removed from the accreditation standards, and therefore, the licensing requirements. The amendment was made to the Texas Administrative Code in July 2019.

This presentation will go into detail about the policies and requirements surrounding accreditation and licensing. It will be discussed how these procedures impact Forensic Document Examination testimony in the courts for the State of Texas. Also, this presentation will further explain the TFSC and how they function as the presiding authority over forensic analysts.

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