

# THE TEXAS FORENSIC SCIENCE COMMISSION: ESTABLISHMENT AND EVOLUTION



NATIONAL ASSOCIATION OF FORENSIC SCIENCE BOARDS

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November 16, 2023



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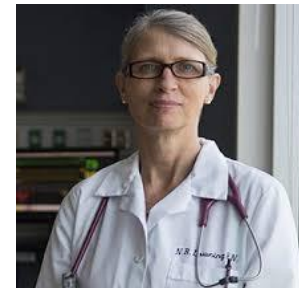
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# COMMISSION TASKS

- Manage laboratory self-disclosures
- License individual analysts
- Accredite crime labs
- Investigate complaints alleging professional negligence & misconduct
- Conduct discipline-wide case reviews when needed
- Federal government liaison (OSAC/NIST)
- Forensic development



# Laboratory Self-Disclosure Program

- The Commission is required to:
  - (1) develop and implement a reporting system through which a crime laboratory may report professional negligence or professional misconduct; and
  - (2) require a crime laboratory that conducts forensic analyses\* to report professional negligence or professional misconduct to the commission.

[Texas Code of Criminal Procedure Article 38.01 § 4\(a\)\(1\) and \(2\).](#)

\*This includes *accredited* and *unaccredited* forensic disciplines in Texas. See, [Attorney General Opinion KP-0127 \(2016\).](#)



# Laboratory Self-Disclosure Program

- Nonconformities/Corrective actions that may rise to the level of negligence of or misconduct (reviewed as part of the commission's complaint and disclosure screening process);
- ...any may be considered in conjunction with a pending Commission investigation or accepted for investigation pursuant to the Commission's investigative authority.





# Evolution in Categories of Information We Receive

- Reported forensic analyst licensing issues (2019);
- Reported non-consensus proficiency testing results from accredited laboratories (AR3125 2022 Revision); and
- Reported accreditation-related events (assessments, surveillance visits, etc).



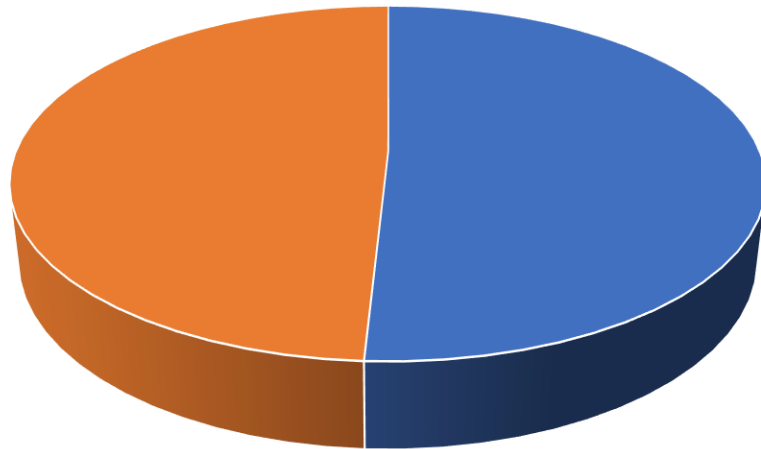
# Crime Laboratory Self-Disclosure Program Evolution

Year	# of Self-disclosures	# of Complaints
2013	0	12
2014	10	10
2015	5	18
2016	4	52
2017	30	29
2018	41	26
2019	72	30
2020	59	21
2021	72	24
2022	49	30
2023	108	17



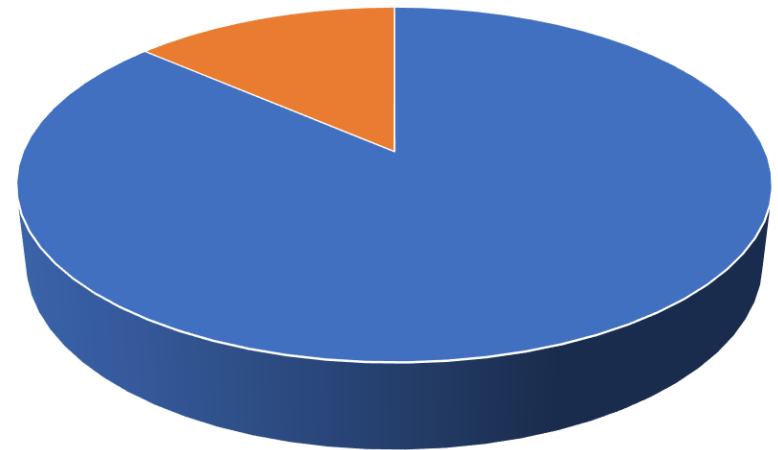
# Crime Laboratory Self-Disclosure Program Evolution

2017



■ Self-disclosures ■ Complaints

2023



■ Self-disclosures ■ Complaints





# Individual Forensic Analyst Oversight

## **Texas Association of Crime Laboratory Directors Position Statement on Mandatory Licensing of Forensic Professionals**

There has been much recent discussion at state and national levels regarding mandatory certification of forensic examiners. While the Texas Association of Crime Laboratory Directors (TACL D) recognizes the benefits of examiner certification, multiple significant challenges exist to implementation of a mandatory certification program within the state. Stakeholders estimate that a fully formed, meaningful certification program in Texas will take seven to ten years to implement, and will require action by organizations outside the control of any entity within Texas. As an alternative to an immediate transition to a requirement of certification of all forensic scientists, TACL D supports the mandatory **licensing** of forensic examiners in Texas as a much more expedient and appropriate mechanism to identify forensic practitioners meeting minimum requirements for practice within the state.

Licensing entails a formal permission by a constituted authority to perform a certain function. Certification in the forensic sciences, in contrast, encompasses testing and completion of other requirements confirming specialized knowledge and skills in a specific technical area. Existing certification programs are not appropriate to all levels of responsibility or experience within the laboratory and do not cover all categories of forensic testing, leaving no certification option for many examiners within Texas. In addition, existing programs are not standardized in terms of years of experience, education, testing, ethics, and recertification requirements. While licensing of forensic professionals may encompass certification for more seasoned examiners where appropriate, it would also provide assurance that examiners are meeting the minimum requirements for practice at all levels of responsibility, experience, and type of testing performed in Texas.

TACL D proposes a State Licensing program that includes the following:

- Assistance from an entity with sufficient infrastructure to support the administrative aspects of the licensing program. Alternatives may include the Texas Department of Licensing and Regulation, the Texas Forensic Science Commission, or others.
- The establishment of a Forensic Scientist Licensing Board and discipline-specific Technical Advisory Committees comprised solely of active or former forensic scientists having casework or management experience in a laboratory accredited by the Texas Department of Public Safety. Responsibility for establishment of the minimum requirements for licensing of individuals at all levels of responsibility and categories of forensic testing would lie strictly with the Board/Committees. The Licensing Board would also have investigation and enforcement authority for ethical complaints against scientists and the ability to suspend



# Texas Association of Crime Laboratory Directors (TACLD) Recommendations

- **Position 1** - certification through *existing* certifying bodies accredited to ISO/IEC 17024 standards.
- **Position 2** – establishment of a state-run certification program.
- **Position 3** - As an alternative to mandatory certification, mandatory licensing of forensic scientists in Texas as a mechanism to identify forensic practitioners meeting minimum requirements for practice within the state.



# Forensic Analyst Licensing Program (2015) –

“A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license” [Tex. Code Crim. Proc. art. 38.01 §4-a\(b\)](#). (by January 1, 2019)

Forensic Analyst – a person who on behalf of a crime laboratory accredited by the Commission technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. (Excludes medical examiners and other exempt disciplines).



# Forensic Analyst Code of Professional Responsibility

## [37 Texas Administrative Code Section 651.219 \(b\)](#) [\(effective May 2018\)](#)

*Each forensic analyst shall:*

- (1) Accurately represent his/her education training, experience, and areas of expertise.
  
- (2) Commit to continuous learning in the forensic disciplines and stay abreast of new findings, equipment and techniques to maintain professional competency.



# Forensic Analyst Code of Professional Responsibility

(3) Promote validation and incorporation of new technologies, guarding against the use of non-valid methods in casework and the misapplication of validated methods.

(4) Avoid tampering, adulteration, loss, or unnecessary consumption of evidentiary materials.

(5) Avoid participation in any case where there are personal, financial, employment-related or other conflicts of interest.



# Forensic Analyst Code of Professional Responsibility

(6) Conduct thorough, fair and unbiased examinations, leading to independent, impartial, and objective opinions and conclusions.

(7) Make and retain full, contemporaneous, clear and accurate written records of all examinations and tests conducted and conclusions drawn, in sufficient detail to allow meaningful review and assessment by an independent person competent in the field.

(8) Base conclusions on procedures supported by sufficient data, standards and controls, not on political pressure or other outside influence.





# Forensic Analyst Code of Professional Responsibility

(9) Not offer opinions or conclusions that are outside one's expertise.

(10) Prepare reports in clear terms, distinguishing data from interpretations and opinions, and disclosing any relevant limitations to guard against making invalid inferences or misleading the judge or jury.

(11) Not issue reports or other records or withhold information from reports for strategic or tactical litigation advantage.



# Forensic Analyst Code of Professional Responsibility

(12) Present accurate and complete data in reports, oral and written presentations and testimony based on good scientific practices and valid methods.

(13) Testify in a manner which is clear, straightforward and objective, and avoid phrasing testimony in an ambiguous, biased or misleading manner.

(14) Retain any record, item or object related to a case, such as work notes, data, and peer or technical review information due to potential evidentiary value and pursuant to the laboratory's retention policy.



# Forensic Analyst Code of Professional Responsibility

(15) Communicate honestly and fully with all parties (investigators, prosecutors, defense attorneys, and other expert witnesses), unless prohibited by law.

(16) Document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or breach of ethical, legal, scientific standards, or questionable conduct.

(17) Ensure reporting, through proper management channels, to all impacted scientific and legal parties of any adverse event that affects a previously issued report or testimony.



# Crime Laboratory Manager Code of Professional Responsibility

(1) Encourage a quality-focused culture that embraces transparency, accountability, and continuing education while resisting individual blame or scapegoating.

(2) Provide opportunities for forensic analysts to stay abreast of new scientific findings, technology and techniques while guarding against the use of non-valid methods in casework, the misapplication of validated methods or improper testimony regarding a particular analytical method or result.



# Crime Laboratory Manager Code of Professional Responsibility

(3) Maintain case retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, analytical and validation data, and peer or technical review.

(4) Provide clear communication and reporting systems through which forensic analysts may report to management non-conformities in the quality system and other adverse events, such as an unintended mistake or breach of ethical, legal, scientific standards, or questionable conduct.

(5) Make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct.



# Crime Laboratory Manager Code of Professional Responsibility

(6) Provide copies of all substantive communications with the laboratory's national accrediting body to the Commission.

(7) For any laboratory that performs forensic analysis on behalf of the State of Texas, **develop and follow a written forensic disclosure compliance policy** for the purpose of facilitating compliance with article 39.14 of the Texas Code of Criminal Procedure.





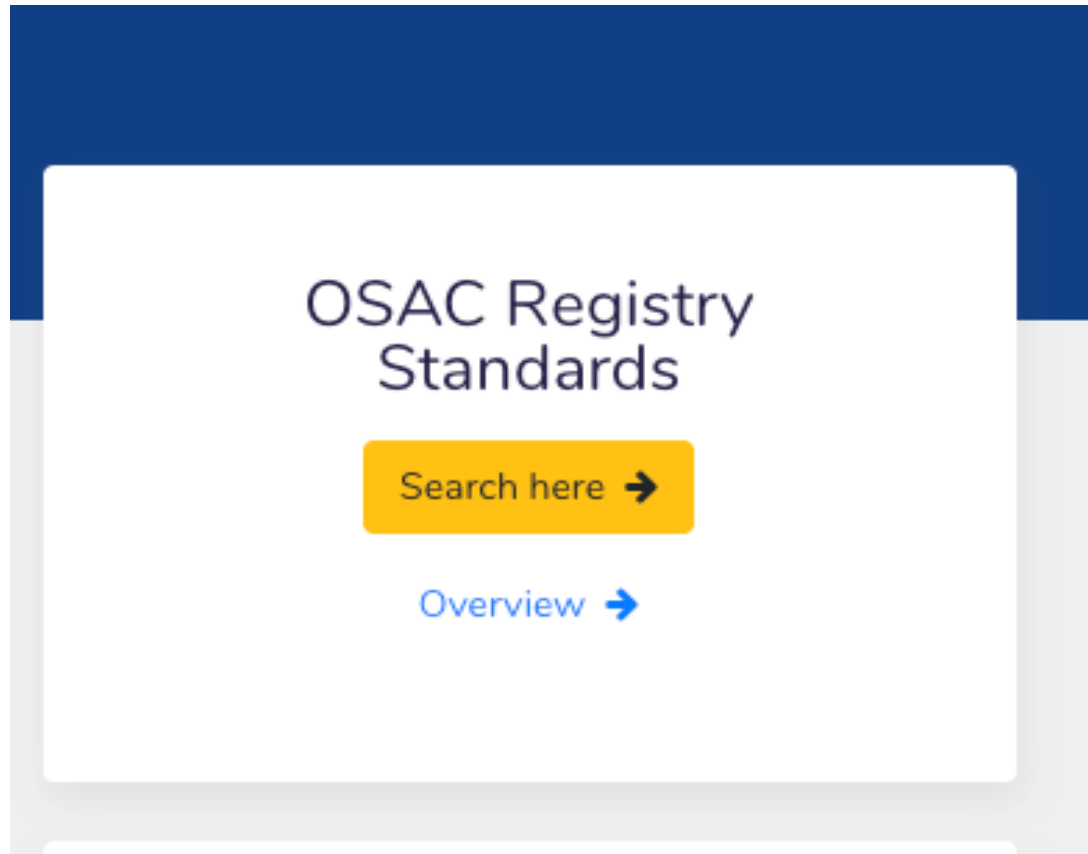
# Crime Laboratory Manager Code of Professional Responsibility

(8) Ensure the laboratory's forensic disclosure policy provides clear instructions for identifying any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the laboratory.

(9) Inform all forensic analysts working on behalf of the laboratory that they may report allegations of professional negligence or professional misconduct to the Texas Forensic Science Commission without fear of adverse employment consequences.



# OSAC Implementation



# OSAC Implementation

Q Search for OSAC Registry Standard

Laboratory

Standard Implemented

Implementation Date

Implementation Type

Clear filters

Show 10 entries

Export to Excel

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Laboratory	Standard Implemented	Implementation Date	Implementation Type	
Austin Forensic Science Department	ASB 017 (Measurement Traceability)	04/28/2022	Full	<a href="#">View</a>
Austin Forensic Science Department	ASB 037 (Opinions & Testimony)	04/28/2022	Full	<a href="#">View</a>
Austin Forensic Science Department	ASB 053 (Report Content)	04/28/2022	Full	



# OSAC Implementation

Texas Forensic Science Commission

[← Back to search results](#)

[🔍 New search](#)

## Laboratory

[Austin Forensic Science Department](#)

## Standard Implemented

ANSI/ASB Standard 017, Standard Practices for Measurement Traceability in Forensic Toxicology, First Edition, 2018

## Original Implementation Date

04/28/2022

## Current Implementation Type

Full

## Attachment(s)

File Description

[OSAC Registry Standards Implementer Certificate](#)



# OSAC Implementation



# Crime Laboratory Portal – SB 0991

15           Sec. 411.162. CRIME LABORATORY PORTAL. The department by  
16 rule shall establish and maintain a central computerized portal  
17 that facilitates the process for requesting crime laboratory  
18 records and for transferring those records among crime  
19 laboratories, attorneys representing the state, and parties  
20 authorized to access the records as a part of discovery under  
21 Article 39.14, Code of Criminal Procedure. The portal may not be  
22 used as a central repository for crime laboratory records.

23           Sec. 411.163. MANDATORY CRIME LABORATORY PARTICIPATION;  
24 DISCIPLINARY ACTION. (a) A crime laboratory that performs a  
25 forensic analysis for use in a criminal action shall participate,  
26 in accordance with department rule, in the transfer of crime  
27 laboratory records using the crime laboratory portal established





# Crime Laboratory Portal – SB 0991

13           Sec. 411.164. DEFENSE COUNSEL ACCESS TO CRIME LABORATORY  
14 PORTAL. In accordance with department rule, the attorney  
15 representing the state in a criminal action shall designate the  
16 defendant or the defendant's attorney, as appropriate, as an  
17 individual who is authorized to access and use the crime laboratory  
18 portal under Section 411.162 to request any crime laboratory  
19 records that are subject to discovery under Article 39.14, Code of  
20 Criminal Procedure.

21           SECTION 3. This Act takes effect September 1, 2023.





# to Success: Stakeholder Collaboration





- **QUESTIONS?**

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