

**Texas Forensic Science Commission  
Minutes from January 29, 2021 Meeting in Austin, Texas**

The Texas Forensic Science Commission met virtually via Zoom at 9:00 a.m. on Friday, January 29, 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 January 5, 2021 extension of the 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, MD (Presiding Officer), Bruce Budowle, Patrick Buzzini, Michael Coble, Nancy Downing, Jasmine Drake, Sarah Kerrigan, Jarvis Parsons, Mark Daniel

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 9:02 a.m. Commission Presiding Officer Barnard called the roll. Commissioners were present as indicated above.

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

Tomlin gave instructions for stakeholders joining the webinar to engage with commissioners and staff during the meeting. Participants were able to chat virtually and ask questions during the meeting or seek technical support. 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 October 23, 2020 Forensic Science Commission Quarterly meeting.**

**MOTION AND VOTE:** *Kerrigan moved to adopt the October 23, 2020 meeting minutes draft. Parsons seconded the motion. The Commission unanimously adopted the motion.*

**4. Office administrative update (FY2021 budget status report; update on staff work and travel policies pursuant to the Governor's orders; discuss abstracts for American Academy of Forensic Sciences February 2021 annual (virtual) conference, introductions of new member Michael Coble.**

Garcia introduced new commission member Dr. Michael Coble. Garcia reported on the Commission's budget status for FY2021 and budget reductions as requested by the Governor, Lieutenant Governor and Speaker of the House.

Garcia described abstracts being presented by staff at the American Academy of Forensic Sciences Annual Conference February 13-19 either as workshops or section presentations. Executive Director of the Office of Court Administration, David Slayton, will present on Texas' approach to addressing challenges faced by the court system during the COVID-19 pandemic, including special considerations regarding remote expert testimony and efforts to keep testifying experts safe. Tomlin will present on Texas' oversight approach with respect to individual forensic analysts and disciplinary action taken pursuant Commission investigations. Garcia will present an abstract on Texas' approach to implementation of OSAC Registry standards and at the plenary session of the meeting, titled *One Academy – Pursuing Justice Through Truth of Evidence*. At the plenary session, Garcia will describe how Texas uses two core values—transparency and collaboration—to assist the Texas criminal justice system in achieving justice through accreditation, investigations and licensing. The session will feature exoneree Richard Miles, whose conviction was overturned by the Texas Court of Criminal Appeals in 2012 in part due to the unreliable eyewitness testimony and gunshot residue analysis used to convict him. Kerrigan described a workshop on the subject of hemp/marijuana differentiation including a presentation on the interlaboratory validation effort facilitated by the Commission with assistance from Sam Houston State University in collaboration with HFSC, HCIFS and Texas DPS.

**5. Elect new member to Complaint Screening Committee to fill vacant seat; discuss and consider pending complaints and laboratory self-disclosures as well as new complaints and self-disclosures received through January 8, 2021.**

**MOTION AND VOTE:** *Daniel moved to elect Commissioner Coble to the Complaint Screening Committee. Budowle seconded the motion. The Commission unanimously adopted the motion.*

**Disclosures Pending from October 23, 2020**

1. No. 20.44; NMS Labs Horsham, PA (Forensic Biology/DNA)

A self-disclosure by NMS Labs Horsham, PA reporting an incident in the laboratory's forensic biology section where incorrect allele frequencies were used to calculate and report statistical values in casework.

This self-disclosure was tabled both at the Commissions' July 24, 2020 and October 23, 2020 quarterly meetings pending the outcome of NMS' internal investigation. Commissioners received the final investigative report from NMS and felt the laboratory's root cause analysis and corrective actions were sufficient.

Commissioners noted that NMS will remove DNA analysis from its accreditation scope effective February 12, 2021. This decision was based on overall business considerations and was not a result of the nonconformity related to this agenda item.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

Disclosures Received as of January 8, 2021

2. No. 20.56; Department of Public Safety Amarillo (Seized Drugs)

A self-disclosure by the Department of Public Safety (“DPS”) (Amarillo) reporting an incident in the laboratory’s seized drug section where an analyst lost a small evidentiary item containing methamphetamine.

**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. Parsons seconded the motion. The Commission unanimously adopted the motion.*

3. No. 20.57; Department of Public Safety Austin (Firearms/Toolmarks)

A self-disclosure by DPS (Austin) reporting an incident in the laboratory’s firearm section where an analyst incorrectly interpreted a digit during a serial number restoration proficiency test.

**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. Parsons seconded the motion. The Commission unanimously adopted the motion.*

4. No. 20.58; Bexar County Criminal Investigation Laboratory (Forensic Biology/DNA)

A self-disclosure by the Bexar County Criminal Investigation Laboratory reporting an incident in the laboratory’s Forensic Biology/DNA section where a reagent was used beyond the manufacturer’s assigned expiration date.

**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. Budowle seconded the motion. The Commission unanimously adopted the motion.*

5. No. 20.59; Department of Public Safety El Paso (Forensic Biology/DNA)

A self-disclosure by DPS (El Paso) reporting an incident in the laboratory’s Forensic Biology/DNA section where an analyst mistakenly inserted cartridge racks onto the deck of a robotic workstation before loading the necessary reagent cartridges into the cartridge rack causing the samples from four cases to spill onto the deck of the robotic workstation.

**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. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

6. No. 20.61; Tarrant County Medical Examiner's Office Crime Laboratory (Forensic Biology/DNA)

A self-disclosure by the Tarrant County Medical Examiner's Office Crime Laboratory reporting an incident in its Forensic Biology/DNA section where the laboratory's long-term storage freezer experienced above freezing temperatures for less than a 24-hour period.

**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. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

7. No. 20.65; Department of Public Safety Austin (Forensic Biology/DNA)

A self-disclosure by DPS (Austin) reporting an incident in the laboratory's Forensic Biology/DNA section where a sexual assault kit submitted by one agency was inadvertently released to a different agency before any forensic analysis was performed.

**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. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

\*Commissioners Parsons recused from discussion and vote on this item because it involved a law enforcement agency within his office's jurisdiction.

8. No. 20.68; Department of Public Safety Crime Laboratory System (Blood Alcohol)

A self-disclosure by the DPS (System) reporting an incident where the laboratory system discovered that an evidentiary item, a clear plastic bag containing blood tubes for blood alcohol analysis, went missing and cannot be located.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

9. No. 20.69; Department of Public Safety Abilene (Seized Drugs)

A self-disclosure by DPS (Abilene) reporting an incident in the laboratory's seized drugs section where an analyst inadvertently scanned in a seized drugs case submitted for testing as "authorized for destruction," and the laboratory subsequently destroyed the evidence.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

10. No. 20.71; Houston Forensic Science Center (Latent Prints)

A self-disclosure by the Houston Forensic Science Center reporting several nonconformities in the laboratory's Latent Print section discovered during a quarterly review of case records. The

quarterly reviews are part of a broader review across laboratory sections to improve technical and administrative review processes (referred to as the “Lean Six Sigma” or (LSS) group project). Errors identified include: 1) multiple technical and administrative defects in a latent print case; 2) a case where item descriptions to two evidence items were incorrect on the issued report; and 3) administrative errors and a technical error in a case where a print was reported as inconclusive to a suspect in the case, but included no verification completed by a second examiner.

**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. Drake seconded the motion. The Commission unanimously adopted the motion.*

11. No. 20.72; UNTHSC-CHI (Forensic Biology/DNA)

A self-disclosure by the University of North Texas Health Science Center – Center for Human Identification (UNTHSC-CHI) reporting an incident in the laboratory’s Forensic Biology/DNA section where, after recent reanalysis of a case sample, the laboratory discovered results that were not concordant with the original results reported in 2006. Results were concordant, however, with another case sample processed on the same day—leading the laboratory to believe the reanalyzed sample was initially mistakenly analyzed and reported with the wrong sample.

**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. Downing seconded the motion. The Commission unanimously adopted the motion.*

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

Complaints Received as of January 8, 2021

12. No. 20.55; Wood, Carrie (Expertox; Hair Follicle Testing)

A complaint by Carrie Wood, Assistant District Attorney in Philadelphia, PA, alleging the laboratory analysis of a sexual assault survivor’s hair follicle samples by Expertox Laboratory was not scientifically reliable.

**MOTION AND VOTE:** *Daniel moved to accept the complaint for investigation to determine the extent to which methods considered insufficient for forensic application have been reported by the laboratory in criminal cases. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

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

13. No. 20.60; Cantu, Gerard (Armstrong; Seized Drugs)

A complaint by Gerard Cantu, Assistant Public Defender in Webb County, alleging various problems with Armstrong Forensic Laboratory’s use of Gas Chromatography with Dual Flame

Ionization Detection (GC-FID) to quantify the concentration of Delta 9 Tetrahydrocannabinol (Delta 9 THC) in five samples of plant materials in a criminal case in Webb County.

**MOTION AND VOTE:** *Daniel moved to accept the complaint for investigation to review the issues cited and assess the validity of the complaint. Kerrigan seconded the motion. The Commission unanimously adopted the motion.*

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

14. No. 20.64; Lumsden, Raymond (UNTHSC-CHI; Forensic Biology/DNA)

A complaint by defendant Raymond Lumsden alleging DNA analyst Christina Capt incorrectly testified that Lumsden was the sole contributor to a Y-STR profile obtained from sexual assault swabs and testified to facts about touch DNA transfer that were incorrect or misleading.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint based on review of data provided by analyst. Downing seconded the motion. The Commission unanimously adopted the motion.*

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

15. No. 20.66; Anonymous (Tarrant County Medical Examiners Office Crime Laboratory; Forensic Biology/DNA)

An anonymous complaint reported to the Commission and the Tarrant County District Attorney's Office, alleging several issues at the Tarrant County Medical Examiner's Office. Most of the issues are outside the jurisdiction of the Commission. The one issue arguably within the Commission's jurisdiction – the alleged "mix up" of toxicology, DNA, and histology samples – is not described with enough specificity to establish a basis for investigation. The anonymous complainant provided no information regarding the dates or cases allegedly involved. Staff efforts to reach the anonymous complainant have been unsuccessful.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint for lack of jurisdiction and a failure to set forth any information beyond general allegations of "mixed up" samples. Downing seconded the motion. The Commission unanimously adopted the motion.*

16. No. 20.67; Curry, Jesse (Harris County Institute of Forensic Sciences; Forensic Biology/DNA)

A complaint by defendant Jesse Curry, alleging a possible third contributor was present in a sexual assault DNA mixture used to convict him.

Bob Wicoff, Director of the Texas DNA Mixture Review Team and Appellate Chief at the Harris County Public Defender's Office located the sexual assault kit at the local police department and submitted it to HCIFS for re-testing. HCIFS is working collaboratively with Mr. Wicoff and the

Harris County DA's office to determine the most reasonable next steps. The laboratory has also identified all cases where DQ-Alpha was used to determine whether other reports may have included statistics for known profiles.

**MOTION AND VOTE:** *Daniel moved to dismiss the complaint considering the relevant stakeholders are already engaged in re-analysis efforts. Coble seconded the motion. The Commission unanimously adopted the motion.*

Staff noted this is the second time in the last few months the Commission has been asked to review a transcript (involving the use of technology pre-dating STR typing) where the statistical rarity of the defendant's known DNA profile was presented to the trier of fact as probative information. HCIFS is already reviewing cases to identify if there are any related issues or patterns in other casework. Staff will ask Bexar County to do the same and if any issues are identified, staff will bring them before the Commission.

#### Staff dismissals

Members discussed five complaints dismissed by staff for lack of jurisdiction.

**MOTION AND VOTE:** *Daniel moved to approve all staff complaint dismissals. Coble seconded the motion. The Commission unanimously adopted the motion.*

- 6. Discuss status of crime laboratory accreditation program, including accredited non-conformances and reports received since October 23, 2020 quarterly meeting; discuss possible rule exemption for Rapid DNA limited to booking stations and FBI-approved projects; discuss development of sample quality assurance documents for quality incidents and corrective actions.**

Staff and commissioners discussed accreditation non-conformances and reports received since the October 23, 2020 quarterly meeting. DPS underwent a systemwide audit for renewal of its accreditation. Staff noted follow up on two items cited as nonconformances from the audit. Staff will follow up with commissioners at the April 16, 2021 quarterly meeting on DPS's response to staff questions on these items.

Garcia described the possible need for an administrative exemption specifically for Rapid DNA testing programs being conducted as part of FBI-approved pilot projects at book stations in Texas. Staff will draft a rule related to the exemption for commissioners to review at the April 16, 2021 quarterly meeting. DPS CODIS Administrator, Gary Molina, briefly addressed the Commission regarding the exemption. Molina indicated that the first part of the FBI pilot project with booking stations has been completed by DPS.

Garcia and Kerrigan emphasized the need for better quality in corrective action reports from some laboratories, including more detailed descriptions of quality incidents and corresponding corrective actions taken. Staff and commissioners discussed issuing guidance to laboratories on documenting non-conformances and other quality incidents for better clarity and uniformity in reporting, documenting and handling non-conformances in the laboratory. Staff will begin working

with commissioners and the TACLD to develop a guidance document, accompanying training and distance learning materials.

**MOTION AND VOTE:** *Parsons moved to dedicate a portion of the Commission’s forensic development funds to training on corrective actions and root cause analysis. Daniel seconded the motion. The Commission unanimously adopted the motion.*

**7. Discuss licensing advisory committee update, including:  
a. Update on licenses issues and renewed; and**

Staff reported 1176 current licensees and the completion of all license renewals for analysts whose licenses expired in 2020. Staff also described the process established for updates to the General Forensic Analyst Licensing Exam. The exam will be updated with questions validated by the Commission’s psychometricians every two years—on even-numbered years beginning in January 2022. Staff presented a timeline for development of new exam questions and review of exam content. Staff also discussed the possibility of remote exam proctoring. Staff will work with Kerrigan and Buzzini to determine some of the best options for remote administration based on what Sam Houston State and other universities are using.

**b. Review outstanding licensing rules and any proposed rule concepts for approval.**

Staff proposed a graduated fee scheduled for late renewals in the next license cycle. Staff will draft a proposed policy for late renewals for review and approval at the April 16, 2021 quarterly meeting

**8. Discuss and adopt final report regarding Collins, Robert (DPS Houston; Forensic Biology) complaint #19.04 investigative panel.**

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

**9. Discuss and adopt final report regarding DPS Austin (Materials (Trace)) disclosure #20.40.**

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

**10. Update from investigative panel regarding Fort Worth Police Department Crime Laboratory complaint #20.47.**

Garcia provided a brief update regarding the investigative panel’s action plan. Staff and the investigative panel will have a final report for review at the Commission’s July quarterly meeting.



**11. Update from investigative panel regarding DPS Austin (Seized Drugs) disclosure #20.48.**

**MOTION AND VOTE:** *Kerrigan moved to adopt the final report draft including disciplinary action against the licensed analyst that is the subject of the investigation. Drake seconded the motion. The Commission unanimously adopted the motion.*

**12. Update from January 8, 2021 Commission meeting to review Quattrone Report findings and recommendations.**

Garcia provided an update on Commission initiatives stemming from the Quattrone Report on the closure of the Austin Police Department DNA laboratory. Staff is working on an action plan that identifies the Commission's objectives, costs and other resource barriers, and an implementation plan for each objective.

**13. Discuss developments by the committee addressing follow-up initiatives for pediatric sexual assault examinations.**

Downing provided an update from the committee addressing follow-up initiatives for pediatric sexual assault examinations.

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

Garcia gave a brief update on outstanding legislation affecting the Commission. Senator Hinojosa has filed a clean-up bill (SB-470) with no significant changes to the Commission's current objectives but providing clarification on the intersection between articles 38.01 and 38.35 of the Texas Code of Criminal Procedure. Staff will continue to monitor any legislation affecting the Commission.

**15. Update from Texas Association of Crime Laboratory Directors (TACLD), including an update on the collaborative work groups discussing implementation of OSAC Registry standards, plan in collaboration with NIST for implementation of OSAC standards and hiring of project manager, discuss initiative to ensure Texas CFE requirements mirror OSAC guideline requirements.**

Peter Stout, President of TACLD, reported on outstanding legislation that may affect Texas crime laboratories.

Garcia and commissioners discussed possibly hiring a project manager to manage the evaluation and implementation of OSAC standards for Texas crime laboratories. Garcia will discuss with OSAC and NIST whether NIST might assist with partial funding for such a position to help Texas manage the implementation of these standards.

Garcia reported on the Licensing Committee's recommendation to ensure current continuing forensic education requirements comport with minimum standards for continuing forensic

education a published on the OSAC Registry. Staff will compare the requirements to ensure the Commission's program, at a minimum, requires what has been established by OSAC.

**16. 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.

**17. Schedule and location of future panel and quarterly meetings, including April 16, 2021 quarterly meeting.**

The Commission will meet for its next quarterly meeting April 16, 2021 (virtual via Zoom).

**18. Hear public comment.**

No further public comments were given other than those noted throughout the agenda above.

**19. Adjourn.**