Houston Forensic Science Center, Inc.

Board of Directors Meeting

March 8, 2019

HOUSTON FORENSIC SCIENCE CENTER, INC.

NOTICE OF PUBLIC MEETING
March 8, 2019

Notice is hereby given that beginning at 9:00 a.m. on the date set out above, the Board of Directors (the "Board") of the Houston Forensic Science Center, Inc. (the "Corporation") will meet in the Council Annex Chambers, 900 Bagby St. (Public Level), Houston, Texas 77002. The items listed below may be taken out of order at the discretion of the Chair and any items listed for closed session may be discussed and/or approved in open session and vice versa as permitted by law.

AGENDA

1. Call to order.

2. Roll call; confirmation of presence of quorum.

3. Reading of draft minutes of February 8, 2019 Board meeting. Consideration of proposed corrections, if any. Approval of minutes.

4. Public comment.

5. Report from Nicole Casarez, board chair, including a monthly update of activities and other announcements.

a. Discussion regarding the February 27, 2019 Texas Court of Criminal Appeals ruling striking down Section 551.143 of the Texas Government Code, (conspiracy to circumvent the Texas Open Meetings Act,) and related action.

<u>Reports and presentations by corporate officers, and possible related action items</u>

6. Report from Mr. David Leach, treasurer and CFO, regarding company financials and other fiscal updates.

7. Monthly operations report from Dr. Amy Castillo, vice president and COO, including a review of turnaround times and backlogs.

<u>Reports and presentations by staff</u>

8. Report from Mr. Jerry Pena, director of CSU and digital multimedia evidence, on evidence collection, turnaround times and other updates.

9. Report from Mr. Charles Evans, director of business development, regarding the status of the Houston Forensic Science Center, Inc. facility project and move to 500 Jefferson.

10. Report from Ms. Erika Ziemak, assistant quality director, regarding quality assurance, including review of testimony monitoring, proficiency tests and corrective actions.

11. Adjournment.

–NOTICE REGARDING SPECIAL NEEDS –

Persons requiring accommodations for special needs may contact the HFSC at 713-929-6760 to arrange for assistance.

–NOTICE REGARDING PUBLIC COMMENT –

Members of the public may address the Board during the "Public Comment" segment of the meeting. Each speaker should limit his or her comments to three minutes. The Chairman may limit both the number of speakers and the time allotted for each speaker. A speaker who plans to submit a document for the Board's consideration should provide at least ten copies of the document, each marked with the speaker's name.

– NOTICE REGARDING CLOSED MEETINGS –

As authorized by Texas Government Code Chapter 551.001 (the "Open Meetings Act"), if during the course of the meeting covered by this Notice, the Board should determine that a closed or executive session of the Board should be held or is required in relation to any items included in this Notice, then such closed or executive session as authorized by Section 551.001 et seq. of the Texas Government Code (the Open Meetings Act) will be held by the Board at the date, hour and place given in this Notice or as soon after the commencement of the noticed open meeting, for any and all purposes permitted by Section 551.071-551.089, inclusive, of the Open Meetings Act.

The presiding officer shall announce that the Board will convene in a closed meeting; that is, in "a meeting to which the public does not have access," sometimes known as an "executive session." The presiding officer's announcement will identify the provision(s) of the Open Meetings Act permitted by Section 551.071-551.089 under which the closed meeting will be held. Should any final action or vote be required in the opinion of the Board with regard to any matter considered in such closed or executive session, then such final action or vote shall be taken only in a meeting open to the public, including reconvening the open meeting covered by this Notice.

Certification of Posting of Notice of the Board of Directors (“the Board) of the Houston Forensic Science Center, Inc. (the “Corporation)

I, Jordan Benton, coordinator of board relations and executive administration, do hereby certify that a notice of this meeting was posted on Tuesday, the 5th day of March, 2019 in a place convenient to the public in the Council Annex Chambers, 900 Bagby Street. (Public Level), Houston, Texas 77002, and on the HFSC website as required by Section 551.002 et seq., Texas Government Code.

Given under my hand this the 5th day of March 2019.

Jordan Benton

Houston Forensic Science Center, Inc.

MEETING OF BOARD OF DIRECTORS
MINUTES
February 8, 2019

The undersigned, being the duly appointed secretary of the Houston Forensic Science Center, Inc., (HFSC and/or the "Corporation") hereby certifies the following are true and correct minutes of the February 8, 2019 meeting of the Board of Directors (the "Board") of the Corporation.

A. In a manner permitted by the Corporation's Bylaws, the meeting was called by providing all directors with notice of the date, time, place and purposes of the meeting more than three days before the date of the meeting.

B. In accordance with Chapter 551, Texas Government Code, made applicable to the Corporation by Section 431.004, Texas Transportation Code, a notice of the meeting was duly filed on February 5, 2019, in the same manner and location as required by law of the City of Houston, Texas (the "City").

C. The meeting was called to order by Nicole B. Cásarez, Board chairwoman, at approximately 9:01 a.m. on Friday February 8, 2019 in the Council Annex Chambers, 900 Bagby St. (Public Level), Houston, Texas 77002.

D. Ms. Jordan Benton called the roll. The following directors were present: Nicole B. Cásarez, Sandra Guerra Thompson, Anthony Graves, Philip Hilder, Francisco Medina, Dr. Robert "Bob" H. McPherson, Dr. Stacey Mitchell, Mary Lentschke and Ms. Tracy Calabrese

   The following directors were absent: Janet Blancett

   Chairwoman Cásarez declared a quorum was present

   Ms. Thompson arrived at about 9:08 a.m. after the roll was called. Ms. Calabrese left the meeting at approximately 10:44 a.m. before the meeting adjourned.

E. Chairwoman Cásarez asked if any changes were needed for the January 11, 2019 Board meeting minutes. Dr. Mitchell made a motion to approve the minutes. Mr. Hilder seconded the motion. The motion passed unanimously.

F. Chairwoman Cásarez asked if members of the public wished to address the Board. No one addressed the Board.

G. Chairwoman Cásarez presented a chair's report. She said HFSC will celebrate its five-year anniversary on April 6 and thanked Mr. John Quinlan, president of 500 Jefferson Smith, LLC, for sponsoring the event. Ms. Cásarez said Dr. Peter Stout, president and CEO, presented to congressional staffers about the need for additional resources in forensics as part of a meeting held by the Center for Statistics and Applications in Forensic Evidence

H. Dr. Stout presented the president's report. He reviewed the lab's overall turnaround time (TAT) and requests received in January 2019. Dr. Stout said requests for toxicology work have doubled in part due to increased enforcement by the Houston Police Department (HPD.) The toxicology section does not have the resources, instruments or staffing to keep up with the incoming casework. Although the number of drunk driving cases are decreasing, the number of drugged-driving cases is increasing _ which require more complex analysis. Dr. Stout said this work is crucial to public safety, and emphasized the need to find resources to ensure the toxicology section can effectively deal with the increased demand. The Board discussed possible funding options including corporate and foundation grants, as well as the City's financial constraints. Dr. Stout gave a staffing update and reviewed recent outreach activities. Dr. Stout announced that Ms. Erika Ziemak is the new assistant quality director.

I. Dr. Stout requested Board approval to execute a 30-year sublease between the City of Houston and HFSC for leased space located at 500 Jefferson Street, Houston, Texas 77002 on HFSC's behalf. Chairwoman Cásarez made a motion to approve. Mr. Hilder seconded the motion. The motion passed unanimously.

J. Dr. Stout requested Board approval for amendments to the First Interlocal Agreement (ILA) between HFSC and the City of Houston. Dr. McPherson made a motion to approve. Mr. Medina seconded the motion. The motion passed unanimously.

K. Mr. Leach presented HFSC's proposed 2020 fiscal year budget, which in total would provide the lab with the same funding it received last year. He reviewed the allocated costs within the budget. Mr. Leach said the budget included a one-time cost for the lab's move to 500 Jefferson as well as the cost to lease a triple quad mass spectrometer for the toxicology section. Dr. Mitchell made a motion to approve the proposed 2020 fiscal year budget. Vice Chair Thompson seconded the motion. The motion passed unanimously.

L. Mr. Leach requested approval for amendments to the procurement policy for goods and services for non-fixed assets. Vice Chair Thompson made a motion to approve the policy. Director Lentschke seconded the motion. The motion passed unanimously.

M. Mr. Leach requested Board approval for amendments to the procurement policy for goods and services for fixed assets. Dr. McPherson made a motion to approve the policy. Vice Chair Thompson seconded the motion. The motion passed unanimously.

N. Dr. Amy Castillo, vice president and COO, presented the operations report. She reported that all sections except biology are operating in the new Laboratory Information Management System (LIMS.) Dr. Castillo said the DNA backlog is now below 200 cases. HFSC will use grant dollars to pay for the remaining cases being completed by a private laboratory. She said all federal grant dollars that had been held up due to the government shutdown have been released. Dr. Castillo said the firearms section plans to eliminate by August a backlog of guns that need to be uploaded into the firearms database, the National Integrated Ballistics Information Network (NIBIN.).

O. Mr. Jerry Pena, director of the crime scene (CSU) and digital multimedia units, said staff in the digital and audio/video sections have been reorganized and cross-trained to accommodate for the departure of the section's manager and the classified officers who have been reassigned to

HPD. Two analysts are now authorized to work both audio/video and digital forensic cases. Mr. Pena said crime scene investigators developed 129 latent prints last month, leading to 52 identifications of individuals. Last month, CSU responded to 57 crime scenes, including six that were officer-involved shootings.

P. Mr. Charles Evans, director of business development, updated the Board about the lab's upcoming move, and said the first group will move in three weeks. He said HFSC will deliver to the Houston City Council the board-approved sublease and ILA by April. He said HFSC will continue to meet all accreditation standards throughout the move. Mr. Evans reviewed ongoing IT and security work at the new building. Mr. Evans said HFSC's corporate address will change will on March 4. Mr. Evans reviewed the move schedule and logistics for the sections that will move between May and December.

Q. Mr. Darrell Stein, director of information strategy, said HFSC launched its new submission request portal at the same time all sections, except for biology, began operating in the new LIMS. The new request portal launched January 18 and Mr. Stein said he received positive feedback from stakeholders about it. He said the biology division will transfer its operations to the new LIMS by the end of summer.

R. Mr. James Miller, manager of seized drugs, presented to the Board the results of the HFSC "dashboard" project. The dashboard will allow all staff to monitor data, track work and view consolidated information in real-time so they can better manage their work. Mr. Miller showed the dashboard to the Board, demonstrating how each view is interactive and offers both personal, section-wide and company-wide metrics, information on backlogs, age of requests, quality data, turnaround times and productivity. He shared that staff members like the visual, intuitive and reliable data. Mr. Miller said company-wide training on the dashboard will begin in March. The dashboard will be rolled out for use on April 1.

S. Ms. Lori Wilson, quality division director, reviewed year-to-date and monthly data for blind quality controls, audits, disclosures, corrective actions, proficiency tests for 2018-2019 and testimony data for January. The quality division is working with HPD to obtain mobile devices scheduled for destruction to assist with blind testing in the digital section.

T. The Board went into Executive Session under Texas Government Code Section 551.071, consultation with attorney, at approximately 11:16 a.m. Dr. Stout and Ms. Akilah Mance, general counsel, were present with the Board.

U. The meeting reconvened in open session at approximately 11:35 a.m. The Board took no further action.

V. Vice Chair Thompson made a motion to adjourn the meeting. Mr. Graves seconded the motion. The meeting ADJOURNED at approximately 11:35 a.m.

By: _____

Jordan Benton Secretary

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0254-18

THE STATE OF TEXAS

v.

CRAIG DOYAL, Appellee

ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW FROM THE NINTH COURT OF APPEALS MONTGOMERY COUNTY

YEARY, J., filed a dissenting opinion.

DISSENTING OPINION

Yet another perfectly good statute falls today, adding fuel to the claims that this Court is often too quick to reject the considered will of our state's Legislative Department.[1] In my opinion, striking this law is unnecessary. The Court's decision to strike the law relies on opinions from the United States Supreme Court that are, in the first place, less than a model

[1] *See Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017) (Newell, J., dissenting) ("Of late, this Court has gotten fairly adept at striking down statutes as facially unconstitutional.").

of clarity, and that, in any event, are not at all like the case before us. It is also a product of the Court's failure to perceive the rather plain import of the Legislature's choice of words establishing a very simple prohibition: "conspiring to circumvent the Open Meetings Act by meeting in numbers less than a quorum for the purpose of secret deliberations [that would otherwise violate the Act]."

Relying on *Johnson v. United States*,135 S. Ct. 2551 (2015), and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), the Court concludes that "a vagueness challenge to a statute that implicates First Amendment freedoms does not require a showing that there are no possible instances of conduct clearly falling within the statute's prohibitions." Then, relying on its own opinion in *Long v. State*, 931 S.W.2d 285 (Tex. Crim. App. 1986), the Court refuses even to require a showing that the statute is vague as applied to Appellee. I am unconvinced that Appellee ought to be able to prevail in his facial vagueness challenge if he cannot make these showings.

I would hold (for some, but not all, of the reasons identified in Judge Slaughter's concurring opinion) that Section 551.143(a) of the Government Code, the Texas Open Meetings Act, is not unconstitutionally vague. TEX. GOV'T CODE § 551.143(a). But I disagree with Judge Slaughter that it nevertheless violates the First Amendment to the United States Constitution—an issue that the Majority need not address, having struck the statute on vagueness grounds. I write further to explain the reasons for my dissent.

I. VAGUENESS

Today the Court allows Appellee to prevail in a facial challenge to the constitutionality of Section 551.143(a) without having to demonstrate that it would be impermissibly vague in all of its applications. Majority Opinion at 8–11. I am unconvinced that this reflects an accurate assessment of the law. Moreover, why should Appellee be permitted to prevail in a facial vagueness claim to dismiss the prosecution against him when we do not even know what the facts of his case may show? Indeed, the Court today affirms a judgment granting Appellee's motion to dismiss under circumstances in which it is entirely possible he would not even be able to prevail in an as-applied challenge. I cannot go along with this.

A. In a Facial Challenge, Must Appellee Show That the Statute is Vague in All of its Applications?

When a litigant raises a facial challenge to a statute on ordinary vagueness grounds, based on the Due Process Clause of the United States Constitution, a court

> should uphold the challenge only if the enactment is impermissibly vague in all of its applications. A [litigant] who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982).[2] It

[2] I have no doubt that when a statute cannot reasonably be implemented because it is simply too amorphous to identify with *any* certainty *what* conduct is proscribed within its ambit, then it should be stricken as facially unconstitutional. *Cf. Parker v. Levy*, 417 U.S. 733, 755 (1974) (observing that the Supreme Court has invalidated statutes under the Fifth Amendment Due Process Clause "because they contained no standard whatever by which criminality could be ascertained"). And a statute that

is true that the Supreme Court has held that when First Amendment rights are implicated, a "more stringent vagueness test should apply." *Hoffman*, 455 U.S. at 495. But, even so, the United States Supreme Court held in 2010 that, "even to the extent a heightened vagueness standard applies, a plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010).

Humanitarian Law Project involved a lawsuit in which the plaintiffs attempted to block any application of a criminal provision of the Antiterrorism and Effective Death Penalty Act (AEDPA) to their conduct on grounds that the provision was unconstitutionally vague and that it criminalized the enjoyment of their First Amendment rights. *Id*. at 10–11. The Supreme Court held that the Court of Appeals, in conducting a faulty vagueness analysis, had "contravened the rule that '[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of a law as applied to the conduct of others.'" *Id*. at 20 (citing *Hoffman Estates*, 455 U.S. at 495). The Supreme Court then continued, "That rule makes no exception for conduct in the form of speech." *Id*. Chief Justice Roberts, who authored the opinion for the Court, explained further:

> Such a plaintiff may have a valid overbreadth claim under the First Amendment, but our precedents make clear that a Fifth Amendment vagueness challenge does not turn on whether a law applies to a substantial amount of protected expression. Otherwise, the doctrines would be substantially

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is that defective, I agree, should be subject to a facial challenge. I cannot agree, however, that Section 551.143(a) even approaches that level of indefiniteness.

redundant.

Id. He then concluded:

> Of course, the scope of the [relevant criminal provision of the AEDPA] may not be clear in every application. But the dispositive point is that the statutory terms are clear in their application to plaintiff's proposed conduct, which means that plaintiff's challenge must fail. Even assuming that a heightened standard applies because the [relevant] statute potentially implicates speech, the statutory terms are not vague as applied to plaintiffs.

Id. at 21.

I am aware that this Court has held that, "when a vagueness challenge involves First Amendment considerations, a criminal law may be held facially invalid even though it may not be unconstitutional as applied to the defendant's conduct." *Long v. State*, 931 S.W.2d at 288. But it is not clear to me that our holdings in that regard could survive *Humanitarian Law Project*, which declined to treat First-Amendment-implicated vagueness claims any differently than ordinary vagueness claims.

The Court today relies upon two more recent Supreme Court opinions to hold that Appellee may nevertheless challenge Section 551.143(a) on facial vagueness grounds: *Johnson v. United States*, 135 S. Ct. at 2560–61, and *Sessions v. Dimaya*, 138 S. Ct. at 1214 n.3. Majority Opinion at 8–11 & n.33. Neither opinion cites, much less explicitly overrules, *Humanitarian Law Project*, however. And the subsequent Ninth Circuit case that the Court cites—for the proposition that *Humanitarian Law Project* and its many precedents have now been rejected—did no more than tentatively observe that they "may not reflect the current

state of the law." *Id.* at 9 n.33 (citing *Henry v. Spearman*, 899 F.3d 703, 709–10 (9th Cir. 2018)). Until the Supreme Court plainly proclaims its demise, I will continue to rely on the clear holding of *Humanitarian Law Project*.

B. Even If He Need Not Show the Statute is Vague in All of its Applications, Must Appellee Still Show That the Statute is Vague as Applied to His Own Conduct?

There is another—even more compelling—reason to find that neither *Johnson* nor *Dimaya* should be relied upon to control our conclusion relating to the propriety of granting Appellee relief on a facial challenge to Section 551.143(a) in a pre-trial setting. Even if *Johnson* and *Dimaya* stand for the proposition that it is no longer necessary to the success of a facial vagueness challenge to establish that the statute is vague in all of its applications, it is still necessary, according to *Hoffman* and *Humanitarian Law Project*, to show that the scope of the statute's vagueness extends to the litigant's own conduct. *See Hoffman*, 455 U.S. at 495 (holding that, in the context of a facial challenge, a "plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"); *Humanitarian Law Project*, 561 U.S. at 20 (holding that this rule applies equally to vagueness claims implicating First Amendment speech).[3] Appellee has not

[3] Dissenting from the Court's judgment in Dimaya, Justice Thomas explained:

> This Court's precedents likewise recognize that, outside the First Amendment context, a challenger must prove that the statute is vague as applied to him. See *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18–19, 130 S.Ct. 2705, 177 L.Ed.2d 355 (2010); *United States v. Williams*, 553 U.S. 285, 304, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008); *Maynard* [*v. Cartwright*], 486 U.S. [356] 361, 108 S.Ct. 1853[, 100 L.Ed.2d 372 (1988)]; *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495, and n. 7, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (collecting cases). *Johnson* did not

made that showing.

Indeed, the fact that Appellee raises his facial claim in a pre-trial proceeding distinguishes this case from both *Johnson* and *Dimaya*. In both of those cases, appeals were taken after a trial court judgment had already been obtained. As a result, the facts underlying those cases were well known and, consequently, the courts were in a position to judge whether the vagueness of the law at issue reached as far as the cases that were presented. Here, in contrast, we address Appellee's claims in a pre-trial posture, not knowing whether the evidence at trial might show that Appellee committed a clear incursion upon the requirements of the law. *Humanitarian Law Project* at least established that

> a plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice. And he certainly cannot do so based on the speech of others.

561 U.S. at 20. Even to the extent that *Johnson* and *Dimaya* might evidence a limitation on the principle that "a statute is void for vagueness only if it is vague in all of its applications," neither of those cases had occasion to examine whether a person challenging a statute's facial constitutionality for vagueness must first establish that the law is vague as applied to his own

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> overrule these precedents. While *Johnson* weakened the principle that a facial challenge requires a statute to be vague "in all applications," 576 U.S., at __, 135 S.Ct. at 2561 (emphasis added), it did not address whether a statute must be vague as applied to the person challenging it. That question did not arise because the Court concluded that ACCA's residual clause was vague as applied to the crime at issue there: unlawful possession of a short-barreled shotgun. See *id.*, at ___, 135 S.Ct., at 2560.

Dimaya, 138 S. Ct. at 1250 (Thomas, J., dissenting)

conduct.[4]

C. Is Section 551.143(a) Either: (1) Vague In All of Its Applications or (2) Vague With Respect to Appellee's Conduct?

Courts are obliged to construe a statutory provision in such a manner as to avoid constitutional infirmity whenever such a reading is at least plausible—even if it is not necessarily the most evident construction. *See, e.g.*, *United States v. Harriss*, 347 U.S. 612, 618 (1954) ("[I]f the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubts might arise. And if this general class of offenses can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction.") (citations omitted); *Johnson v. United States*, 135 S. Ct. at 2578 (Alito, J., dissenting) ("Whether [a constitutional construction] is the *best*

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[4] The Court declares that to force a defendant to demonstrate that a statute is vague as it applies to him in the context of a facial challenge will lead to "a result [that] is illogical." Majority Opinion at 11 n.35. As far as I am concerned, the illogic of the result arises from the fact that the Court allows a facial vagueness challenge to succeed even when the defendant cannot illustrate that the statute is vague in all of its applications. Calling a statute facially unconstitutional on vagueness grounds when there is at least some conduct that it plainly proscribes is, itself, illogical. And to declare that such a statute is essentially a nullity, and can be challenged even in post-conviction habeas corpus proceedings (at least once some other defendant has succeeded in such a challenge)—even by an applicant whose conduct is plainly proscribed—seems the height of illogicality. In this context, as in the First Amendment overbreadth context, I would not recognize the availability of such retroactive application of a "facial" vagueness challenge to provide post-conviction relief. *Cf. Ex parte Fournier*, 473 S.W.3d 789, 803 (Tex. Crim. App. 2015) (Yeary, J., dissenting) ("The windfall that inevitably flows from judicially declaring an overbroad penal provision to be facially unconstitutional need not extend so far as to apply retroactively to grant habeas corpus relief to applicants who have suffered no First Amendment infraction themselves."); *Ex parte Lea*, 505 S.W.3d 913, 916 (Tex. Crim. App. 2016) (Yeary, J., dissenting) (same).

interpretation [of a statute] is beside the point. What matters is whether it is a reasonable interpretation of the statute."). It is certainly possible to construe Section 551.143(a) of the Government Code as definite and specific enough to embrace certain core conduct, even if its application to other "marginal" conduct seems less certain.[5] If construing the statute in this way saves it from a claim of facial invalidity on vagueness grounds, then precedent directs that we should take that approach.

Section 551.143(a) provides:

> A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

Under the plain language of this provision, an offense is shown by evidence that the actor "knowingly conspire[d.]" Black's Law Dictionary defines "conspire" to be to "engage in a conspiracy; to join in a conspiracy." BLACK'S LAW DICTIONARY at 376 (10th ed. 2014). "[C]onspiracy," in turn, is defined as "[a]n agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement[.]" *Id*. at 375.

Just what is the "unlawful act" or "objective" that the actor must knowingly conspire to do before he may be convicted under this provision? He must conspire to "circumvent"

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[5] *See Corwin v. State*, 870 S.W.2d 23, 29 (Tex. Crim. App. 1993) ("That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense.") (quoting *United States v. Petrillo*, 332 U.S. 1, 7 (1947)).

the Open Meetings chapter of the Government Code.[6] Chapter 551 of the Government Code affirmatively requires (with certain exceptions): (1) that government business be transacted in a "meeting" (defined as a "deliberation" involving a "quorum"—that is, a majority—of the governmental body, during which public business or public policy are discussed or considered or during which formal action is taken, TEX. GOV'T CODE §551.001(4) & (6)); (2) that such meetings must be preceded by notice to the public, and must be "open to the public[,]" TEX. GOV'T CODE §§ 551.041 & 551.002; and (3) that such meetings must be duly and fully documented for public consumption by minutes or recording, TEX. GOV'T CODE §§ 551.021 & 551.022.

To be guilty under Section 551.143(a), then, it is necessary for an actor to "knowingly conspire" to "circumvent" these easily identified, manifest requirements of the Open Meetings Act. But that is not all. The actor must also "knowingly conspire" to "circumvent" these requirements of the Open Meetings Act *in a particular way*. The object of the conspiracy must be to circumvent those requirements "by meeting in numbers less than a quorum" and doing so "for the purpose of" conducting "secret deliberations" that would constitute "a violation of this chapter." On its face, this lengthy adverbial phrase does pose

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[6] The dictionary definition of the word "circumvent" carries different shades and gradations of meaning, but the one that is plain from the context of the statute is: "**2:** to overcome or avoid the intent, effect, or force of : anticipate and escape, check, or defeat by ingenuity or stratagem : make inoperative or nullify the purpose or power of esp. by craft or scheme". WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED at 410 (2002). *See also* WEBSTER'S II NEW COLLEGE DICTIONARY at 204 (1999) ("**2.** To overcome by clever maneuvering.").

a certain dilemma. It criminalizes the act of "meeting in numbers less than a quorum[,]" but only "for the purpose of secret deliberations[.]" And yet, Section 551.001(2) defines "deliberation" for purposes of the Open Meetings Act to be a "verbal exchange during a meeting" of the governmental body, and Section 551.001(4) defines a "meeting" to require a quorum of the governmental body. This being the case, for Section 551.143(a) to speak in terms of a "meeting" of *less than a quorum* for the purpose of *deliberations* (secret or otherwise) would seem to be nonsense, a non-sequitur, a paradox—a literal absurdity. If "deliberations" in Section 551.143(a) requires a quorum, how can one deliberate in the presence of less than a quorum?

Here, what may be considered by some to be an absurdity is readily resolved when it is considered in context of the balance of the statutory language and the evident purpose of the overall statutory scheme. It is possible to make perfectly good sense of the statute when we consider that, by use of the qualifier "secret," the Legislature delineated an understanding of "deliberations" slightly different than the definition set out in Section 551.001(2). It is evident enough that the statute is designed to proscribe "verbal exchanges" between members of a governmental body "concerning an issue within the jurisdiction of the governmental body" (or, for that matter, "any public business"), TEX. GOV'T CODE § 551.001(2), that are conducted by a majority of the governmental body—but in a way that is in "secret," so as to avoid the manifest requirements of an actual quorum, an announced and open meeting, and full documentation. *See Acker v. Texas Water Commission*, 790 S.W.2d 299, 300 (Tex. 1990)

("When a majority of a public decisionmaking body is considering a pending issue, there can be no 'informal' discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting.").

Then-Attorney General Greg Abbott construed Section 551.143(a) in a way similar to this, in a 2005 Attorney General Opinion. He reached the same construction of the statute by interpreting "quorum" to reach the concept of a so-called "walking quorum," whereby a majority of a governmental body meets, not all at once, but serially. TEX. ATT'Y GEN. OP. GA-0326, at 2 (2005).[7] By this reasoning, he construed Section 551.143(a) "to apply to members of a governmental body who gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body." *Id*. To illustrate judicial support for this construction, he cited a case that clearly illustrates a violation of Section 551.143(a): *Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Texas 2001). *Id*. at 3. As United States District Judge Orlando Garcia described the offense that occurred in *Esperanza*:

> The Mayor met and spoke with groups of council members of less than a quorum to reach a "concensus"—that is, to arrive at a majority decision on the budget—prior to the formal meeting. The City Manager kept track of the

[7] A previous Attorney General Opinion reached a similar conclusion as early as 1992. *See* TEX. ATT'Y GEN. OP. DM-95, at 4 (1992) ("If a quorum of a governmental body agrees on a joint statement on a matter of governmental business or policy, the deliberation by which that agreement is reached is subject to the requirements of the Open Meetings Act, and those requirements are not necessarily avoided by avoiding the physical gathering of a quorum in one place at one time.").

> number of council members present so that a formal quorum would not be together in his office. The consensus reached was memorialized in the consensus memorandum containing the signatures of each council member, and manifested when the council adopted the budget set forth in the memorandum at the next day's public meeting—a "fiat accompli." A clearer manifestation of intent to reach a decision in private while avoiding the technical requirements of the [Open Meetings] Act can hardly be imagined.

316 F. Supp. 2d at 476–77. I second Judge Garcia's observation that, whatever questions may be raised about the potential reach of Section 551.143(a), there can be little doubt it embraces at least these core facts.

The Court spins a number of hypothetical scenarios in an effort to illustrate a lack of pellucidity at the margins—as if the breadth of application necessarily translates into fatal vagueness. Majority Opinion at 17–22. Many of these scenarios strike me as falling within the plain ambit of the statute as I have construed it, pursuant to our duty to preserve its constitutionality. Others may illustrate arguable incursions upon the statute as I have construed it—depending upon whatever evidence may be offered to establish the requisite intent. And still others seem to me not to violate the statute at all because they do not involve an agreement to circumvent the Open Meetings Act by specifically involving a *majority* of the governing body in "secret deliberations." In any event, I agree with Chief Justice Roberts' observation in *Humanitarian Law Project* that, "[w]hatever force these arguments might have in the abstract, they are beside the point here." 561 U.S. at 22. The statute is susceptible to a construction that would render any number of obvious applications to be clear, and under those circumstances, Appellee should not have been permitted to prevail in a due process

void-for-vagueness attack on its facial validity. Appellee has failed to show that the statute is vague in all of its applications.

Indeed, granting Appellee relief on his First-Amendment-enhanced due process void-for-vagueness argument, when the statute can readily be construed to admit of many valid applications, is to confuse the due-process vagueness analysis with the First Amendment overbreadth doctrine. *See id*. at 19 ("By deciding how the statute applied in hypothetical circumstances, the Court of Appeals' discussion of vagueness seemed to [erroneously] incorporate elements of First Amendment overbreadth doctrine."). And in doing so, the Court essentially grants Appellee relief on overbreadth grounds without inquiring whether he has satisfied his burden to establish an indispensable facet of such a claim—"that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

Finally, even if the Court is correct that it is unnecessary for Appellee to show vagueness in all possible applications of the statute before he may succeed in a facial challenge, we should still deny relief. To assert a successful facial challenge, he must at least show that whatever vagueness infects the statute makes it unclear whether his own conduct is proscribed. *Hoffman*, 455 U.S. at 495; *Humanitarian Law Project*, 561 U.S. at 20. Because the trial court granted Appellee's motion to dismiss in a pre-trial setting, we know nothing

about the State's theory of the case, much less what its evidence may have revealed.[8] For all we know, whatever conduct Appellee engaged in falls within the clear ambit of the statute, whatever its murkiness at the margins. He has not shown otherwise. For this reason, if no other, the trial court erred to grant Appellee's motion to dismiss. The Court errs to reverse the judgment of the court of appeals with respect to Appellee's vagueness claim.

II. THE FIRST AMENDMENT

My construction of the statute also preserves it, I believe, from First Amendment attack. As thus circumscribed, Section 551.143(a) represents a reasonable time, place, or manner restriction upon nonpublic, not public, speech. For this reason, I disagree with Judge Slaughter's conclusion that it must be invalidated as an unconstitutional encroachment upon the free speech rights of public decisionmakers. Moreover, even if I agreed that strict scrutiny represented the appropriate standard for gauging the constitutionality of the statute for First Amendment purposes, I would hold that the legislative will should prevail.

Opinions that delineate the First Amendment restrictions on criminal proscriptions

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[8] The indictment alleges that Appellee violated Section 551.143(a) simply by "engaging in a verbal exchange concerning an issue within the jurisdiction of" the governmental body of which he was a member. *See* Majority Opinion at 2 (quoting the indictment). It did not allege when, where, or with whom (other members?) or how many (less than a quorum at any one time, but ultimately adding up to a quorum?). It is conceivable that he may yet be acquitted, or that he may, even if convicted, mount a successful vagueness-as-applied challenge on direct appeal, depending upon the arguments he makes and the State's evidence at trial. Indeed, if he is convicted on facts that fail to establish a knowing conspiracy to involve a quorum of members in "secret deliberations," he may even challenge the legal sufficiency of the evidence to support his conviction. I express no opinion as to these questions. My only point is that he should not be permitted to bar prosecution on the basis of a pre-trial attack on the facial validity of the statute based on vagueness when the statute is susceptible to an interpretation that would render it plainly applicable to many fact scenarios.

tend to be somewhat *sui generis*. We often find ourselves trying to force the square peg of a new statutory regulation implicating speech within the round hole of prior First Amendment precedent. This is such a case. The United States Supreme Court has not weighed in on the First Amendment implications of open meetings legislation, so we have yet to obtain that Court's guidance as to the appropriate standard to apply.

Judge Slaughter believes that the appropriate standard is strict scrutiny because Section 551.143(a) places criminal restrictions on speech based on its "subject matter," which the Supreme Court has lately identified as "content-based" speech. Concurring Opinion at 20–23 (taking the position that strict scrutiny applies because the statute regulates speech according to it subject matter). For this proposition, she relies upon *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). *Reed* indeed involved the suppression of speech (street signs advertising church services) on the basis not of its message, but simply because of its subject matter. But because it involved speech in a *public* forum, it may not represent the best analogy to open meetings legislation.

Since *Reed* was decided, the Supreme Court has reiterated that the standard for measuring regulations on *nonpublic* speech is different—the so-called nonpublic forum standard, which will tolerate reasonable restrictions based upon time, place, or manner, so long as the restrictions are *viewpoint* neutral. *See Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1885–86 (2018) ("[O]ur decisions have long recognized that the government may impose some content-based restrictions on speech in nonpublic forums[.]"). In *Mansky*,

the issue was whether a state could impose reasonable time, place, and manner restrictions upon political paraphernalia worn within a polling place—a place that, at least for the duration of its function *as a polling place*, was regarded by the Supreme Court as a nonpublic forum. *Id*. at 1886. The Supreme Court therefore held that the nonpublic forum standard applied, even though it nevertheless struck down the specific regulation at issue in *Mansky* as insufficiently precise to satisfy even *that* standard. *Id*. at 1885, 1888–92.

While the fit is not perfect, I would apply the nonpublic forum standard to gauge the First Amendment tolerableness of Section 551.143(a). That the Open Meetings Act regulates only the private speech of governmental body members has previously been recognized. *See Asgeirsson v. Abbott*, 696 F.3d 454, 461 (5th Cir. 2012) ("The prohibition in TOMA is applicable only to private forums and is designed to *encourage* public discussion."). Though it may be "content-based" in contemplation of *Reed*, the Open Meetings Act is plainly viewpoint neutral—it bans "walking quorums" without reference to a governmental body member's particular view of whatever public business he may wish to debate or discuss outside of the Act's requirements. Indeed, as *Asgeirsson* recognized, the Open Meetings Act does not prohibit public speech at all—it requires that the specified speech, regardless of viewpoint, be *conducted* in public. *Id*. As *Asgeirsson* went on to observe, "the requirement to make information public is treated more leniently than are other speech regulations." *Id*. at 463.

As I have construed Section 551.143(a), it constitutes a reasonable time, place, or

manner restriction. "Although there is no requirement of narrow tailoring in a nonpublic forum, the State must [still] be able to articulate some sensible basis for distinguishing what may come in from what must stay out." *Manksy*, 138 S. Ct. at 1888. If we limit our construction of the statute to apply only to the core "walking quorum" conduct, as illustrated by cases such as *Esperanza* and *Hitt v. Mabry*, 687 S.W.2d 791, 793 (Tex. App.—San Antonio 1985, no pet.),[9] then the statute should readily survive a First Amendment attack. *See Boos v. Barry*, 485 U.S. 312, 331 (1988) (holding that a statute challenged under the First Amendment overbreadth doctrine may be saved by a judicial narrowing construction). So construed, it plainly achieves the legitimate policy objectives of open meeting legislation—transparency, public involvement, and anti-corruption—by assuring that the affirmative requirements of the statutory scheme—openness, notice, and documentation of a governmental body's official business—are not thwarted by artifice and stratagem. And it does so without unnecessarily restricting the private speech rights of government body members so long as their private interactions do not rise to the level of knowingly conducting their official business as a governmental body outside the glare of public scrutiny. For this reason, I would hold that Section 551.143(a) constitutes a reasonable time, place, and manner restriction under the nonpublic forum standard.

But, even if I believed that *Reed* identified the appropriate standard by which to

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[9] In *Hitt*, the plaintiff sought to enjoin the school superintendent and president of the Board of Trustees, among others, to prevent them from issuing a letter that had been agreed upon only by virtue of "an informal telephone poll of the Board" without any public meeting. 687 S.W.2d at 793.

measure Section 551.143(a), I would hold that the statute survives strict scrutiny analysis. Like Judge Slaughter, I have no doubt that the interests underlying the Open Meetings Act are compelling ones. Concurring Opinion at 24. The statute, as the reasonable construction I have outlined above would narrow it, would also extend only so far as to serve those compelling interests, and would not otherwise restrict the legitimate private speech of governmental body members. Such members would remain free to discuss among themselves, in whatever numbers they desire, any topic that does not involve "an issue within the jurisdiction of the governmental body or any public business." TEX. GOV'T CODE § 551.001(2). They may even discuss official business among themselves, in numbers less than a quorum, so long as those discussions do not take place as part of a knowing conspiracy ultimately to conduct official business as a de facto quorum without adhering to the affirmative requirements of the Open Meetings Act.

I also do not agree that the imposition of criminal penalties for violations of the act equates to a failure on the part of the Legislature to narrowly tailor its terms. Civil remedies for violations of the act are just that—remedial only. *See* TEX. GOV'T CODE §§ 551.141 & 551.142 (providing that an action taken by a governmental body in violation of the open meeting chapter "is voidable" and that violations may be vindicated by way of mandamus and injunctive remedies). They provide no real disincentive to members of governmental bodies to try to conduct business in secret. The worst that could happen under that type of regime is that civil remedies may be imposed and that efforts to avoid the requirements of

the Open Meetings Act could be thwarted. To provide a true disincentive, the stigma of a criminal penalty is necessary. Besides, the fact that a violation is only a misdemeanor shows that even the criminal penalty has been narrowly tailored. Misdemeanors are the least restrictive criminal stigma available and adequate to do the job. Section 551.143(a) is therefore, in my view, sufficiently narrowly tailored to achieve the State's compelling interests.

III. CONCLUSION

Because the Court strikes down a statute that is plainly salvageable, I respectfully dissent.

FILED: February 27, 2019
PUBLISH

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. PD-0254-18

THE STATE OF TEXAS

v.

CRAIG DOYAL, Appellee

**ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE NINTH COURT OF APPEALS
MONTGOMERY COUNTY**

KELLER, P.J., delivered the opinion of the Court in which KEASLER, HERVEY, RICHARDSON, KEEL, and WALKER, JJ., joined. SLAUGHTER, J., filed a concurring opinion. YEARY, J., filed a dissenting opinion. NEWELL, J., dissented.

A provision of the Texas Open Meetings Act (TOMA) makes it a crime if a member or group of members of a governmental body "knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter."[1] We conclude that this provision is unconstitutionally vague on its face. Consequently, we reverse the

[1] TEX. GOV'T CODE § 551.143(a).

judgment of the court of appeals and affirm the trial court's judgment dismissing the prosecution.

I. BACKGROUND

Appellee was the Montgomery County Judge, and as such, he was a member of the Montgomery County Commissioners Court. He was indicted for violating TOMA's § 551.143, the statute described above. The indictment alleges that Appellee did

> as a member of a governmental body, to wit: the Montgomery County Commissioner's [sic] Court, knowingly conspire to circumvent Title 5 Subtitle A Chapter 551 of the Texas Government Code (hereinafter referred to as the Texas Open Meeting Act), by meeting in a number less than a quorum for the purpose of secret deliberations in violation of the Texas Open Meetings Act, to-wit: by engaging in a verbal exchange concerning an issue within the jurisdiction of the Montgomery County Commissioners Court, namely, the contents of the potential structure of a November 2015 Montgomery County Road Bond.

Appellee filed a motion to dismiss on the basis that § 551.143 was overbroad in violation of the First Amendment and was unconstitutionally vague. The trial court granted the motion and dismissed the indictment.

On appeal, the State contended that the statute did not violate the Constitution. The court of appeals agreed, concluding that the statute did not violate the First Amendment and was not unconstitutionally vague.[2] In response to Appellee's First Amendment claims, the court of appeals held that § 551.143 was a content-neutral law because it was "directed at conduct, *i.e.,* the act of conspiring to circumvent TOMA by meeting in less than a quorum for the purpose of secret deliberations in violation of TOMA."[3] The court further concluded that the strict-scrutiny standard was inapplicable because the prohibition in TOMA "is applicable only to private forums and is

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[2] *State v. Doyal*, 541 S.W.3d 395 (Tex. App.—Beaumont 2018).

[3] *Id.* at 401.

designed to *encourage* public discussion."[4]

With respect to vagueness, the court of appeals concluded that the statutory terms "conspire," "circumvent," and "secret," although undefined, have commonly understood meanings.[5] Relying on an opinion of the Texas Attorney General, the court further concluded that the statute applies to "members of a governmental body who gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body."[6] Under this construction, the court concluded that the statute "describes a criminal offense with sufficient specificity that ordinary people can understand what conduct is prohibited."[7]

Consequently, the court of appeals reversed the trial court's order dismissing the indictment and remanded the case for further proceedings.[8] We granted Appellee's petition for discretionary review, which complained, *inter alia*, that § 551.143 is void for vagueness.[9] We agree that the

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[4] *Id.* (emphasis in *Doyal*).

[5] *Id.* at 402.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Two amicus briefs have been filed in support of Appellee's position that the statute is unconstitutionally vague: (1) on behalf of the Texas Association of School Boards, the Texas Association of School Administrators, and the Texas Council of School Attorneys, and (2) on behalf of the Texas Conference of Urban Counties. A third amicus brief was filed on behalf of the Texas Municipal League, the Texas City Attorneys Association, and the Texas Association of Counties "to inform the Court how city and county officials desperately need guidance as to what they can and cannot do." The Texas Conference of Urban Counties joined in sponsoring that brief and later filed its own brief urging that the statute was unconstitutionally vague. The Texas Attorney General has filed a brief defending the constitutionality of the statute, and the State Prosecuting Attorney has

statute is unconstitutionally vague on its face.

II. ANALYSIS

A. The Statutory Scheme

TOMA generally requires that meetings of a governmental body be open to the public.[10] "Meeting" is defined in two ways, both of which require that a quorum be present:

> (A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or
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> (B) except as otherwise provided by this subdivision, a gathering:
>
> (i) that is conducted by the governmental body or for which the governmental body is responsible;
>
> (ii) at which a quorum of members of the governmental body is present;
>
> (iii) that has been called by the governmental body; and
>
> (iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.[11]

A "quorum" is defined as "a majority of a governmental body, unless defined differently by

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filed a brief defending the constitutionality of the statute with respect to Appellee's overbreadth claim. We have also granted review of vagueness challenges to this statute in *State v. Davenport*, PD-0265-18, and *State v. Riley*, PD-0255-18. *See also State v. Davenport*, No. 09-17-00125-CR, 2018 Tex. App. LEXIS 1044 (Tex. App.—Beaumont February 7, 2018) (not designated for publication) and *State v. Riley*, No. 09-17-00124-CR, 2018 Tex. App. LEXIS 1042 (Tex. App.—Beaumont February 7, 2018) (not designated for publication).

[10] TEX. GOV'T CODE § 551.002 ("Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.").

[11] *Id.* § 551.001(4). The definition also contains some qualifications that we need not detail here. *See id.* (below paragraph (iv)).

applicable law or rule or the charter of the governmental body."[12] "Deliberation" is defined as "a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business."[13]

The main TOMA provision, § 551.144, makes it a crime to engage in conduct that calls, facilitates, or participates in a closed meeting.[14] A "closed meeting" is "a meeting to which the public does not have access."[15]

Appellee was not charged under the main provision though. Instead, he has been prosecuted under, § 551.143, which provides:

> A member or a group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.[16]

B. Implicating the First Amendment

As we shall explain more fully below, more clarity is required of a criminal law when that law implicates First Amendment freedoms.[17] Consequently, we first address whether § 551.143

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[12] *Id.* § 551.002(6).

[13] *Id.* § 551.001(2).

[14] *Id.* § 551.144.

[15] *Id.* § 551.001(1).

[16] *Id.* § 551.143(a).

[17] *Long v. State*, 931 S.W.2d 285, 287-88 (Tex. Crim. App. 1986).

implicates the First Amendment's freedom of speech.[18]

We have recognized that the First Amendment is implicated when the government seeks to impose criminal sanctions on an elected official for communications made in his official capacity.[19] As a Fifth Circuit panel once stated, "[T]he Supreme Court's decisions demonstrate that the First Amendment's protection of elected officials' speech is robust and no less strenuous than that afforded to the speech of citizens in general."[20] The Fifth Circuit decision of *Asgeirsson v. Abbott*, relied upon by the State in the present case, held that TOMA's § 551.144 was "a content-neutral time, place, or manner restriction."[21] Calling a statute a reasonable time, place, or manner restriction is an implicit acknowledgment that some of the activity regulated by the statute is protected speech.[22]

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[18] *See* U.S. CONST. Amend 1 ("Congress shall make no law . . . abridging the freedom of speech"). The First Amendment applies to the states by virtue of the Fourteenth Amendment. *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 638-39 (1943). Because the mere implication of First Amendment freedoms is what triggers a stricter clarity requirement for due process purposes, *see supra* at n. 17, and we ultimately conclude that the statute is unconstitutionally vague, *see infra*, we need not address whether the statute is a content-based restriction or what level of scrutiny might apply in a First Amendment analysis.

[19] *Ex parte Perry*, 483 S.W.3d 884, 911-12 (Tex. Crim. App. 2016).

[20] *Rangra v. Brown*, 566 F.3d 515, 524 (5th Cir.), *vacated as moot en banc*, 584 F.3d 206, 207 (5th Cir. 2009) (discussing *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), *Bond v. Floyd*, 385 U.S. 116 (1966), and *Wood v. Georgia*, 370 U.S. 375 (1962)). *See also Jenevein v. Willing*, 493 F.3d 551, 557-58 (5th Cir. 2007); *Alsworth v. Seybert*, 323 P.3d 47, 57-58 (Alaska 2014).

[21] 696 F.3d 454, 458 (5th Cir. 2012). *See also St. Cloud Newspapers v. District 742 Community Schools*, 332 N.W.2d 1, 7 (Minn. 1983) (upholding Minnesota's Open Meeting Law as "a reasonable regulation of public officials' rights of free speech and association.").

[22] *See McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) ("[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'"). There are situations that are

The State contends that § 551.143 reaches only conduct rather than speech. At oral argument, the State's attorney maintained that the statute punishes the conduct of "meeting" rather than what might be said during that meeting.[23] But both of TOMA's definitions of "meeting" incorporate communications, either through "deliberations," the passing of "information" from one person to another, or the asking of questions. The State contends that these definitions do not control because they define "meeting" as a noun and § 551.143 uses "meeting" as a verb.[24] Even if the State is correct that the definitions are not controlling,[25] the statute does not proscribe "meeting" in the abstract but proscribes a particular kind of meeting—one that is for the purpose of "deliberations." This purpose makes the statutory act of "meeting" communicative, even if the bare fact of meeting would not be so. The Supreme Court has observed that a parade could be non-communicative "[i]f there were no reason for a group of people to march from here to there except to reach a destination"

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covered by the statute that do not implicate the First Amendment, namely the act of voting. *Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 125-27 (2011). But in allowing a restriction if it is a "reasonable time, place, and manner limitation," the Supreme Court has indicated that official advocacy is protected speech. *Id.* at 121-22 (If Carrigan was constitutionally excluded from voting, his exclusion from "'advocat[ing]' at the legislative session was a reasonable time, place, and manner limitation.") (bracketed material in *Carrigan*).

[23] Specifically, the State's attorney argued, "It's actually conduct; it's the meeting that is being addressed by the statute." Seeking clarification of the State's position, Judge Newell asked, "Are you saying the statute criminalizes the act of meeting or what's discussed at the meeting?" The State's attorney responded, "It's the act of meeting; it doesn't criminalize what's discussed in the meeting." Arguably, however, the only act proscribed by the statute is the act of "conspiring," and the language that follows the word "conspires" is simply part of the object of the conspiracy. Under that reading, a meeting must at least be contemplated but need not actually take place. Regardless, the purpose of the contemplated meeting is communicative, as we explain below.

[24] An opinion of the Attorney General agrees with this contention. *See* Tex. Atty Gen. Op. no. GA-0326, heading A, 2005 Tex. AG LEXIS 3737, *5 (May 18, 2005).

[25] It could be argued that the verb "meeting" would be the act of holding a "meeting"— so that the noun definition would inform the meaning of the verb.

but that "[r]eal" parades are in fact "public dramas of social relations" and, as such, are "a form of expression."[26] For the same reason, TOMA's punishment of meeting for the purpose of deliberations reaches speech, and not just conduct.

The State also contends that any speech that is implicated by the statute is unprotected because it constitutes "speech integral to criminal conduct." But the cases that involve this form of unprotected speech involve speech that furthers some other activity that is a crime.[27] Examples of this include picketing designed to coerce a company to sign an illegal contract or solicitation to facilitate a sex crime.[28] The statute before us proscribes activity designed to "circumvent" TOMA, but circumventing TOMA is not a crime apart from § 551.143.[29]

C. Nature of a Facial Vagueness Challenge

We next turn to whether the facial vagueness challenge advanced here requires a showing that there are no possible instances of conduct that it is clear would fall within the statute's

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[26] *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557, 568 (1995).

[27] *See Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 492-93, 497-98 (1949) (picketing to force company to sign an illegal contract); *Ex parte Ingram*, 533 S.W.3d 887, 888-89 (Tex. Crim. App. 2017) (solicitation to facilitate a sex crime).

[28] *See Giboney* and *Ingram*, *supra*.

[29] *See United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (listing "speech integral to criminal conduct" as a category of unprotected speech and observing a long history of prohibiting animal cruelty but not observing any similar tradition with respect to *depictions* of animal cruelty); *Ex parte Perry*, 471 S.W.3d 63, 113-17 (Tex. App.—Austin 2015), *aff'd in part, rev'd in part*, 483 S.W.3d 884 (Tex. Crim. App. 2016) (rejecting contention that certain types of threats proscribed by coercion-of-a-public-servant statute constitute speech integral to criminal conduct —finding that they would be "only if the basic workings of government are considered criminal conduct"); *Gerhart v. State*, 360 P.3d 1194, 1197 (Okla. Crim. 2015) (holding that the defendant's "email did not urge or compel the Senator to violate the law or commit an unlawful act").

prohibitions. If such a showing is required, and if at least one such instance of conduct can be imagined, then we would have to address whether a trial would be needed to develop a record to substantiate an as-applied challenge.[30] In *Long v. State*, we concluded, "[W]hen a vagueness challenge involves First Amendment considerations, a criminal law may be held facially invalid even though it may not be unconstitutional as applied to the defendant's conduct."[31] The Supreme Court more recently suggested that such a conclusion might be incorrect: "Even assuming that a heightened standard applies because the . . . statute potentially implicates speech, the statutory terms are not vague as applied to plaintiffs."[32] But in an even more recent case, *Johnson v. United States*, the Supreme Court stated, "[A]lthough statements in some of our opinions could be read to suggest otherwise, our *holdings* squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp."[33] The Court's

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[30] *See London v. State*, 490 S.W.3d 503, 507-08 (Tex. Crim. App. 2016) ("as applied" challenges generally require fully developed record from a trial). *But see Perry*, 483 S.W.3d at 895-900 (plurality op.) (some types of "as applied" claims are cognizable even on pretrial habeas, including a Separation of Powers claim that involves an infringement on government official's own power).

[31] 931 S.W.2d at 288 (citing *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)).

[32] *Holder v. Humanitarian Law Project*, 561 U.S. 1, 21 (2010).

[33] 135 S. Ct. 2551, 2560-61 (2015) (emphasis in original). *See also Sessions v. Dimaya*, 138 S. Ct. 1204, 1214 n.3 (2018) ("And still more fundamentally, *Johnson* made clear that our decisions 'squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.'"). *See also Johnson*, 135 S. Ct. at 2561 ("If the existence of some clearly unreasonable rates would not save the law in *L. Cohen Grocery*, why should the existence of some clearly risky crimes save the residual clause?"). To follow the reasoning in the immediately preceding *Johnson* parenthetical, we could ask, "Why should the existence of some clearly circumventing behavior save § 551.143?"

At least one lower court has declined to rely on *Humanitarian Law Project* in light of *Johnson*, suggesting that the former has been superseded or is distinguishable in light of the latter. *See Henry v. Spearman*, 899 F.3d 703, 708-09 (9th Cir. 2018). Another lower court has

statements in *Johnson* do not appear to be limited to vagueness challenges that implicate First Amendment freedoms, but to the extent that more clarity is required in the law, those statements would seem to apply with even greater force when First Amendment freedoms are implicated.[34] We

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distinguished *Humanitarian Law Project* on the basis that the case addressed "only whether the statute provide[s] a person of ordinary intelligence fair notice of what is prohibited" and did not address a vagueness challenge under a "standardless enforcement discretion" theory. *Act Now to Stop War & Racism Coal. v. District of Columbia*, 846 F.3d 391, 409-10 (D.C. Cir. 2017) (quoting *Humanitarian Law Project*, 561 U.S. at 20). Consistent with the D.C. Circuit's holding, Justice Gorsuch emphasized, in his concurrence in *Dimaya*, the danger of the legislature using a vague law to delegate responsibility for prescribing criminal law standards to the courts, the prosecutors, and the police: "[I]t comes clear that legislators may not abdicate their responsibilities for setting the standards of the criminal law by leaving to judges the power to decide the various crimes includable in a vague phrase. . . .Vague laws also threaten to transfer legislative power to police and prosecutors, leaving to them the job of shaping a vague statute's contours through their enforcement decisions. . . . Under the Constitution, the adoption of new laws restricting liberty is supposed be a hard business, the product of an open and public debate among a large and diverse number of elected representatives." 138 S. Ct. at 1227-28 (Gorsuch, J., concurring) (citations and internal quotation marks omitted).

The present case implicates the "insufficient guidelines for law enforcement" theory of vagueness that the D.C. Circuit concluded was exempt from the pronouncements in *Humanitarian Law Project* because the "circumvents" language of the statute leaves the job of shaping the meaning of the statute to entities such as the Attorney General's office, individual prosecutors, and police officers. Relevant to the law-enforcement theory of vagueness may be the fact that this case is like *Johnson* and *Dimaya* in that it involves abstract elements within a catch-all provision. *See Johnson*, 135 S. Ct. at 2555-56 (residual nature of provision in *Johnson*); *infra* at nn.46-48 and accompanying text (abstract nature of statutes in *Johnson* and *Dimaya*). To the extent that the pronouncements in *Humanitarian Law Project* can be construed to apply only to the "lacking fair notice to a person of ordinary intelligence" theory of vagueness, being "insufficiently definite to avoid chilling protected expression" may constitute another theory of vagueness exempt from those pronouncements. In any event, *Johnson* and *Dimaya* are more recent than *Humanitarian Law Project*, and while these more recent cases did not explicitly mention *Humanitarian Law Project*, *Johnson* did refer to and disavow "statements in some of our opinions"—without naming those opinions—and so appears to have disavowed all prior conflicting opinions to the extent of any conflict.

[34] *See supra* at n.33 (discussing implications of D.C. Circuit's view in *Act Now to Stop War & Racism Coal.*). *See also Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 494-95 (1982) ("The court should then examine the facial vagueness challenge and, *assuming the enactment implicates no constitutionally protected conduct*, should uphold the challenge only if the enactment is impermissibly vague in all of its applications. A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.")

conclude that a facial vagueness challenge to a statute that implicates First Amendment freedoms does not require a showing that there are no possible instances of conduct clearly falling within the statute's prohibitions.[35] What is required to establish a facial vagueness violation is addressed below.

D. Vagueness

1. *Standard*

To pass constitutional muster, a law that imposes criminal liability must be sufficiently clear (1) to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and (2) to establish determinate guidelines for law enforcement.[36] When the law also implicates First Amendment freedoms, it must also be sufficiently definite to avoid chilling protected expression.[37]

(emphasis added). There is at least some tension between the dissent's conclusion that *Johnson* did not supersede certain pronouncements in *Holder* and its assumption that *Holder* superseded the above-emphasized language in *Hoffman*.

[35] The dissent contends that a defendant ought to still be required to show that a statute is vague as to him, after a trial of the case, even if the statute is facially unconstitutional for vagueness under the principles articulated in *Johnson*. But the whole point of the concept of a statute being unconstitutional on its "face" is that the facts of a litigant's particular case are immaterial; the statute is invalid as to everyone. We have explicitly recognized that a facially unconstitutional statute is "void from its inception" and "considered no statute at all." *Smith v. State*, 463 S.W.3d 890, 895 (Tex. Crim. App. 2015). Although we have held that untimely facial challenges can be forfeited, once a statute is declared facially unconstitutional, "it is as if it had never been," *id.*, and can be challenged even by way of post-conviction habeas corpus. *Ex parte Lea*, 505 S.W.3d 913, 914-15 (Tex. Crim. App. 2016). So even a person who fails to raise a facial challenge in a timely fashion could obtain relief once a facial challenge raised by someone else is successful. *See Smith*, 464 S.W.3d at 893. The position taken by the dissent would result in denying a *timely* raised facial challenge even though, under our precedent, the defendant could eventually obtain relief if the law were declared facially unconstitutional in someone else's case. Such a result is illogical.

[36] *Grayned v. Rockford*, 408 U.S. 104, 108-09 (1972); *Long*, 931 S.W.2d at 287.

[37] *Grayned*, *supra* at 109; *Long*, *supra*.

Greater specificity is required when First Amendment freedoms are implicated because "uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas are clearly marked."[38] Nevertheless, "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity."[39] A scienter requirement in the statute may sometimes alleviate vagueness concerns[40] but does not always do so.[41]

What renders a statute vague is the "indeterminacy of precisely what" the prohibited conduct is.[42] Statutes have been struck down as vague when they tied the defendant's criminal culpability to conduct that was "annoying" or "indecent" because those terms encompassed "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings."[43] The Supreme Court has also found a statute to be void for vagueness when it prohibited the charging of an "unjust or unreasonable rate," without further defining what "unjust or unreasonable" in this context meant.[44] And in a First Amendment case involving concerns about the indeterminacy of a law, the Court has struck down a statute that prohibited the wearing of a "political badge, political

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[38] *Grayned*, *supra*; *Long*, *supra* at 288.

[39] *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1891 (2018) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989)).

[40] *McFadden v. United States*, 135 S. Ct. 2298, 2307 (2015); *Humanitarian Law Project*, 561 U.S. at 21.

[41] *Long*, 931 S.W.2d at 288, 289, 293. *See also Perry v. S.N.*, 973 S.W.2d 301, 308 n.8 (Tex. 1998) ("a statute may require scienter and yet fail to define clearly the prohibited conduct").

[42] *United States v. Williams*, 553 U.S. 285, 306 (2008).

[43] *Id.* (citing *Coates v. Cincinnati*, 402 U.S. 611 (1971) and *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997)).

[44] *Johnson*,135 S. Ct. at 2561 (citing *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921)).

button, or other political insignia" when "political" was not defined and had been haphazardly construed by the state courts.[45]

In *Johnson*, and in the subsequent case of *Dimaya*, the Supreme Court found "hopeless indeterminacy" in statutes that required a judge to determine whether the "ordinary case" of a particular statutory offense posed a "serious potential risk" of physical injury or "substantial risk" of physical force.[46] The Court characterized this as the application of a"qualitative standard" of risk assessment to the "judge-imagined abstraction" of an "idealized ordinary case of the crime."[47] The Court criticized this sort of assessment for not being tied to "real-world facts or statutory elements."[48]

2. *Application*

We conclude that the statute before us is vague in much the same way as the statutes in *Johnson* and *Dimaya*. Like those statutes, the statute before us is hopelessly indeterminate by being too abstract. As we shall see, the statute has little in the way of limiting language and notably lacks language to clarify its scope.

An offense is committed under § 551.143 if a member or group of members of a governmental body "knowingly conspires to circumvent this chapter by meeting in numbers less

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[45] *Mansky*, 138 S. Ct. at 1888. Although the issue ostensibly before the Supreme Court in *Mansky* was whether the Minnesota law violated the Free Speech Clause of the First Amendment, *id.* at 1882, the Court based its holding on the "indeterminate scope of the political apparel provision," *id.* at 1889, and the fact that the Minnesota law was not "capable of reasoned application," *id.* at 1892, which makes it sound like a vagueness holding.

[46] *Dimaya*, 138 S. Ct. at 1211, 1213-14, 1215-16; *Johnson*, 135 S. Ct. at 2555-56, 2557-58, 2561.

[47] *Dimaya*, *supra* at 1215-16; *Johnson*, *supra* at 2558, 2561.

[48] *Johnson*, *supra* at 2257. *See also Dimaya*, *supra* at 1213-14, 1215.

than a quorum for the purpose of secret deliberations in violation of this chapter."[49] Viewed in isolation, the phrase "less than a quorum" could seem to serve a limiting function by carving out a subset of fact situations to which the statute applies, but an examination of this language in light of TOMA as a whole shows otherwise. Aside from the statute at issue here, TOMA's public-meeting provisions apply only when a governmental body meets as a "quorum."[50] In specifying that an offense is committed when members meet in "less than a quorum," § 551.143 signifies a residual or catch-all provision, designed to enlarge TOMA's reach.[51] Because the phrase "numbers less than a quorum" is catch-all language that expands the reach of TOMA, it does not serve a limiting function in the statute.

The words "meeting" and "deliberation" are defined in TOMA, but both definitions require a quorum,[52] which seems to contradict § 551.143's use of these words in connection with the phrase "less than a quorum." As we explained earlier, the State claims that the definition of "meeting" is inapplicable because the definition is of "meeting" as a noun while § 551.143 uses the word as a verb. Even if we accept the State's contention in that regard, "deliberation" is used in § 541.143 as

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[49] TEX. GOV'T CODE § 551.143(a).

[50] *See e.g. id.* §§ 551.001, 551.144.

[51] *See Ex parte Thompson*, 442 S.W.3d 325, 348-49 (Tex. Crim. App. 2014) (construing phrase "not a bathroom or private dressing room" in § 21.15(b)(1) of the then-existing improper-photography statute and contrasting it with § 21.15(b)(2), which proscribed visual recording "at a location that is a bathroom or private dressing room"—"By its very wording negating the 'bathroom or private dressing room' element, the provision before us, § 21.15(b)(1), was designed as a catch-all, to reach other situations in which photography and visual recordings ought to be prohibited.").

[52] *See id.* § 551.001(2), (4).

the same part of speech—a noun—for which it is defined.[53] In any event, applying the statutory definitions literally to these words as they appear in § 551.143 would result in an internally inconsistent statute, so the definitions cannot serve to limit or clarify that provision.

Likewise, the words "in violation of this chapter" cannot also be construed literally because, aside from § 551.143, TOMA applies only when there is a quorum. If the requisite violation of TOMA requires meeting in a quorum and the person does not contemplate meeting in a quorum, then the person cannot literally have the purpose of violating TOMA.

The word "secret" indicates that § 551.143, like other parts of TOMA, is aimed at preventing meetings that are not open to the public. As such, the word serves a limiting function but, given the wide array of possible interactions between public officials, is not sufficient by itself to supply the requisite clarity to the statute.

What remains is probably the crucial part of the statute: "knowingly conspires to circumvent this chapter." In the past, the Supreme Court has warned against the potential breadth and vagueness of the doctrine of conspiracy and of the need to restrict its application.[54] A conspiracy to violate a

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[53] Moreover, because "deliberation" is defined as occurring during "a meeting," and uses "meeting" as a noun, it would seem to incorporate the statutory definition of "meeting." *See id.* § 551.001(2).

[54] *Grunewald v. United States*, 353 U.S. 391, 402 (1957) ("Prior cases in this Court have repeatedly warned that we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions. The important considerations of policy behind such warnings need not be again detailed.") (citing *Krulewitch v. United States*, 336 U.S. 440 (1949) (Jackson, J., concurring)). *See also Krulewitch*, *supra* at 446-48 (Jackson, J., concurring) ("The modern crime of conspiracy is so vague that it almost defies definition. Despite certain elementary and essential elements, it also, chameleon-like, takes on a special coloration from each of the many independent offenses on which it may be overlaid. It is always 'predominantly mental in composition' because it consists primarily of a meeting of minds and an intent.").

law[55] would not ordinarily present a vagueness problem. But a conspiracy to "circumvent" a law is another matter.

What does it mean to "circumvent" a law? The court of appeals concluded that "circumvent" means "to overcome or avoid the intent, effect, or force of: anticipate and escape, check, or defeat by ingenuity or stratagem: make inoperative or nullify the purpose or power of esp. by craft or scheme."[56] We accept that definition, but it does not really answer the question. What constitutes "avoiding or overcoming" the effect of the law or "nullifying the purpose" of the law? Consistent with our observation regarding other portions of § 551.143, the "circumvent" language necessarily requires something other than a literal violation of some other provision of TOMA. But proscribing a non-literal violation of TOMA does not set forth a clear standard. That is true even with the culpable mental state of "knowing." If it is unclear what it means to circumvent a law, one cannot "know" that he is circumventing the law.

And that is what makes this case like *Johnson* and *Dimaya*. Like the statutes in those cases, the statute in this case is hopelessly abstract. The present statute does not focus on real-world conduct other than catch-all conduct that expands the scope of TOMA. And § 551.143 does not focus on the elements of some other offense in TOMA. Rather, § 551.143 imposes criminal punishment for doing something that conflicts with the purpose of TOMA. It requires a person to envision actions that are like a violation of TOMA without actually being a violation of TOMA and refrain from engaging in them.

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[55] *See e.g.* TEX. PENAL CODE § 15.02.

[56] *Doyal*, 541 S.W.3d at 402 (citing WEBSTER'S THIRD INTERNATIONAL DICTIONARY 410 (2002)).

The statutory language here requires a sort of extratextual-factor inquiry that is unmoored to any statutory text. Ordinarily, we are limited to the text in construing a statute, but we have latitude to address extratextual factors when a statute is ambiguous or the literal text would lead to absurd results.[57] Extratextual factors can include the object of the legislation and the consequences of a particular construction.[58] Language that appears vague on its face "may derive much meaningful content from the purpose of the Act, its factual background, and the statutory context."[59] However, even when a statute is ambiguous, it is ordinarily because the actual text is reasonably susceptible to more than one interpretation.[60] It is one thing to use extratextual factors to help determine which of two or more competing interpretations of the text is probably the right one. It is quite another to engage in a free-floating extratextual inquiry to determine what a statute probably means. Even assuming that we could engage in the latter sort of inquiry under some circumstances, we could not do so for a statute that proscribes a criminal offense and that implicates protected expression under the First Amendment.

The State contends, however, that there is only one possible interpretation of the statute, and that it is the interpretation found in a 2005 attorney general opinion. That attorney general opinion concluded that § 551.143 applied to "members of a governmental body who gather in numbers that

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[57] *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

[58] *Oliva v. State*, 548 S.W.3d 518, 521-22 (Tex. Crim. App. 2018).

[59] *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 593 (1985).

[60] *See Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018) (Doctrine of constitutional avoidance "permits a court to "choos[e] between competing *plausible* interpretations of a statutory text.") (emphasis in *Jennings*); *Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013) ("A statute is ambiguous when the language it employs is reasonably susceptible to more than one understanding.").

do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body."[61] The attorney general opinion referred to this as "a daisy chain of members the sum of whom constitute a quorum" or a "walking quorum."[62]

Even if the statute could be limited to a "daisy chain" of meetings or a "walking quorum," there are a number of different ways in which those concepts could be defined, and there is disagreement on whether certain situations qualify. A Louisiana court of appeals has described a "walking quorum" as a meeting "where different members leave the meeting and different members enter the meeting so that while an actual quorum is never physically present an actual quorum during the course of the meeting participates in the discussion."[63] The Wisconsin Court of Appeals described a "walking quorum" as "a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum."[64] The Supreme Court of Ohio found an improper game of "legislative musical chairs" when a city manager called three series of back-to-back non-quorum meetings with groups of council members."[65] A California appellate court concluded that one-on-one telephone calls with members of the governing body would suffice if the calls were essentially

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[61] Tex. Atty Gen. Op. no. GA-0326, 2005 Tex. AG LEXIS 3737, at *6.

[62] *Id.* at *6, 12.

[63] *Mabry v. Union Parish School Board.*, 974 So. 2d 787, 789 (La. App. 2 Cir. 2008).

[64] *State ex rel. Zecchino v. Dane County*, 380 Wis. 2d 453, 460-61, 909 N.W.2d 203, 207 (Wis. App. 2018).

[65] *State ex rel. Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 541, 543-44, 668 N.E.2d 903, 904, 906 (1996).

a poll to arrive at the collective agreement of the governing body.[66] Hawaii's intermediate appellate court has held that "a series of one-on-one conversations relating to a particular item of Council business" circumvented the spirit of the state's open meeting law.[67]

Nevada's Supreme Court has held, however, that a "constructive quorum" is not necessarily established by back-to-back briefings conducted with agency members, that, taken as a whole, would add up to a quorum.[68] That court further concluded that, in the absence of a quorum, it was not improper for members of a public body to "privately discuss issues or even lobby for votes."[69] And Montana's Supreme Court declined to adopt a "constructive quorum" rule that would encompass "serial one-on-one discussions."[70]

Although these cases involve a variety of statutory schemes,[71] their various conclusions point to the fact that there can be different ideas about what constitutes a "walking" or "constructive" quorum. Those ideas range from the narrow conception articulated by the Louisiana court of appeals—a single meeting at which a quorum is defeated by the mere expediency of different

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[66] *Stockton Newspapers v. Redevelopment Agency*, 171 Cal. App. 3d 95, 103, 214 Cal. Rptr. 561, 565 (1985).

[67] *Right to Know Comm. v. City Council*, 117 Haw. 1, 12, 175 P.3d 111, 122 (Haw. App. 2008).

[68] *See Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 98-99, 64 P.3d 1070, 1077-78 (2003) (more would be required, "such as polling or collective discussions designed to reach a decision").

[69] *Id.* at 96 (quoting *Del Papa v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778 (1998)).

[70] *Willems v. State*, 374 Mont. 343, 350, 325 P.3d 1204, 1209 (2014).

[71] *See supra* at nn.63-70.

members stepping out of the room for a period of time—to the broad conception articulated by Hawaii's intermediate court—to include serial one-on-one communications with enough members to reach a quorum.

A broad view of what constitutes a "walking quorum" would constrain one-on-one lobbying for votes or even one-on-one discussions. Suppose a person is a member of a nine-member board, and he wishes a certain rule to be adopted, and he approaches another board member one-on-one to lobby that member to vote for his preferred rule. A discussion between two board members is not enough to make a quorum. But if the person then repeats that procedure with three other board members, individually approaching each one at different times, he has now approached a total of four members, which, with himself, constitutes a majority of the board. Whether that constitutes a "walking quorum" depends on how broad the concept really is. Under the "circumvents" language of § 551.143, this could be illegal, but it's not certain that it is.

But the "circumvents" language potentially sweeps even more broadly. If lobbying other members to achieve a majority vote is a "circumvention" under § 551.143, it may not even be necessary for a member to actually communicate with a majority-forming number[72] of the members. Suppose, in the nine-member-board hypothetical, that the member who wants a certain rule passed knows that one of the other members already intends to vote for the rule. To get a majority vote for his preferred rule, the first member need only persuade three other members. If he lobbies those three members, he has not communicated with a quorum, but his purpose is to ensure that a majority—which is a quorum—votes his way.

Suppose, instead, that the member who wants a certain rule passed knows that three other

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[72] A majority if the lobbying member is included.

members already intend to vote for the rule. To get a majority, he need persuade only one other member. He communicates with only that one member in an attempt to sway that person's vote. The purpose of his communication is still to ensure that a majority—again a quorum—votes his way. To the protest that this scenario strays beyond any recognized concept of "walking quorum," the answer is that, contrary to the State's contention and the Attorney General's opinion, the "circumvents" language in § 551.143 is not necessarily limited by the concept of a "walking quorum." If lobbying other members to get a majority vote circumvents TOMA, then lobbying even a single member of a more-than-three-member board could do so.[73]

But it gets worse, because the "circumvents" language can conceivably reach even further. Suppose, in the nine-member board hypothetical, that seven of the members have decided how they will vote on the rule at issue, with the vote split four to three. The two remaining undecided members discuss the issue between themselves to decide how they stand on it. That discussion could be viewed as a circumvention because the two undecided members hold the votes that would resolve the issue one way or another.

What if one member knows enough about other members to be reasonably sure how they will vote on a given issue, even if they have not yet expressed their thoughts? How sure does one have to be that communicating with another member will ultimately be decisive on a matter of official business before one runs afoul of the law? And the net that the word "circumvents" casts may be even wider. If part of the purpose of having an open meeting is for the public to see all of the information received by the public officials, then receiving information in a one-on-one session

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[73] Obviously, for a three member board, any conversation between two members would be in a quorum.

might itself be viewed as a "circumvention" of TOMA. All of this discussion reinforces our conclusion that the language in § 551.143 is potentially very broad and lacks any reasonable degree of clarity on what it covers. We also conclude that protected speech is likely to be chilled because of the great degree of uncertainty about what communications government officials may engage in.

E. Narrowing Construction

We have a duty to employ a reasonable narrowing construction to avoid a constitutional violation, but we can employ such a construction only if the statute is readily susceptible to one.[74] We may not rewrite a statute that is not subject to a narrowing construction, because such a rewriting "constitutes a serious invasion of the legislative domain."[75] A statute is readily subject to a narrowing construction only "if the language already in the statute can be construed in a narrow manner. Adding language to a statute is legislating from the bench."[76] Even when faced with a vague statute, we will not impose a narrowing construction when one "would add significant content not now present in the statute and could be fashioned in a number of different ways."[77] In considering a narrowing construction, we should take into account that vague laws, even when not overtly invidious, "invite the exercise of arbitrary power . . . by leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up."[78]

We do not doubt the legislature's power to prevent government officials from using clever

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[74] *Perry*, 483 S.W.3d at 903.

[75] *State v. Johnson*, 475 S.W.3d 860, 872 (Tex. Crim. App. 2015).

[76] *State v. Markovich*, 77 S.W.3d 274, 285 (Tex. Crim. App. 2002) (Keasler, J., dissenting).

[77] *Long*, 931 S.W.2d at 296.

[78] *Dimaya*, 138 S. Ct. at 1223-24 (Gorsuch, J., concurring).

tactics to circumvent the purpose and effect of the Texas Open Meetings Act. But the statute before us wholly lacks any specificity, and any narrowing construction we could impose would be just a guess, an imposition of our own judicial views. This we decline to do.

F. Conclusion

In light of the above discussion, we conclude that § 551.143 is unconstitutionally vague on its face. We reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Delivered: February 27, 2019

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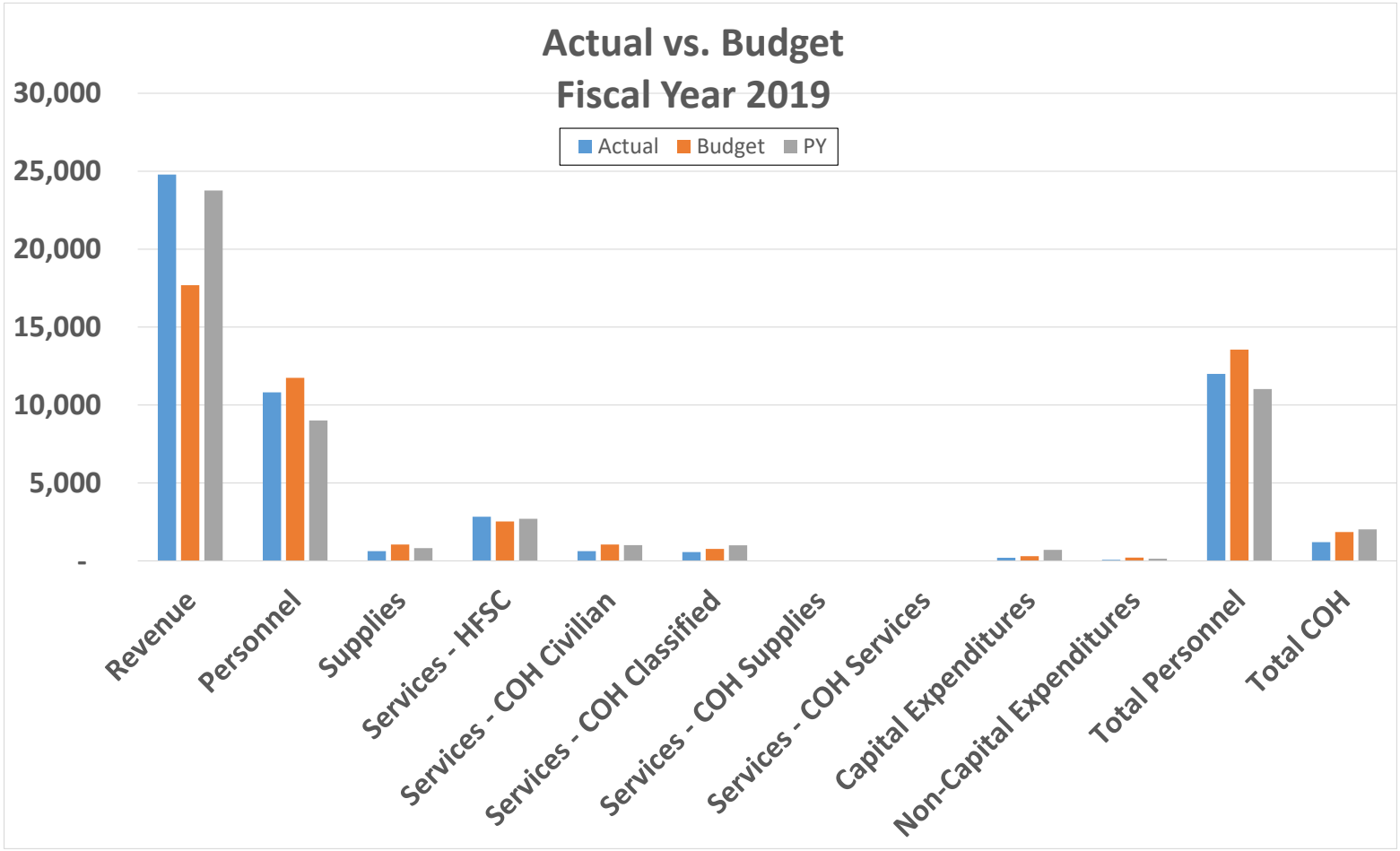

Actual vs. Budget
Fiscal Year 2019
Actual
Budget
PY
30,000
25,000
20,000
15,000
10,000
5,000
-
Revenue
Personnel
Supplies
Services - HFSC
Services - COH Civilian
Services - COH Classified
Services - COH Supplies
Services - COH Services
Capital Expenditures
Non-Capital Expenditures
Total Personnel
Total COH

HOUSTON FORENSIC SCIENCE CENTER, INC.
COMPARATIVE STATEMENT OF ACTIVITIES - ACCRUAL BASIS
For the Period July 1, 2018 through February 28, 2019

		Current Month (Preliminary)							YTD							FY19	
		FY19	FY19	FY18	Variance				FY19	FY19	FY18	Variance				FY19	% Year
		Feb 2019	Budget	Feb 2018	Budget - Actual	%	FY19 - FY18	%	July 1-Feb 28, 2019	Budget	July 1- Feb 28, 2018	Vs. Budget	%	Vs. FY18	%	Budget V2	Completed
			# of Months							# of Months							
			1							8							
Revenues:																	
411000	City of Houston-Appropriations	$ 664	$ 2,013	$ 1,810	$ (1,349)	-67%	$ (1,146)	-63%	$ 23,496	$ 16,107	$ 22,351	$ 7,389	46%	$ 1,146	5%	$ 24,160	97%
415000	City of Houston Direct OH-Appro	122	122	122	-	0%	-	0%	973	973	973	-	0%	-	0%	1,460	67%
416000	City of Houston - Safe funds	-	-	-	-	0%	-		-	-	-	-	0%	-	0%	-	0%
420000	Contributions	-	1	-	(1)	0%	-		7	6	8	2	0%	(1)	-12%	8	88%
425000	In-Kind Donations	-	-	-	-	0%	-		-	-	34	-	0%	(34)	-100%	-	0%
426000	Training Services	-	0	-	(0)	0%	-		7	3	5	3	0%	2	34%	5	135%
440000	Grants	10	74	16	(64)	-87%	(6)	-39%	289	593	362	(305)	-51%	(73)	-20%	890	32%
450000	Forensic Services	-	1	1	(1)	-100%	(1)	-100%	7	6	21	2	28%	(13)	-65%	9	85%
450001	Miscellaneous Copy Fees	-	-	-	-	0%	-		-	-	-	-	0%	-	0%	-	0%
450002	Interest Income	0	0	0	0	29%	0	17%	4	3	4	2	76%	1	16%	4	117%
Total Income		796	2,211	1,949	(1,415)	-64%	(1,153)	-59%	24,784	17,691	23,758	7,093	40%	1,027	4%	26,536	93%
Expenses:																	
	Personnel:																
500010	Salary Base - Civilian	1,102	1,187	780	85	7%	(322)	-41%	8,758	9,492	7,297	734	8%	(1,462)	-20%	14,238	62%
501070	Pension - Civilian	63	66	58	3	4%	(5)	-8%	486	528	429	43	8%	(57)	-13%	793	61%
502010	FICA - Civilian	81	86	58	5	6%	(24)	-41%	634	690	526	56	8%	(109)	-21%	1,035	61%
503010	Health Insurance - Active Civil	96	111	84	15	13%	(13)	-15%	780	889	650	109	12%	(129)	-20%	1,333	58%
503015	Basic Life Ins - Active Civil	10	10	9	(0)	-3%	(1)	-15%	83	80	55	(3)	-3%	(27)	-49%	120	69%
503060	Long Term Disability - Civilian	-	-	-	-	0%	-		-	-	-	-	0%	-	0%	-	0%
503090	Workers Comp - Civilian Adm	4	7	3	3	41%	(1)	-16%	33	52	32	19	36%	(2)	-6%	78	43%
503100	Workers Comp - Civil Claims	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
504030	Unemployment Claims - Admin	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
504010	Pension - GASB 27 Accrual	-	-	-	-		-		-	-	0	-	0%	0	0%	-	0%
504031	Unemployment Taxes - Admin	12	1	11	(11)	-964%	(1)	-9%	38	9	26	(29)	-325%	(12)	-47%	13	283%
		1,369	1,468	1,003	99	7%	(366)	-36%	10,812	11,740	9,014	929	8%	(1,798)	-20%	17,610	61%
	Supplies:																
511010	Chemical Gases & Special Fluids	-	1	0	1	100%	0	100%	12	9	7	(2)	-24%	(4)	-61%	14	83%
511040	Audio Visual Supplies	-	-	-	-	100%	-		-	-	-	-	0%	-	0%	-	0%
511045	Computer Supplies	0	3	(2)	3	100%	(2)		8	26	9	18	71%	2	19%	39	19%
511050	Paper & Printing Supplies	0	2	0	2	81%	(0)	-361%	18	17	14	(2)	-10%	(4)	-28%	25	74%
511055	Publications & Printed Material	1	1	0	0	26%	(1)	-228%	3	9	6	6	64%	3	47%	14	24%
511060	Postage	-	0	0	0	100%	0	100%	0	1	1	0	55%	0	44%	1	30%
511070	Miscellaneous Office Supplies	3	7	5	5	64%	2	48%	58	60	58	2	4%	1	2%	90	64%
511080	General Laboratory Supply	125	107	30	(17)	-16%	(95)	-322%	495	859	667	364	42%	171	26%	1,289	38%
511090	Medical & Surgical Supplies	-	0	-	0	100%	-		-	1	-	1	100%	-	0%	1	0%
511095	Small Technical & Scientific Eq	-	1	0	1	100%	0	100%	2	5	2	3	59%	0	11%	8	28%
511110	Fuel	-	0	-	0	100%	-		-	0	-	0	0%	-	0%	0	0%
511120	Clothing	(0)	3	0	3	106%	0	481%	3	23	27	20	86%	24	88%	34	9%
511125	Food/Event Supplies	-	1	0	1	100%	0	100%	14	10	9	(4)	-46%	(5)	-61%	14	98%
511130	Weapons Munitions & Supplies	-	1	-	1	100%	-		4	6	2	2	32%	(2)	-122%	9	45%
511145	Small Tools & Minor Equipment	-	2	1	2	100%	1	100%	1	12	10	11	90%	9	88%	18	7%
511150	Miscellaneous Parts & Supplies	1	1	0	0	17%	(1)	-4076%	10	10	9	(0)	0%	(2)	-19%	15	67%
		129	131	34	1	1%	(95)	-280%	629	1,048	822	418	40%	193	23%	1,572	40%

HOUSTON FORENSIC SCIENCE CENTER, INC.
COMPARATIVE STATEMENT OF ACTIVITIES - ACCRUAL BASIS
For the Period July 1, 2018 through February 28, 2019

		Current Month (Preliminary)							YTD							FY19	
		FY19	FY19	FY18	Variance				FY19	FY19	FY18	Variance				FY19	% Year
		Feb 2019	Budget	Feb 2018	Budget - Actual	%	FY19 - FY18	%	July 1-Feb 28, 2019	Budget	July 1- Feb 28, 2018	Vs. Budget	%	Vs. FY18	%	Budget V2	Completed
	Services:																
520100	Temporary Personnel Services	-	-	10	-		10	100%	2	-	10	(2)	0%	8	78%	-	0%
520105	Accounting & Auditing Svcs	5	3	2	(2)	-55%	(2)	-86%	29	24	24	(5)	-21%	(4)	-18%	36	81%
520106	Architectural Svcs	-	4	-	4	100%	-		-	33	-	33	0%	-	0%	50	0%
520107	Computer Info/Contracting Svcs	-	2	-	2	100%	-		4	13	0	9	67%	(4)	-40338%	20	22%
520109	Medical Dental & Laboratory Ser	173	7	7	(166)	-2344%	(166)	-2415%	240	57	39	(184)	-324%	(202)	-524%	85	283%
520110	Management Consulting Services	27	10	5	(17)	-172%	(22)	-444%	134	80	265	(54)	-68%	130	49%	120	112%
520112	Banking Services	0	0	0	0	19%	0	30%	3	2	2	(1)	-47%	(1)	-52%	3	98%
520113	Photographic Services	-	0	-	0	100%	-		-	0	-	0	100%	-	0%	1	0%
520114	Misc Support Serv Recruit Relo	0	10	3	9	96%	3	88%	21	79	82	58	73%	61	74%	118	18%
520115	Real Estate Rental	88	84	49	(3)	-4%	(39)	-79%	693	674	640	(19)	-3%	(53)	-8%	1,011	69%
520118	Refuse Disposal	6	1	-	(5)	-462%	(6)		18	9	1	(9)	-95%	(17)	-2001%	14	130%
520119	Computer Equip/Software Maint.	84	63	85	(21)	-33%	0	1%	655	506	746	(149)	-29%	91	12%	760	86%
520121	IT Application Services	-	8	5	8	100%	5	100%	48	68	61	20	30%	14	0%	102	47%
520123	Vehicle & Motor Equip. Services	-	0	-	0	100%	-		-	2	-	2	100%	-	0%	3	0%
520124	Other Equipment Services	10	21	16	11	52%	6	38%	168	166	89	(1)	-1%	(78)	-88%	250	67%
520143	Credit/Bank Card Svcs	-	0	-	0	100%	-		0	0	0	0	79%	0	76%	0	14%
520145	Criminal Intelligence Services	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
520520	Printing & Reproduction Serv.	-	1	-	1	100%	-		6	8	3	2	25%	(3)	-85%	12	50%
520605	Public Information Svcs	-	2	-	2	100%	-		7	12	2	5	41%	(5)	-266%	18	39%
520705	Insurance (Non-Medical)	10	9	8	(1)	-11%	(2)	-31%	78	72	70	(6)	-8%	(8)	-11%	108	72%
520760	Contributions	-	-	-	-		-		-	-	-	-		-	0%	-	0%
520765	Membership & Prof. Fees	2	2	2	0	21%	0	16%	17	17	11	(0)	-3%	(6)	-51%	25	69%
520805	Education & Training	23	16	18	(7)	-43%	(4)	-24%	122	126	101	4	3%	(21)	-21%	189	64%
520815	Tuition Reimbursement	-	4	-	4	100%	-		14	31	29	17	55%	15	52%	46	30%
520905	Travel - Training Related	2	15	12	13	89%	10	87%	104	120	106	16	14%	2	2%	180	58%
520910	Travel - Non-training Related	1	1	0	0	25%	(1)	-262%	11	10	4	(1)	-11%	(7)	-161%	15	74%
521405	Building Maintenance Services	4	2	1	(2)	-102%	(3)	-353%	9	17	20	8	49%	12	58%	25	34%
521505	Utilities	0	0	0	0	26%	0	21%	3	3	3	(0)	-14%	0	0%	4	76%
521605	Data Services	13	13	8	(1)	-5%	(6)	-74%	145	102	32	(43)	-42%	(113)	-351%	153	95%
521610	Voice Services, Equip & Labor	1	6	8	5	79%	7	85%	21	46	41	26	55%	20	49%	69	30%
521705	Vehicle/Equipment Rental/Lease	-	0	-	0	100%	-		0	0	-	0	0%	(0)	0%	0	0%
521725	Other Rental Fees	4	3	2	(1)	-33%	(1)	-62%	20	21	22	1	5%	2	8%	32	63%
521730	Parking Space Rental	20	12	13	(8)	-68%	(7)	-56%	106	97	110	(9)	-9%	4	4%	146	73%
521905	Legal Services	-	2	-	2	100%	-		43	17	19	(26)	-158%	(24)	-121%	25	172%
522205	Metro Commuter Passes	10	6	9	(5)	-81%	(2)	-18%	70	45	38	(25)	-56%	(32)	-86%	67	104%
522305	Shipping and Freight	1	1	1	1	63%	0	41%	8	12	11	3	27%	3	23%	17	49%
522430	Misc. Other Services & Chrgs	1	8	22	7	85%	21	95%	33	63	123	31	48%	91	74%	95	34%
522720	Insurance - General & Professional	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
523100	Civilian Payroll	73	131	53	58	44%	(19)	-36%	629	1,046	1,009	418	40%	380	38%	1,569	40%
523200	Classified Payroll	49	96	86	47	49%	37	43%	561	771	998	209	27%	437	44%	1,156	49%
523300	Supplies	-	1	-	1	100%	-		-	11	-	11	100%	-	0%	17	0%
523400	Services	2	2	(0)	0	20%	(2)		11	19	15	8	40%	4	25%	29	40%
523000	Sub-Contractor (COH-HPD) Total	124	231	139	107	46%	15	11%	1,201	1,848	2,022	646	35%	821	41%	2,771	43%
	Total Services	**609**	**548**	**425**	**(61)**	-11%	**(184)**	-43%	**4,033**	**4,381**	**4,727**	**348**	8%	**694**	15%	**6,572**	61%

HOUSTON FORENSIC SCIENCE CENTER, INC.
COMPARATIVE STATEMENT OF ACTIVITIES - ACCRUAL BASIS
For the Period July 1, 2018 through February 28, 2019

		Current Month (Preliminary)							YTD							FY19	
		FY19	FY19	FY18	Variance				FY19	FY19	FY18	Variance				FY19	% Year
		Feb 2019	Budget	Feb 2018	Budget - Actual	%	FY19 - FY18	%	July 1-Feb 28, 2019	Budget	July 1- Feb 28, 2018	Vs. Budget	%	Vs. FY18	%	Budget V2	Completed
	Non-Capital Expenditures																
551010	Furniture and Fixtures	-	8	1	8	100%	1	100%	20	67	29	47	70%	9	32%	100	20%
551015	Computer Hardware/SW	19	14	(4)	(4)	-30%	(22)		45	115	101	71	61%	56	56%	173	26%
551025	Scientific/Foren Eqmt	-	3	4	3	100%	4	100%	3	24	10	21	87%	7	69%	36	9%
	Total Non-Capital Expenditures	19	26	2	7	27%	(17)	-1058%	68	206	140	138	67%	72	52%	309	22%
	Capital Expenditures																
170140	Improvements	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
170210	Furniture & Fixtures	-	-	-	-		-		-	-	-	-	0%	-	0%	-	0%
170230	Computer Hardware/SW	-	-	-	-		-		28	-	197	(28)	0%	169	86%	-	0%
170240	Scientific/Foren Eqmt	-	38	-	38	100%	-		8	300	122	292	97%	114	93%	450	2%
170980	Const in Progress	-	-	569	-		569	100%	160	-	392	(160)	0%	231	59%	-	
	Total Capital Expenditures	-	38	569	38	100%	569	100%	197	300	710	103	34%	514	72%	450	44%
Total Expense and Capital Before Depreciation		2,126	2,209	2,032	83	4%	(94)	-5%	15,739	17,675	15,414	1,936	11%	(325)	-2%	26,513	59%
561230	Depreciation	40	40	41	(0)	-1%	1	2%	333	318	322	(15)	-5%	(12)	-4%	477	70%
570505	FA Gain/Loss	-	-			0%			-	-		-	0%	-	0%	-	0%
610000	City of Houston Direct Overhead	122	122	122	-	0%	-	0%	973	973	973	-	0%	-	0%	1,460	67%
	Grant and Training Expense	-	-	-	-		-		-	-	-	-		-	0%	-	
Total Expense and Capital After Depreciation		2,288	2,371	2,195	83	4%	(93)	-4%	17,046	18,967	16,709	1,921	10%	(337)	-2%	28,450	60%
	Net Ordinary Income less capital spending	(1,492)	(159)	(246)	(1,499)	940%	(1,246)	507%	7,739	(1,276)	7,049	9,014	-707%	690	10%	(1,914)	-404%

HOUSTON FORENSIC SCIENCE CENTER, INC.
COMPARATIVE STATEMENT OF NET POSITION
By Quarter
(in '000's)

	Preliminary As of 02/28/19	As of 12/31/18	As of 09/30/18	As of 06/30/18
ASSETS				
Cash and Cash Equivalents				
Bank of Texas-Operating	$ 8,389	$ 12,652	$ 17,249	$ 1,659
Total Current Assets	8,389	12,652	17,249	1,659
Accounts Receivable				
Accounts Receivable	22	16	27	116
Total Accounts Receivable	22	16	27	116
Capital Assets Net of Depreciation				
Capital Assets	6,414	6,218	6,194	6,217
Accumulated Depreciation	(1,968)	(1,887)	(1,761)	(1,635)
Total Net Capital Assets	4,446	4,331	4,433	4,582
Other Assets				
Prepaid - HR	(1)	0	(4)	2
Prepaid - Insurance	61	88	128	126
Prepaid - Service Agreements	176	226	292	331
Prepaid - Other	976	61	86	-
Total Other Assets	1,212	375	502	459
TOTAL ASSETS	**$ 14,069**	**$ 17,374**	**$ 22,212**	**$ 6,816**
LIABILITIES				
Accounts Payables	$ 203	$ 312	$ 92	$ 527
Payroll Tax Liability	500	500	490	1,092
Other Liabilities, Including Fund 2213 Billing	124	260	313	133
Deferred - Others	248	248	6	6
Total Liabilities	1,075	1,320	901	1,759
NET POSITION/FUND BALANCE				
Unrestricted/Unassigned	8,548	11,723	16,877	1,318
Temporarily Restricted - SAFE Funds				
Net Investment in Capital Assets	4,446	4,331	4,433	3,740
Total Net Position	12,994	16,054	21,310	5,057
TOTAL LIABILITIES AND NET POSITION	**$ 14,069**	**$ 17,374**	**$ 22,212**	**$ 6,816**

Houston Forensic Science Center, Inc.
Finance Division
List of Grant Contracts
As of Feb. 28, 2019

Awarded

Awarding Agency:	USDOJ-OJP-NIJ			
Name of Project:	NIJ FY 16 DNA Capacity Enhancement and Backlog Reduction Program			
Start and End Dates:	01/01/2017 - 12/31/2018			
Contact:	Alissa Genovese			
Award Number:	**2016-DN-BX-0142**	**Awarded**	**Invoiced**	**Current Receivable**
	Amount of Award:	$ 741,000		
	Grant Inception to date:	(435,495)	435,495	0
	Grant Balance:	305,505		
Status:	Awarded			

Awarding Agency:	USDOJ-OJP-NIJ			
Name of Project:	NIJ FY 17 DNA Capacity Enhancement and Backlog Reduction Program			
Start and End Dates:	01/01/2018 - 12/31/2019			
Contact:	Monte Evans			
Award Number:	**2017-DN-BX-0027**	**Awarded**	**Invoiced**	**Current Receivable**
	Amount of Award:	$ 867,755		
	Grant Inception to date:	(422,707)	354,185	(67,760)
	Grant Balance:	445,048		
Status:	Awarded			

Awarding Agency:	USDOJ-OJP-NIJ			
Name of Project:	Cap Enhancement for Drug and DNA Testing in Sexual Assault Cases			
Start and End Dates:	01/01/2018 - 12/31/2020			
Contact:	Monte Evans			
Award Number:	**2017-DN-BX-0176**	**Awarded**	**Invoiced**	**Current Receivable**
	Amount of Award:	$ 114,000	-	
	HFSC Match	38,000	-	
	Grant Inception to date:	(999)	-	
	Grant Balance:	151,001		
Status:	Awarded			

Awarding Agency:	University of Virginia			
Name of Project:	Quality Blind Testing Research			
Start and End Dates:	11/26/2018 - 05/31/2019			
Contact:	Lynn Boyter			
Award Number:	**2018 CSAFE**	**Awarded**	**Invoiced**	**Current Receivable**
	Amount of Award:	$ 59,000	-	
	Grant Inception to date:	(12,254)	12,254	-
	Grant Balance:	46,746		
Status:	Sub Award			

Solicitation

Awarding Agency:	USDOJ-OJP-NIJ
Discipline:	Seized Drugs
Primary Recipient:	RTI
Name of Project:	Applied Research and Development in Forensic Science for Criminal Justice Purposes
Purpose:	HFSC will work with RTI to provide technology evaluation for seized materials at our laboratory. This will help ensure RTI is able to fully evaluate the use of near infrared (NIR) spectroscopy for the detection of drugs from seized material during the course of the project.
Collaboration:	HFSC
Start and End Dates:	Start 01/01/2019
Contact:	Katherine Moore /Megan Grabenauer
Solicitation Number:	NIJ-2018-13600
	Amount Requested:
Status:	Letter of Support

Awarding Agency:	NIJ
Discipline:	Seized Drugs
Primary Recipient:	HFSC
Name of Project:	Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly Funded Forensic Laboratories - Establishing Sufficiency Thresholds for Assessing the Quality of Mass Spectral Data
Purpose:	This study proposes to initiate and test the development of a sufficiency standard that can be used as a model for the nationalized mass spectral standard. In addition, both results and methodology from this project should have direct extension to other forensic disciplines using mass spectral data, such as Toxicology and Trace Analysis.
Collaboration:	Ohio University
Start and End Dates:	01/01/2019 - 12/31/2022
Contact:	Peter Harrington
Solicitation Number:	NIJ-2018-13900
Amount Requested:	$ 773,000
HFSC Requested	$ 355,322
Status:	Submitted

Awarding Agency:	NIJ
Discipline:	Seized Drugs
Primary Recipient:	Texas Southern University
Name of Project:	W.E.B. Du Bois Scholars in Race and Crime Research Assessing the Impact of the No Lab, No Plea Policy
Purpose:	This research serves to evaluate the No Lab, No Plea policy instituted in Harris County, Texas and to gauge how it impacts racial disproportionalities in the handling of drug offense cases. We also aim to determine whether reduced forensic turnaround times and the analysis of forensic evidence are related to sentencing outcomes.
Collaboration:	Texas Southern University/HFSC
Start and End Dates:	01/01/2019 - 12/31/2022
Contact:	Howard Henderson
Solicitation Number:	NIJ-2018-14220
	Total Amount Requested: $ 455,249.00
	HFSC Requested Funds: $ 112,357.00
Status:	Submitted

Awarding Agency:	NIJ
Discipline:	Latent Prints
Primary Recipient:	RTI
Name of Project:	Applied Research and Development in Forensic Science for Criminal Justice Purposes
Purpose:	HFSC fully intends to collaborate and provide the resources to assist RTI in creating and validating the fingerprint database. We are able to assist in this research effort by providing the time and expertise of 10 of our latent print examiners for the Selection and AFIS Team. We will also assist in recruiting 20 latent prints donors as part of the Detection Team.
Collaboration:	HFSC
Start and End Dates:	Start 01/01/2019
Contact:	Heidi Eldridge
Solicitation Number:	NIJ-2018-13600
	Total Amount Requested:
Status:	Letter of Support

Awarding Agency:	NIJ
Discipline:	Seized Drugs
Primary Recipient:	TSU/US/SHSU
Name of Project:	"Applied Research and Development in Forensic Science for Criminal Justice Purposes"
Purpose:	The Houston Forensic Science Center (HFSC) is pleased to offer our support to Texas Southern University with University of Houston and Sam Houston State University (the Partnership) for their proposal to develop a mobile sensor for multiplex detection of “fentalogs” in street drugs.
Collaboration:	HFSC
Start and End Dates:	Start 01/01/2019
Contact:	Ashraf Mozayani
Solicitation Number:	NIJ-2018-13600
	Total Amount Requested:
Status:	Letter of Support

MacArthur High School

- Patrick Tynan, seized drugs analyst

Operations Report

March 8, 2019

March 2019 Highlights

- Forensic biology backlog and training update
- Lean six sigma project update

Received, backlog, turnaround time and detail data for February will be presented in April due to transition to the new Laboratory Information Management System (LIMS)

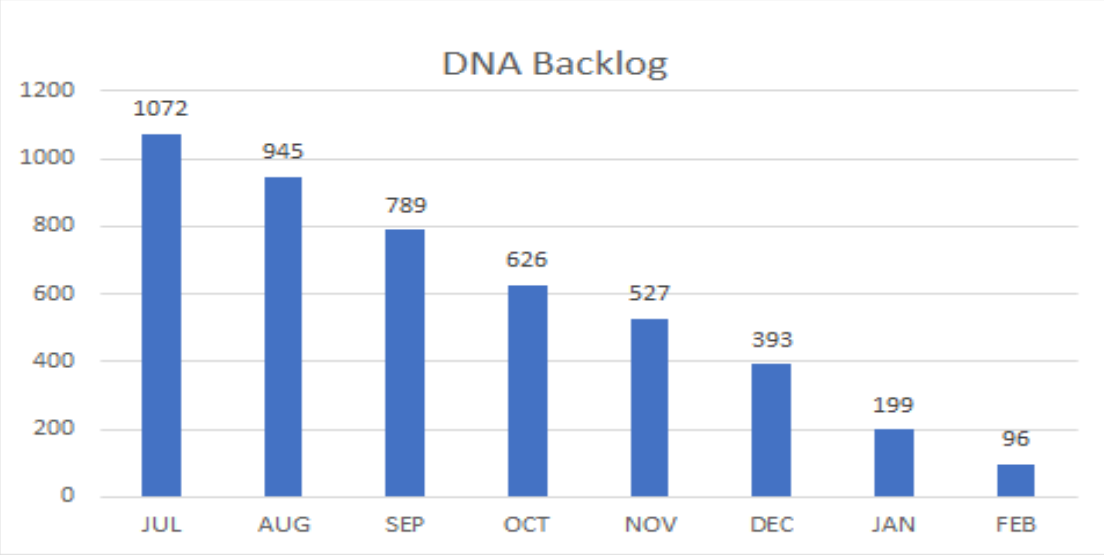
Forensic Biology-Backlog

Total TAT	EOM >30 day	Critical issues
↓ 234	↓ 96	2

SA Kit: 161-day avg TAT
4 pending SAK requests
SAK "other": 169-day avg
Non-SAK DNA: 260-day avg
96 total requests >30 days

Critical issues

- Target: minimum 12 DNA report writers, currently 8
- Delayed NIJ funding pushed back start of DNA analyst training to March 5



Forensic Biology-Outsourcing

Total Cases Shipped	Cases Returned	Cases Reviewed
858	397	0

SAKs shipped: 573

SAKs completed: 242

Non-SAKs shipped: 285

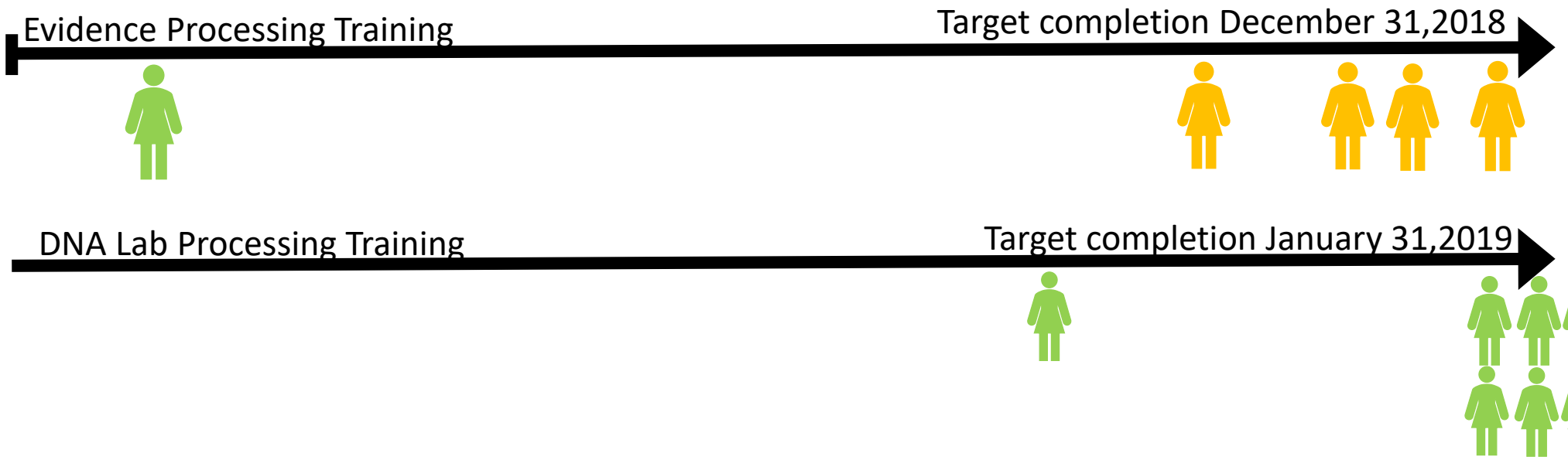
Non-SAKs completed: 155

Critical issues

- The in-house review of all outsourced casework
- Bode delayed TAT for SAKs, current TAT ~120 days

- Original project timeline: August 2018 to September 2019
- Ahead of schedule on internal backlog
- 461 outsourced cases pending
- Outsource reviews next focus
- In the next month, will set date to stop outsourcing

Forensic Biology Training



Lean Six Sigma Project Update

- Three projects ended the week of February 25 to March 1
  - Multidisciplinary requests
  - Work product evidence return
  - Management dashboard: release date April 1
- Project results and updates to be presented at next meeting
- New projects will launch in June

Crime Scene and Multimedia

March 8, 2019

Multimedia Section

- Actively assisted in the officer-involved shooting in which 4 HPD officers were shot
- Participated in the presentation of the Intermediate Crime Scene Investigative course at the HPD training academy
- Presented at the Internet Crimes Against Children (ICAC) conference hosted by HPD at the Children's Assessment Center
- Held training for HPD's Special Victims Unit regarding digital analysis and deciphering reports

Crime Scene Unit

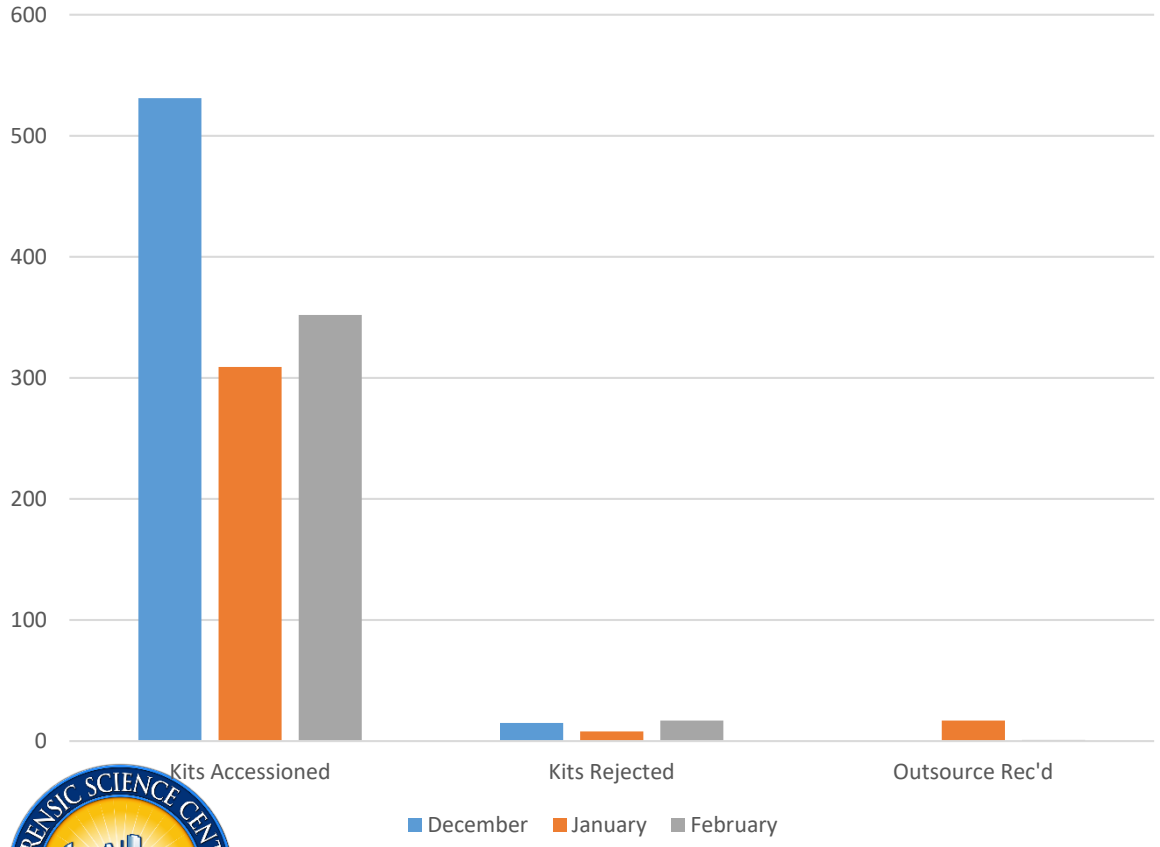
- Worked on crime scene reconstruction of the officer-involved shooting in which 4 HPD officers were shot
- Currently interviewing for a crime scene investigator (CSI) vacancy
- 18 CSIs completed in-house 20-hour training on photography and Narcan application
- Provided Intermediate Crime Scene Training at HPD Academy
- Preparing for move to 500 Jefferson

Detail data

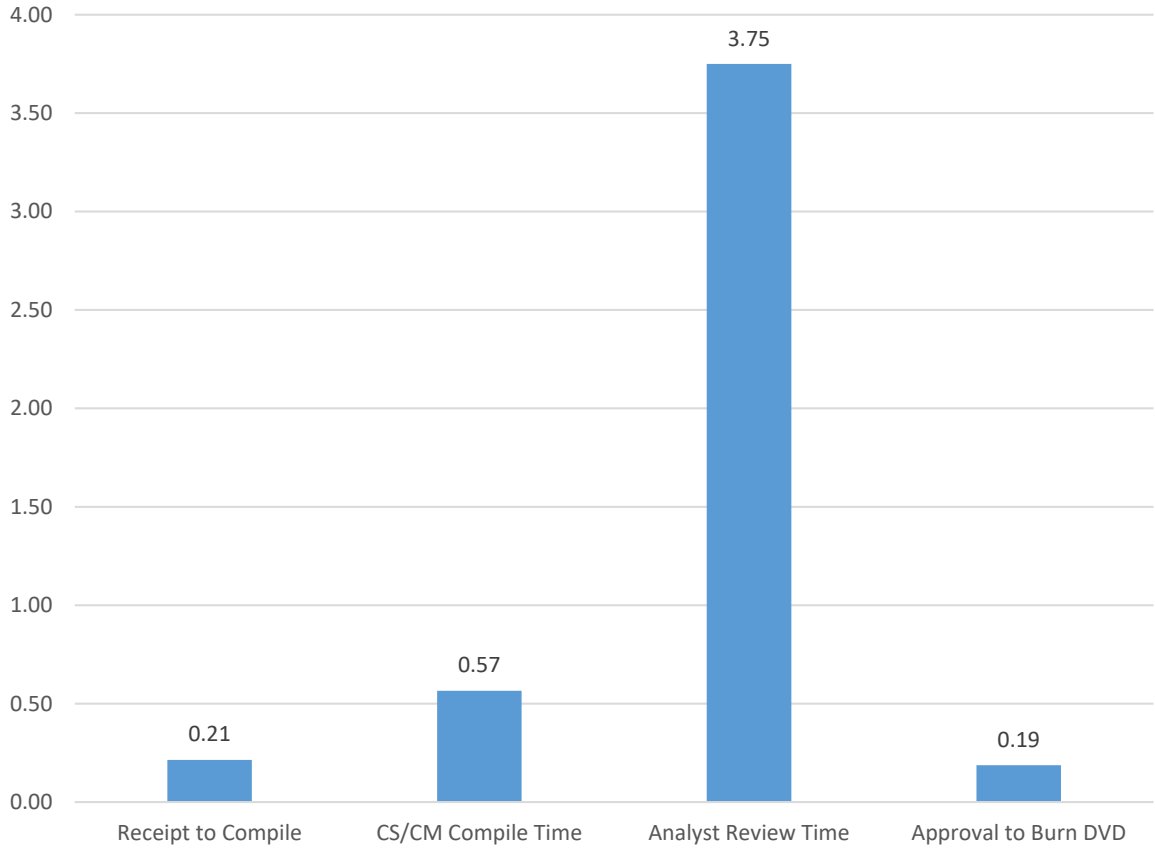
CS/CM – February

Toxicology Support

Accessioning



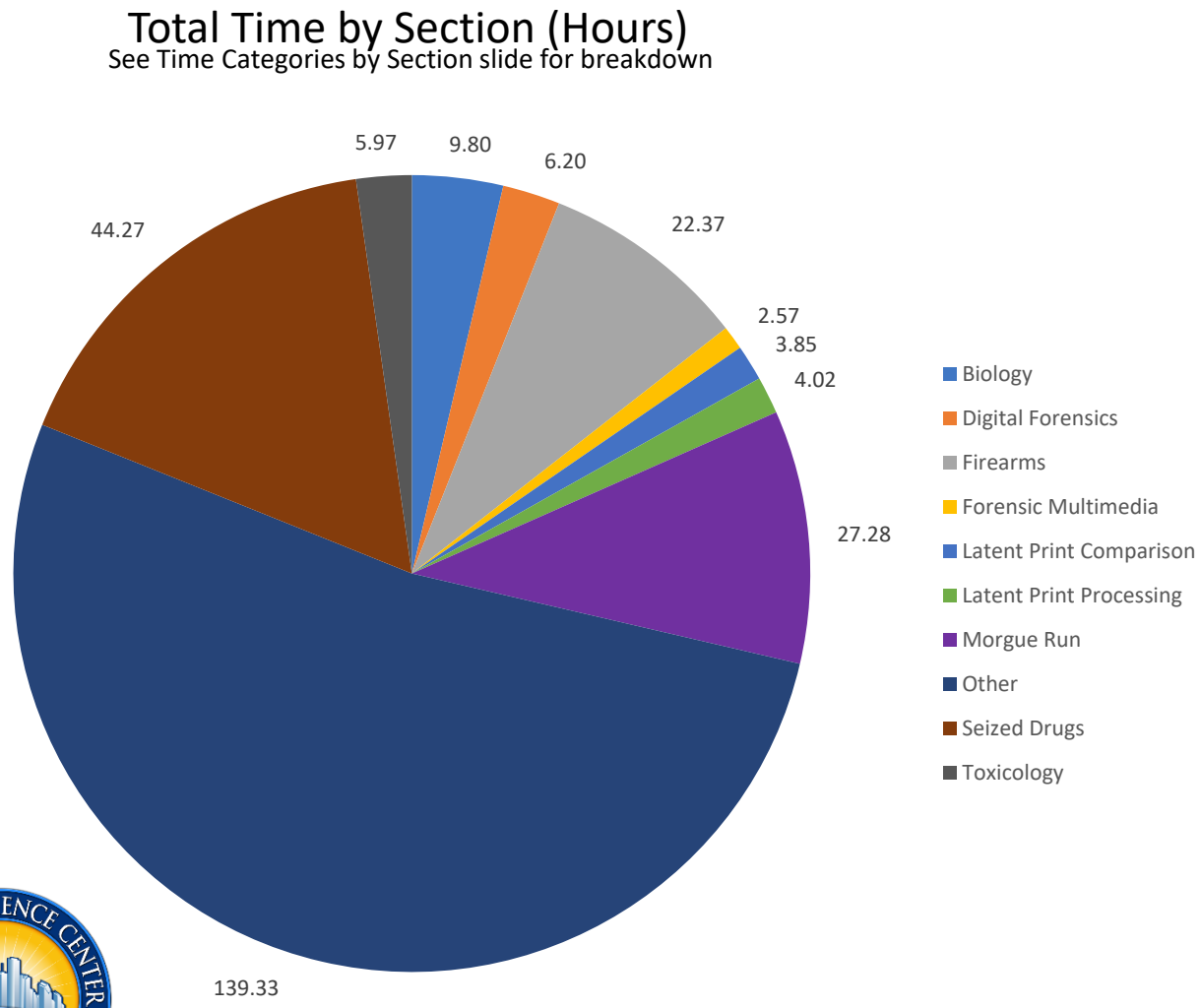
Toxicology Discovery Order TAT (days) – by status

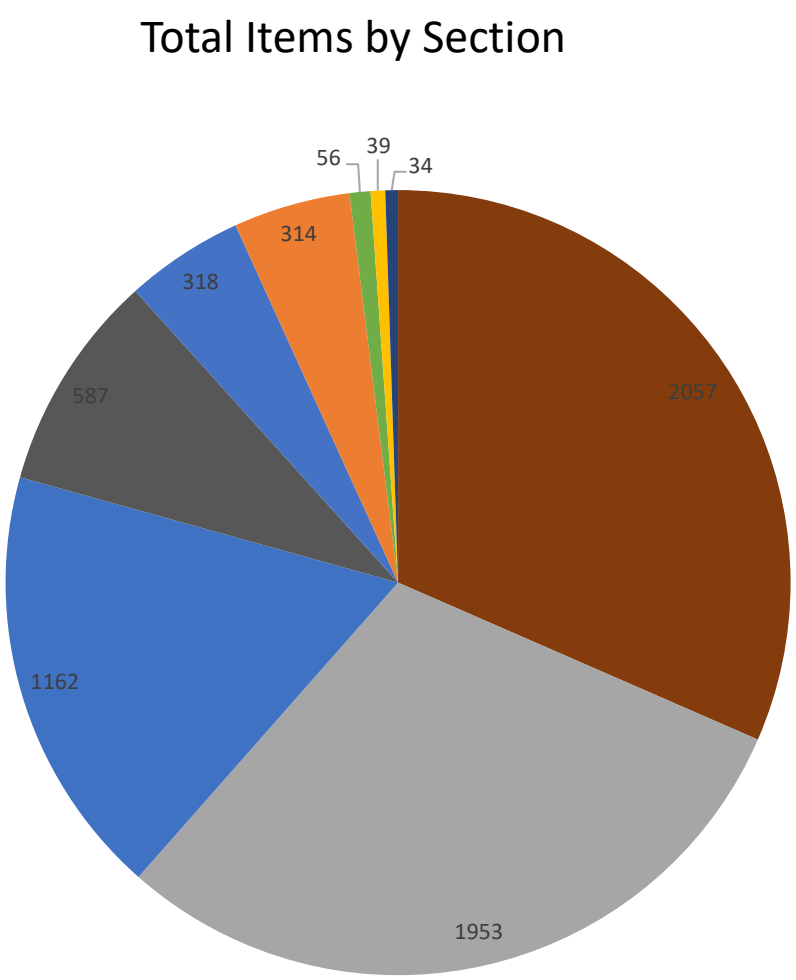


n = 28 Discovery Orders

CS/CM – February

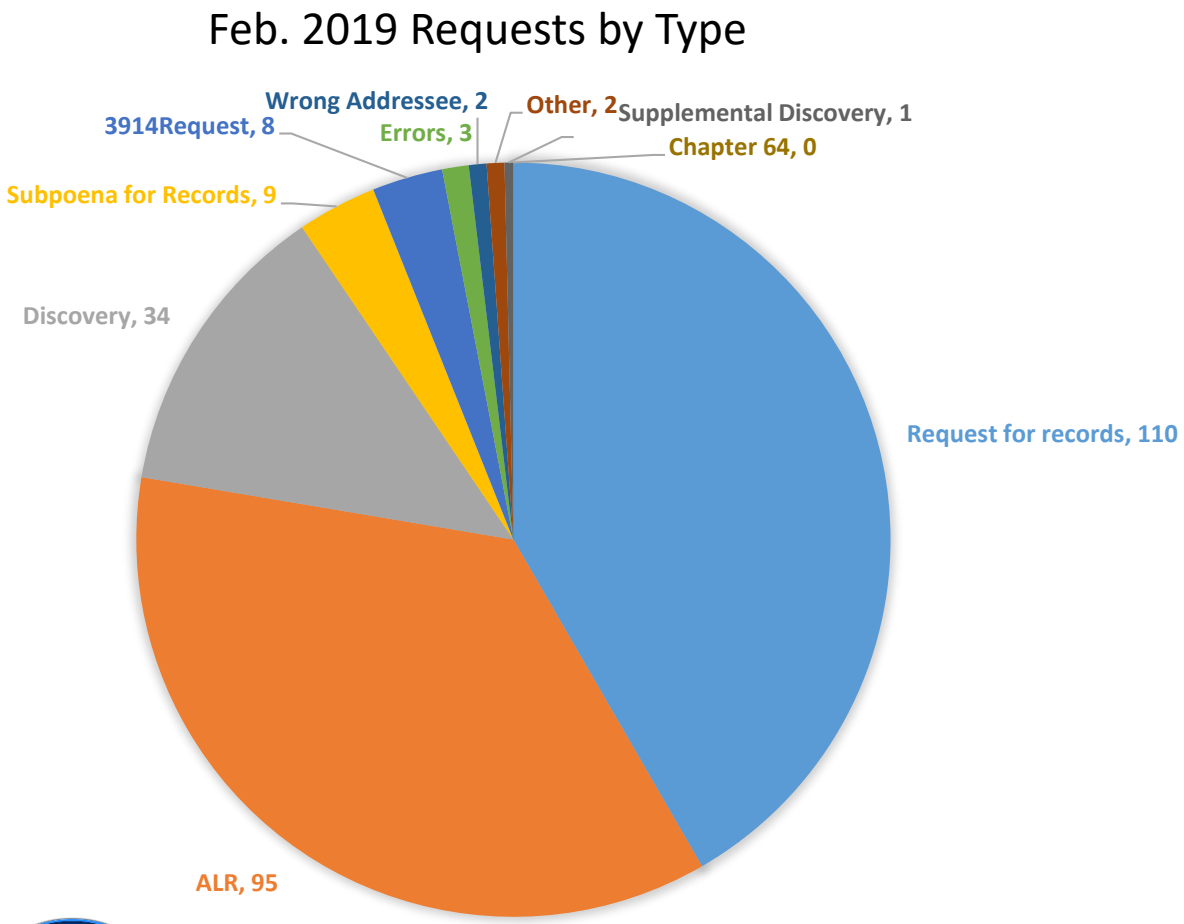
Evidence Handling

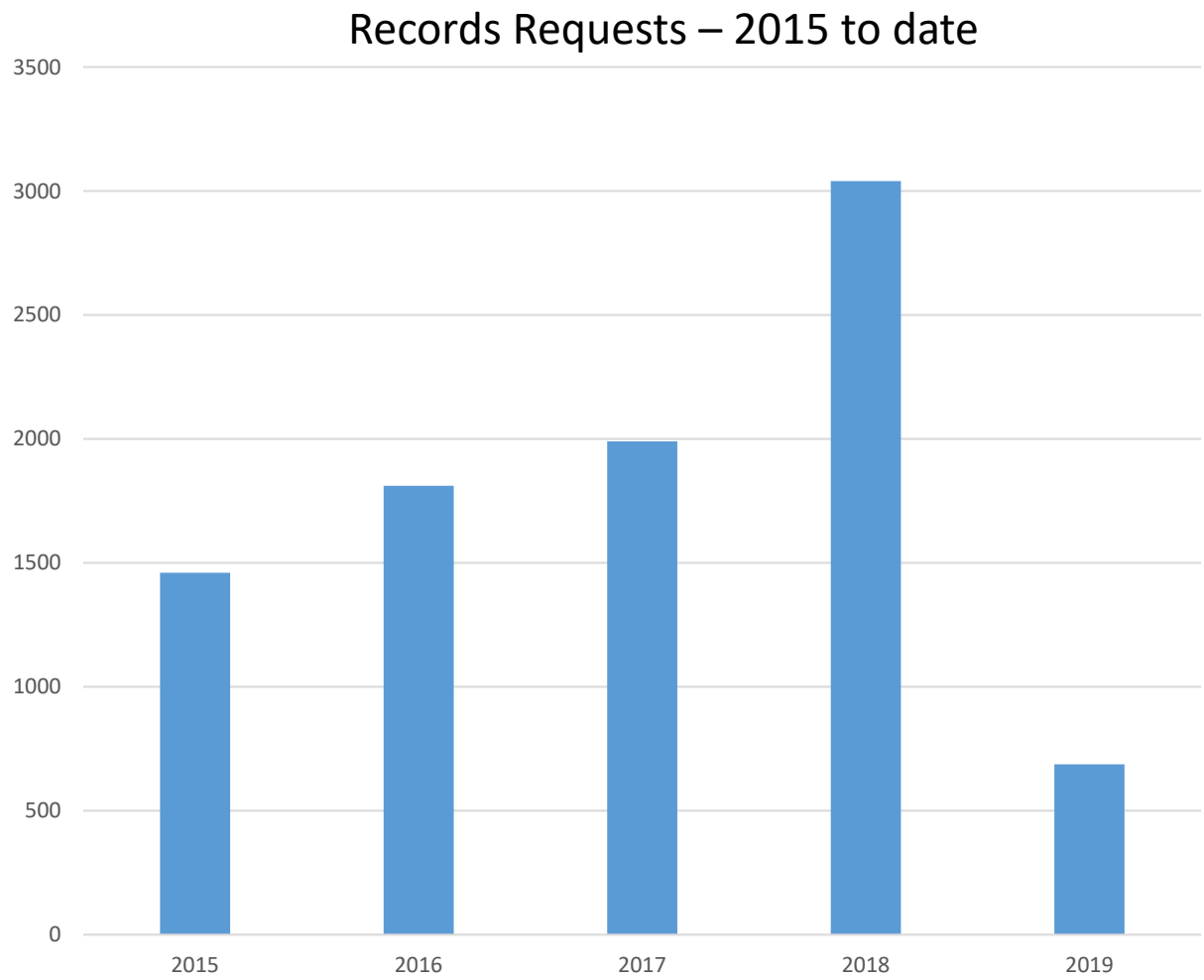




CS/CM – February

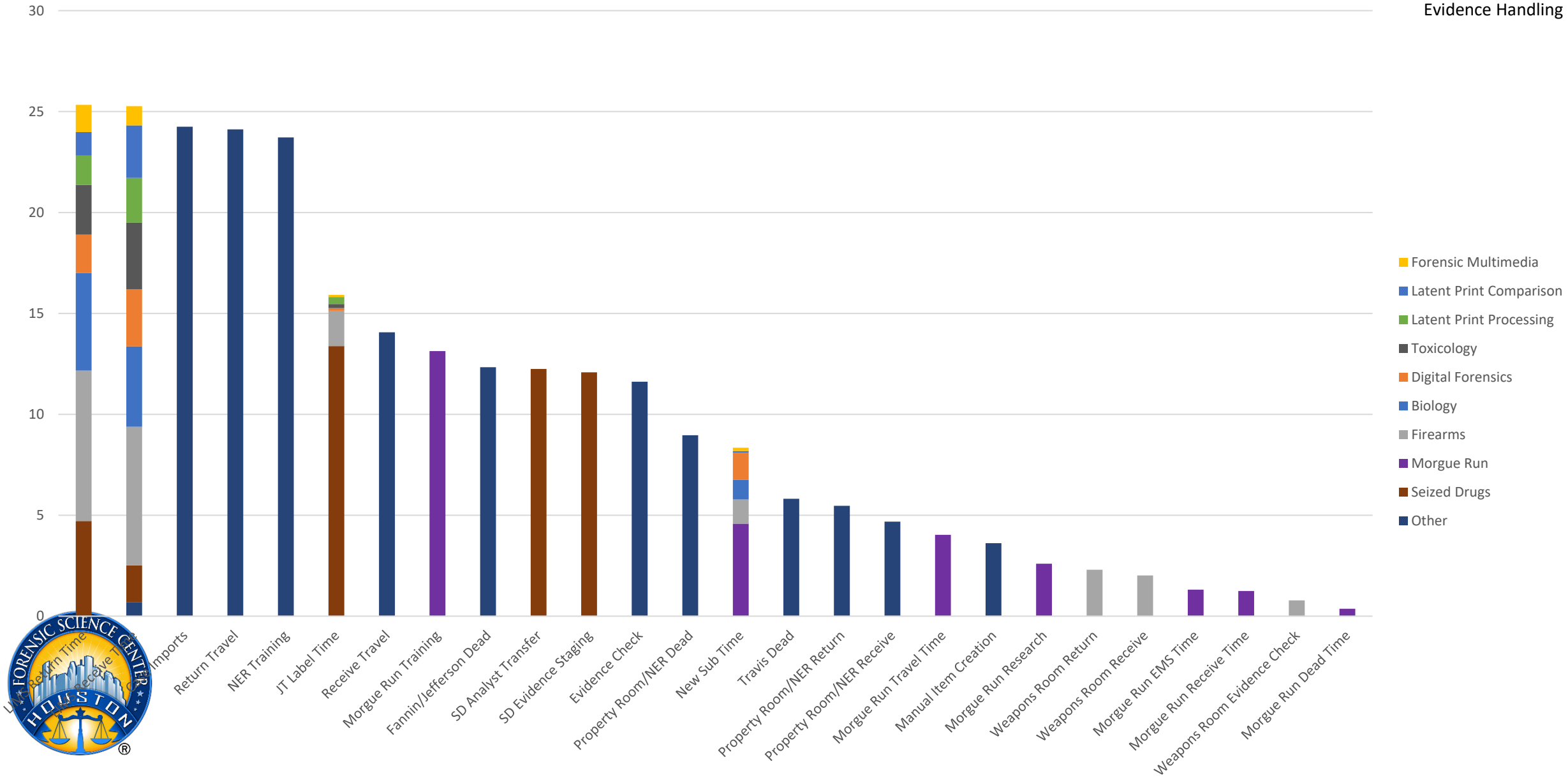
Administrative





CS/CM – February

Time Categories by Section



CODIS (National DNA Database)

Total TAT	EOM >30 day	Critical issues
⬇ 18	⬇ 3	1

Profiles Entered: 81
Matches: 176

112 Pending notifications
3 Notifications over 30 days
~27 of the pending 112 notifications are waiting on other agencies for information.

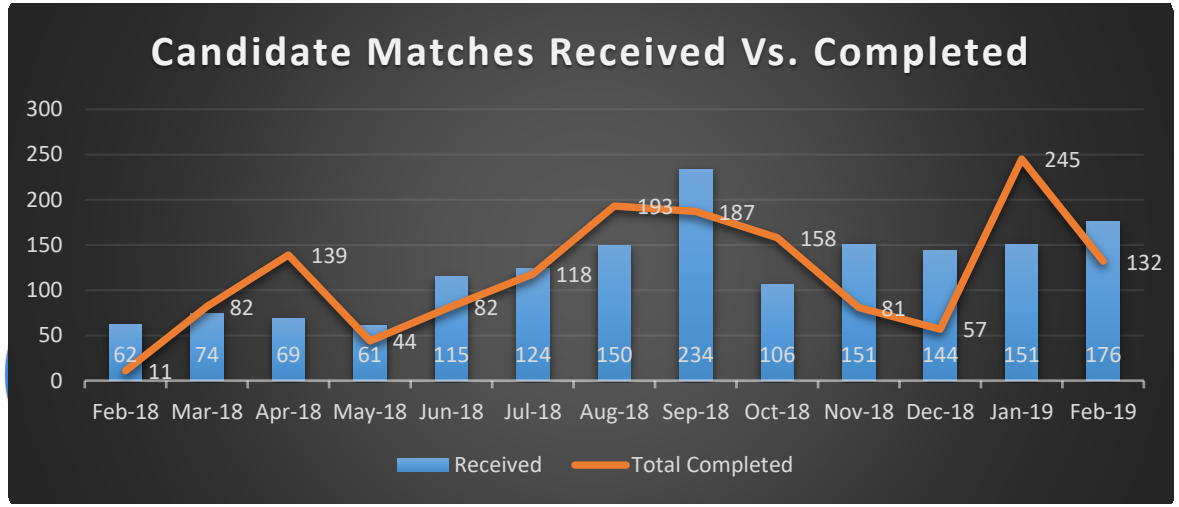
132 Total Matches were addressed in December

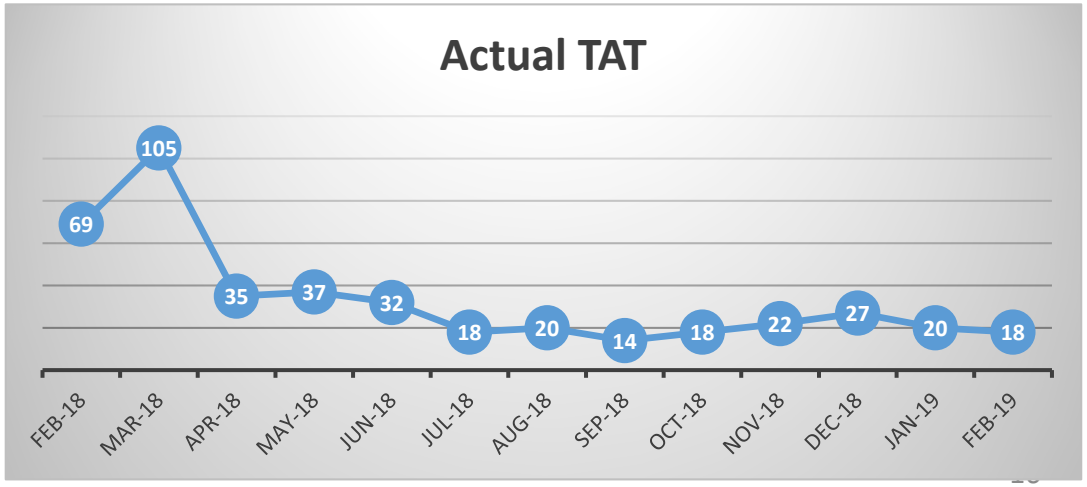
Critical issues

- Obligate Allele Project

Projections for next 90 days

- Complete more reviews of Obligate Allele Project cases.





Lean Six Sigma Development Group
Current Projects

Current Projects	Projects Completed	Projects in Queue
3	7	10

Project: Management Dashboard **Type/Phase:** D M A D V
Project Engineer: Amy Castillo **Status:** Completed
Timeline: 4/30/2018- 2/26/2019
Accomplishments:
- Project Completed and Certified
- Roll out scheduled for April 1, 2019
- Generation 2 project to kick off in April 2019

Project: Work Product Evidence Return (WPER) **Type/Phase:** D M A I C
Project Engineer: Paula Evans **Status:** Completed
Timeline: 8/22/2018 – 2/27/2019
Accomplishments:
- Project completed and certified
- GB certification awarded to Ashley Henry
- Data collected an analyzed daily
- Returned over 10,000 test fires to date
- Inventoried over 16,000 DNA extracts to date

Project: Multidisciplinary Requests **Type/Phase:** D M A I C
Project Engineer: Aimee Grimaldi **Status:** Completed
Timeline: 8/10/2018 – 2/26/2019
Accomplishments:
- Project completed and certified
- GB certification awarded to Preshious Rearden
- Team will create a training video to demonstrate magazine preservation
- Team will continue to monitor adoption of magazine preservation to suggest a time to remove the 5-day hold on non-CSU collected NIBIN evidence

500 Jefferson office/lab project, 3/8/19 HFSC Board update

First move completed 3/4/19 (went well)

2nd/3rd moves to complete 3/19/19. Project continues on schedule

Project agreement status (sub-lease/ILA)

- Remaining sub-lease and ILA documents approved by HFSC Board 2/8/19, approved by City Council 2/20/19

- Awaiting Mayor/City Controller endorsed documents

Move Status

- IT/Security delivered on time, required functionality

- 1st move completed 3/4/19:
  - CEO, all Latent Prints, part IT, part Client Services/Case Management staff and equipment moved
  - Latent Prints evidence moved 3/1/19
  - Move went very well, good staff feedback
  - Attention to detail, focus, teamwork, clear roles and responsibilities. All organizations fully operational 3/5/19
  - Lessons learned: a) ensure sufficient packing materials, b) bring forward move day coordinators meeting, c) conduct move day move company walkthrough, d) label ends of 500 Jefferson cubicles to improve efficiency
  - Scorecard monitoring helped project success/focus
  - Pre-move packets and 500 Jefferson welcome packets issued, again positive staff feedback

  - All staff parking decisions made, first move parking arrangements implemented

- HFSC corporate address moved to 500 Jefferson Street, 13th floor, effective 3/4/19. Notifications conducted to stakeholders, clients, certification agencies, postal service, vendors, website, grants

- 2nd/3rd moves to complete 3/19/19:
  - Digital and Multimedia workstation disassembly/transport/ reassembly
  - Move all Digital and Multimedia, Finance, part Admin
  - By 3rd move, 20% of staff will have moved to 500 Jefferson

- 2nd half March/April focus on returning Fannin space to landlord and preparation for two May Travis moves:
  - HPD to take HFSC Fannin furniture
  - Moves 4 and 5 in May (27 and 64 staff move, respectively)
  - Balance in October/November 2019 (lab floor/basement)

- Progressing staff file clean-up

Current Project Focus

- Lab floor 18 and basement permit submissions to City targeted for 3/8/19 and 4/1/19, respectively. Reviewing draft submissions

- Progressing FBI CODIS validation via email/HFSC documentation. Back-up plan is to leave CODIS in Travis until move approved

- Managing critical path: lab/basement permits and construction, garage construction, long-lead time items (generator, air-handlers, fume hoods, lab furniture, shooting tank), instrument move/certification

- Communicated with Andy Icken, Tantri Emo (City Finance) and HPD concerning financial impact of progressive Travis space return to HPD (multiple HPD IT tours conducted):
  - Release space to HPD 5/15/19 and 12/1/19, eliminate lease expense

Lab key items to be worked in next three months

- Lab floor 18/basement permit receipt

- Lab furniture order, long-lead time orders

- Lab/basement commissioning consultant selection, action plan

- Instrument move/re-certification plans, schedule implications

- Fume hood move timing, lab operation in interim

Attachments

- HFSC key contacts: core team, organization move coordinators

- HFSC move sequence

- Floor plans: basement B1, floors 13, 14, 15, 18, garage 2

500 Jefferson Project Key Contacts (1/31/19 update)

Core Team

- Overall Project: Charles Evans, Ray Engelhardt, Aimee Grimaldi, Paula Evans
- IT/Phones: Will Arnold, Chris Hamilton
- Security: Domingo Villarreal
- Safety: Kim Rana
- Staff Parking: Yolanda Kemp
- Furniture Disposition: Ray Engelhardt (HPD), Jason Jones (Auction, Dispose)
- Staff Policy: Caresse Young
- Move Packet/Welcome Packet/Communications: Ramit Plushnick-Masti
- Records Retention, Document Sort/Store/Scan/Shred/Ship: Ashley Henry, Akilah Mance
- Budget: David Leach, Charles Evans

Move Coordinators

- Crime Scene: Domingo Villarreal
- Digital and Multimedia: Preston Coleman, Jose Ramirez, Rachel Maloney
- Firearms: Chandler Bassett
- Toxicology: Valarie Coronado, Brooke Mendenhall
- Seized Drugs: Derek Sanders
- Forensic Biology: Brittany Beyer, Courtney Head
- Latent Prints: Tim Schmahl
- Client Services/Case Management (includes Supply Room): Ashley Henry
- Research and Development: Preshious Reardon
- Quality: Jackie Moral
- HR: Caresse Young
- Finance/Procurement/Legal/Information Strategy/Chris Nettles: David Leach, Steve Case
- IT: Will Arnold
- CEO/COO/Business Development/PIO/Board Secretary/LSS: Paula Evans

Multiple other sub-teams/work efforts with HFSC staff leads/support

Proposed move sequence (# of staff in brackets)

2/20/19 Update

- Move #1 – Fannin, 2/28/19 to 3/4/19, All Latent Prints (18) **to 15th Floor**, IT (3**) to 14th Floor**, CS/CM Fannin 1st floor (2) **to 13th Floor**, HFSC front door/corporate address, CEO Travis to **15th floor. Total 24. Complete**

- Move #2 – Fannin, 3/14/19 to 3/18/19 **to 13th Floor: Total 9**
  - Finance/Procurement (6), Legal (1), Information Strategy (1), Chris Nettles (1)

- Move #3 – Fannin, 3/12/19 to 3/19/19 **to 15th Floor: Total 10**
  - All Digital and Multimedia (10)
  - Includes Digital workstation disassembly/transport 3/13/19, reassembly 3/14/19

- April 2019 month focus on hand-back of Fannin to landlord

- Move #4 – Travis 10th and 20th Floors, 5/2/19 to 5/6/19: **Total 27**
  - IT (2) – **to 14th Floor**, Quality (7) **to 13th Floor**, R&D (1) **to 13th Floor**, Administration (20th floor, HR, Communications, Board Secretary, Business Development **to 13th Floor** (8)
  - CSU 10th floor (9) **to 15th Floor**, fenced parking available 4/15/19, carts on 15th floor.

- Move #5 – Travis 24th/25th Floors, 5/9/19 to 5/13/19: **Total 64**
  - CS/CM 24th floor (9) **to 13th Floor**, R&D (2) **to 13th Floor**, LSS (2) **to 13th Floor**, Biology Analysts (24), CODIS (3) **to 14th Floor**, COO **to 14th Floor**, CSU 25th floor (24) – **to 15th Floor**

- Lab Moves to 18th Floor & Basement (includes developing timeline for instrument move, certification/validation):
  - Move #6 – ½ Toxicology (5) **to 14th & 18th Floors**, ½ Seized Drugs (9) **to 14th & 18th Floors**, CS/CM supply room (1, plus 50% supplies) **to 13th Floor**, 10/3/19 to 10/7/19

- Move #7(A) – IT to move maximum number of Forensic Biology computers **to 14th & 18th Floors** -10/12/19 to 10/14/19

- Move #7(B) – All Forensic Biology (27) **to 14th & 18th Floors**, ½ Firearms (8) **to 14th Floor & Basement**, balance CS/CM (9) **to 13th Floor**, Latent Prints Lab **to 18th Floor**, Quality/R&D Lab **to 18th Floor**, 10/17/19 to 10/21/19

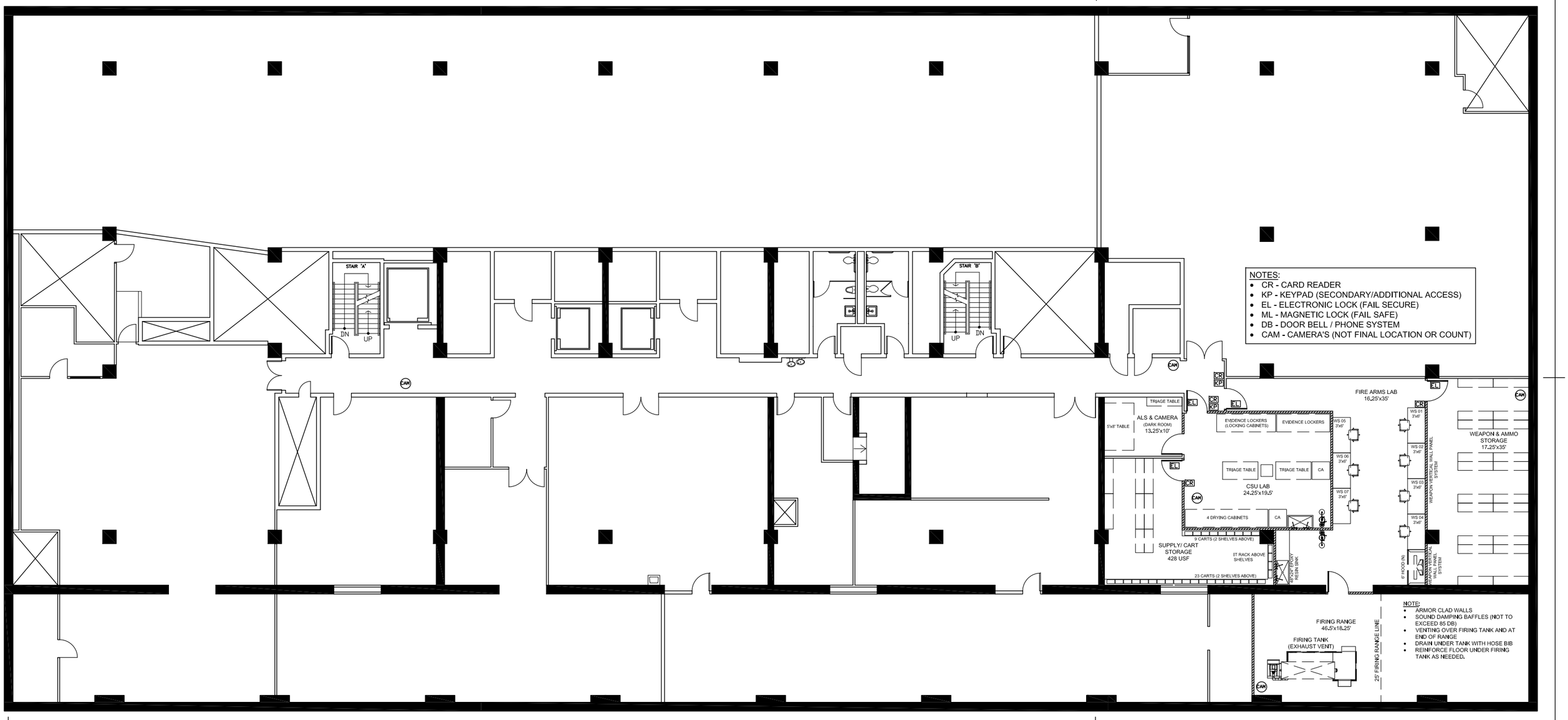
- Move #8 – ½ Seized Drugs (8**) to 14th & 18th Floors**, 10/31/19 to 11/4/19

- Move #9 – ½ Toxicology (5) – **to 14th & 18th Floors**, ½ Firearms (7) **to 14th Floor & Basement**, CS/CM supply room (1, plus 50% supplies) **to 13th Floor**, IT (2) **to 14th Floor**,11/14/19 to 11/18/19

- Move completed, hand-over of all space at Travis to HPD, 12/31/19

- Sections may still update "twin move timing" when more information on instrument certification/validation

BUILDING SERVICE & LEASE SPACE



BUILDING SERVICE & LEASE SPACE

FIRE ARMS & CSU

NORTH 0 4 8 16 24

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

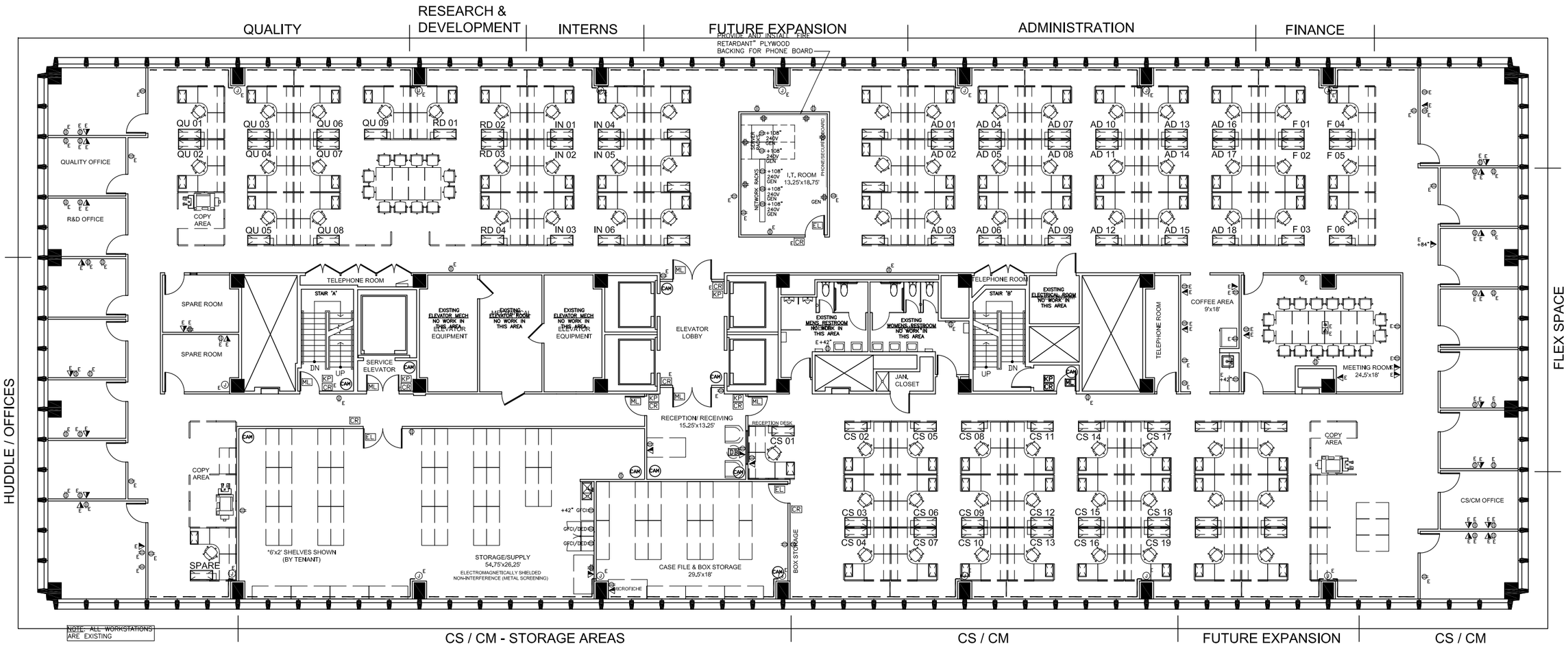
PROPOSED FLOOR PLAN

Philip Ewald Architecture Incorporated
Architecture Interior Design Planning
4200 Montrose Boulevard Suite 420 Houston Texas 77006 713 522 1977
www.philipewald.com

LEVEL B1

01/16/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION
NOT FIELD VERIFIED



NOTES:

- CR - CARD READER
- KP - KEYPAD (SECONDARY/ADDITIONAL ACCESS)
- EL - ELECTRONIC LOCK (FAIL SECURE)
- ML - MAGNETIC LOCK (FAIL SAFE)
- DB - DOOR BELL / PHONE SYSTEM
- CAM - CAMERA'S (NOT FINAL LOCATION OR COUNT)

NORTH 0 4 8 16 24

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

PROPOSED FLOOR PLAN

Philip Ewald Architecture Incorporated
Architecture Interior Design Planning
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LEVEL 13

01/16/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

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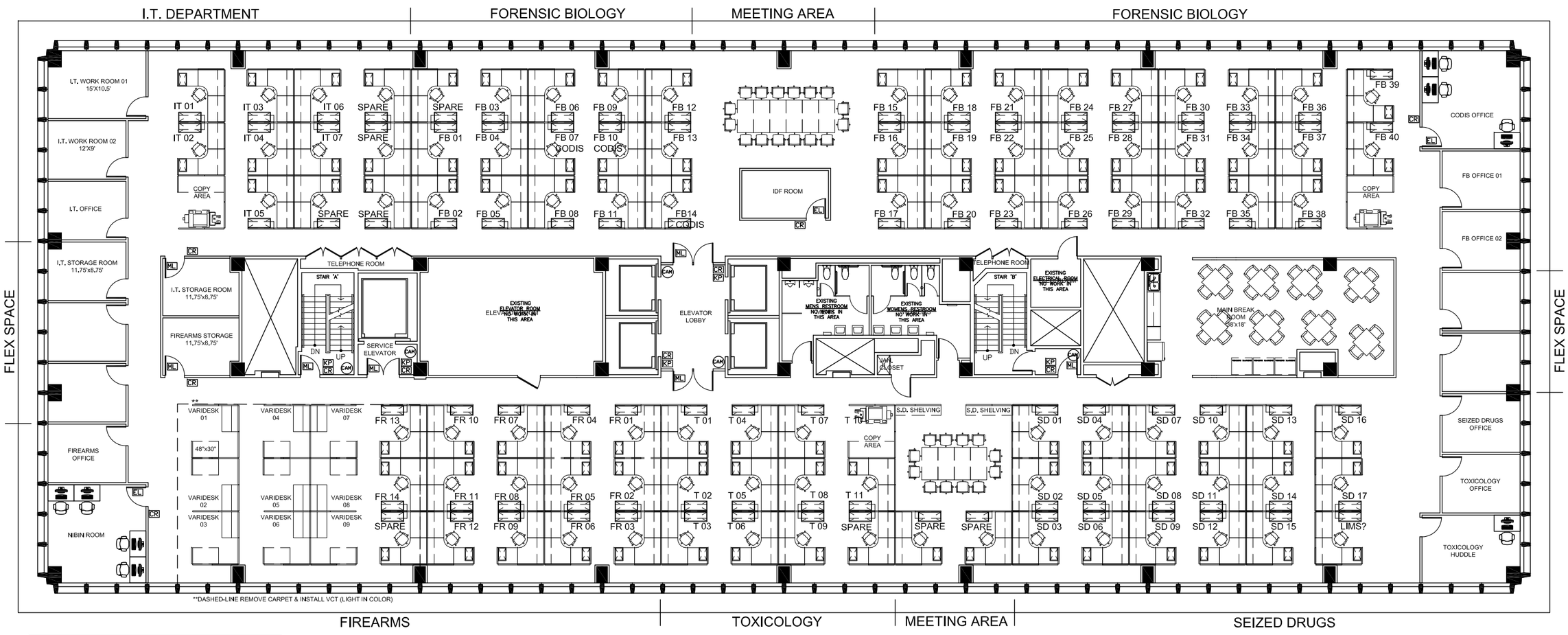

NOTES:
- CR - CARD READER
- KP - KEYPAD (SECONDARY/ADDITIONAL ACCESS)
- EL - ELECTRONIC LOCK (FAIL SECURE)
- ML - MAGNETIC LOCK (FAIL SAFE)
- DB - DOOR BELL / PHONE SYSTEM
- CAM - CAMERA'S (NOT FINAL LOCATION OR COUNT)

NORTH 0 4 8 16 24

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

PROPOSED FLOOR PLAN

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Architecture Interior Design Planning
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LEVEL 14

01/16/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

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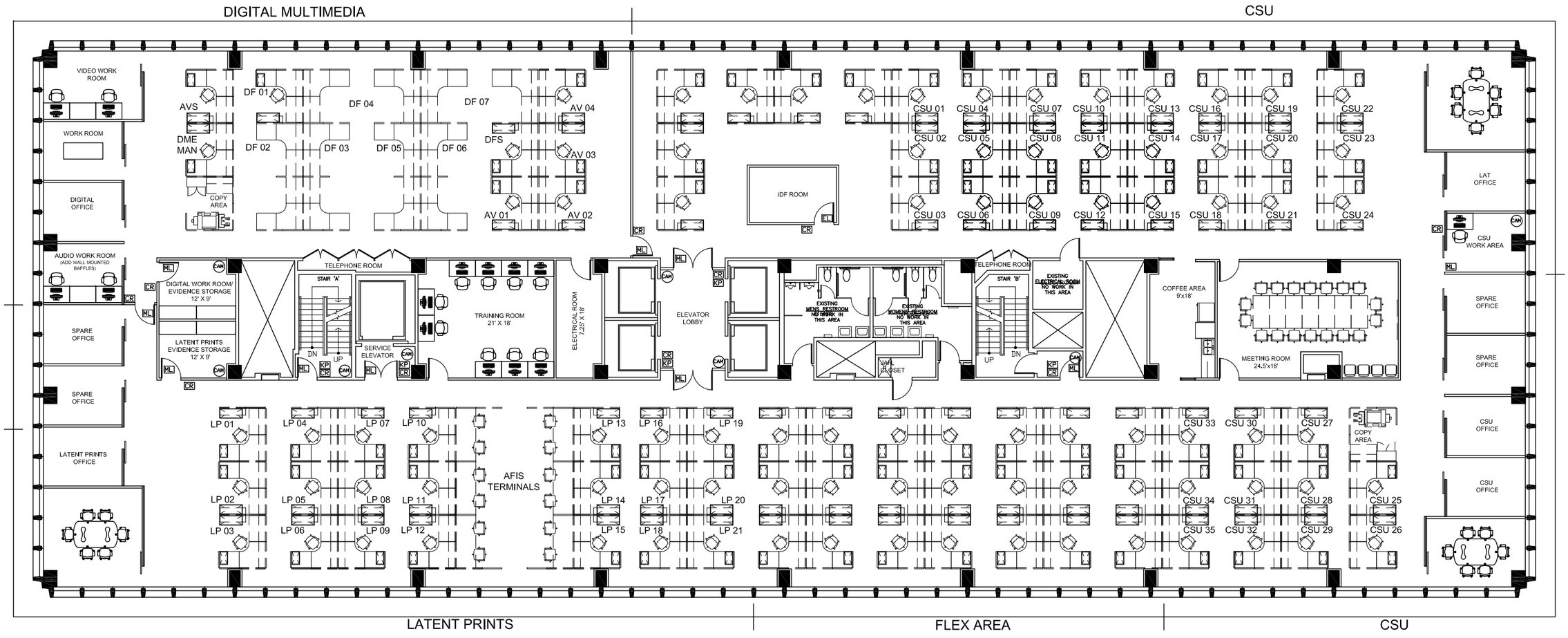

NOTES:
- CR - CARD READER
- KP - KEYPAD (SECONDARY/ADDITIONAL ACCESS)
- EL - ELECTRONIC LOCK (FAIL SECURE)
- ML - MAGNETIC LOCK (FAIL SAFE)
- DB - DOOR BELL / PHONE SYSTEM
- CAM - CAMERA'S (NOT FINAL LOCATION OR COUNT)

NORTH 0 4 8 16 24

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

PROPOSED FLOOR PLAN

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Architecture Interior Design Planning
4200 Montrose Boulevard Suite 420 Houston Texas 77006 713 522 1977
www.philipewald.com

LEVEL 15

01/16/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

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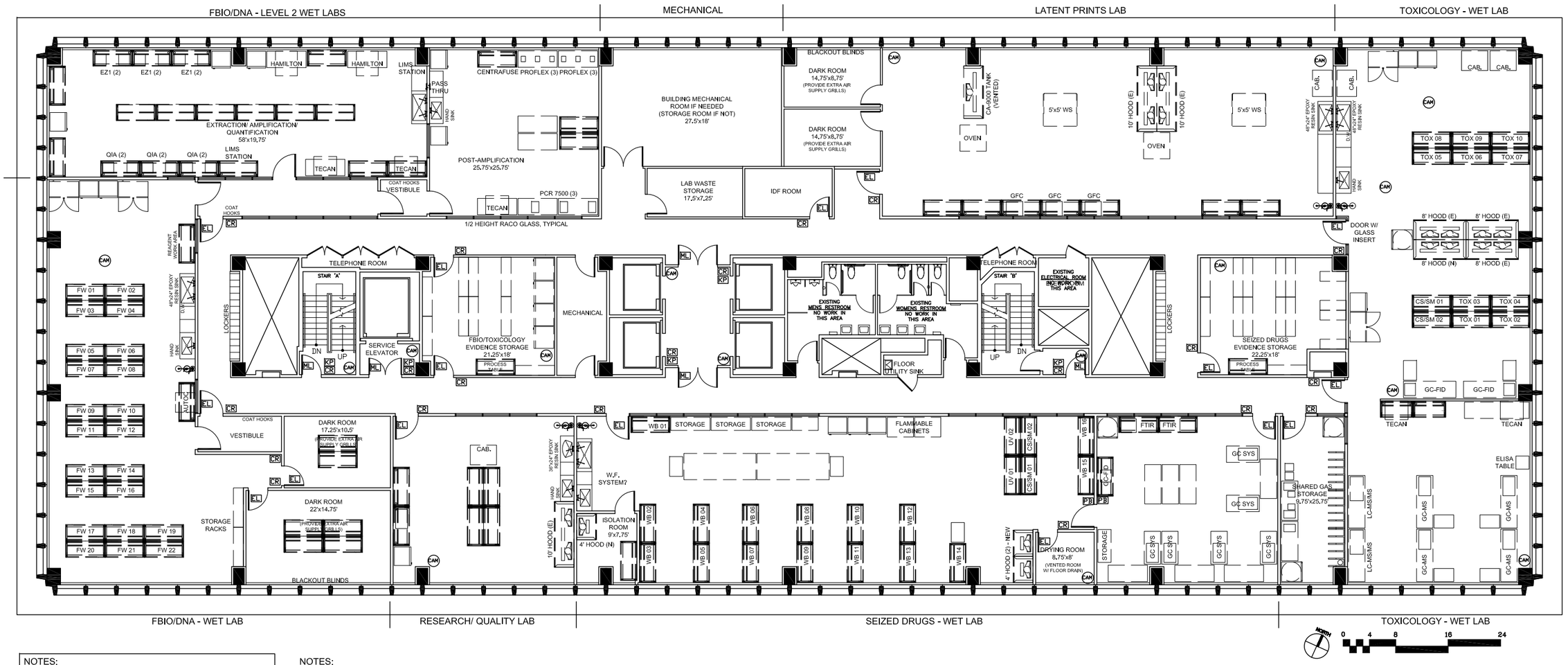

NOTES:
- CR - CARD READER
- KP - KEYPAD (SECONDARY/ADDITIONAL ACCESS)
- EL - ELECTRONIC LOCK (FAIL SECURE)
- ML - MAGNETIC LOCK (FAIL SAFE)
- PB - AUTOMATIC DOOR OPENER
- DB - DOOR BELL / PHONE SYSTEM
- CAM - CAMERA'S (NOT FINAL LOCATION OR COUNT)

NOTES:
- WATER FILTRATION SYSTEM AT ALL SINKS
- SEAMLESS EPOXY RESIN MEDICAL LAB FLOOR THROUGHOUT
- ALL REFRIGERATORS AND HVAC TO BE ON BACKUP GENERATOR POWER
- ALL LARGE 48" LONG SINKS TO HAVE 2 FAUCETS
- BIOLOGY LEVEL 2 LABS SHALL NOT REUSE AIR FROM LAB FLOOR
- TOXICOLOGY LAB MAY NOT RECEIVE AIR FROM SEIZED DRUGS

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

PROPOSED FLOOR PLAN

Philip Ewald Architecture Incorporated
Architecture Interior Design Planning
4200 Montrose Boulevard Suite 420 Houston Texas 77006 713 522 1977
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LEVEL 18

02/04/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

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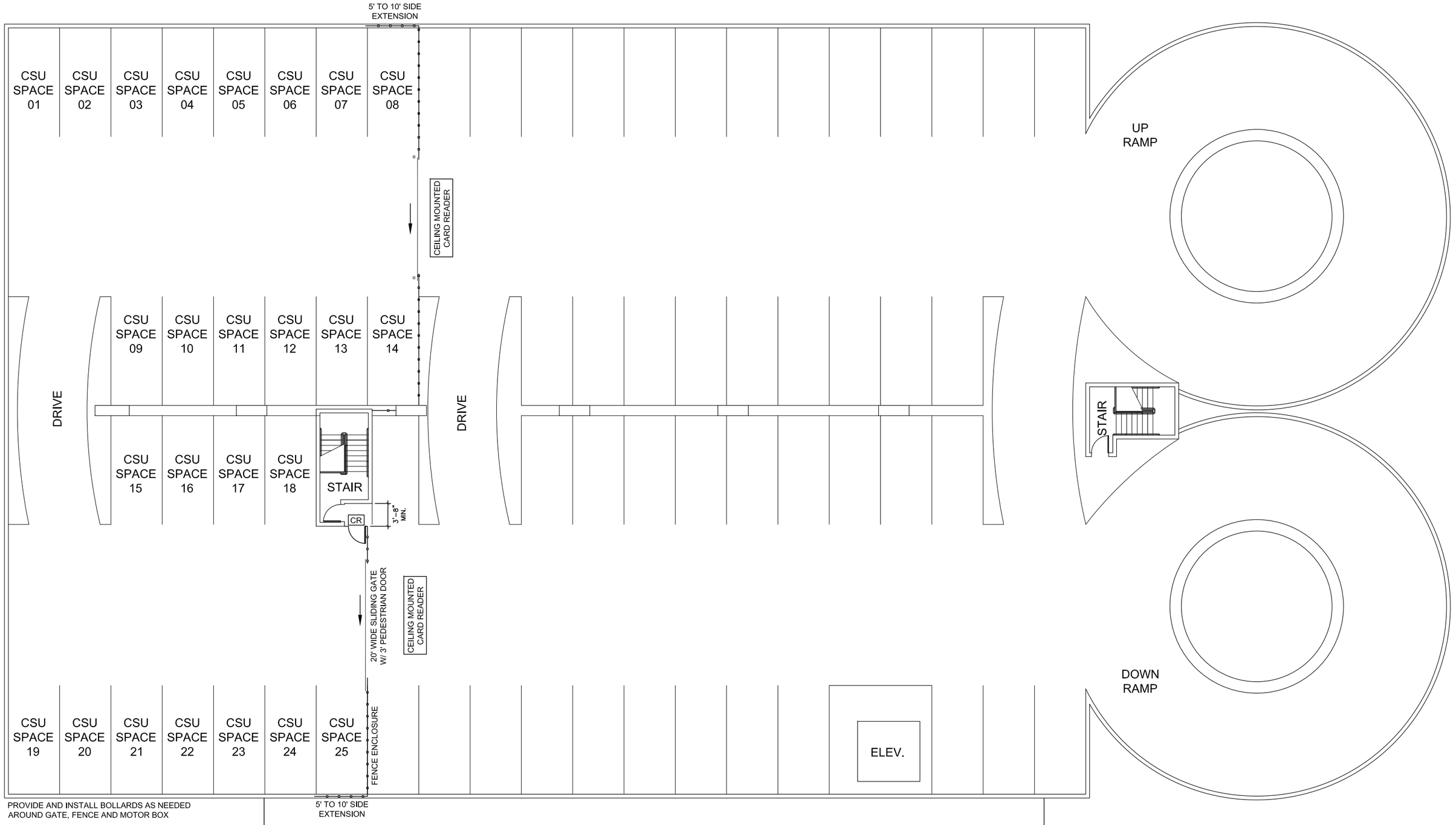

HOUSTON FORENSIC SCIENCE CENTER

500 JEFFERSON STREET

PROPOSED GARAGE FLOOR PLAN

LEVEL 2

Philip Ewald Architecture Incorporated
Architecture Interior Design Planning
4200 Montrose Boulevard Suite 420 Houston Texas 77006 713 522 1977
www.philipewald.com

02/08/2019 SCALE: 1/16" = 1'-0" PROJECT #18080

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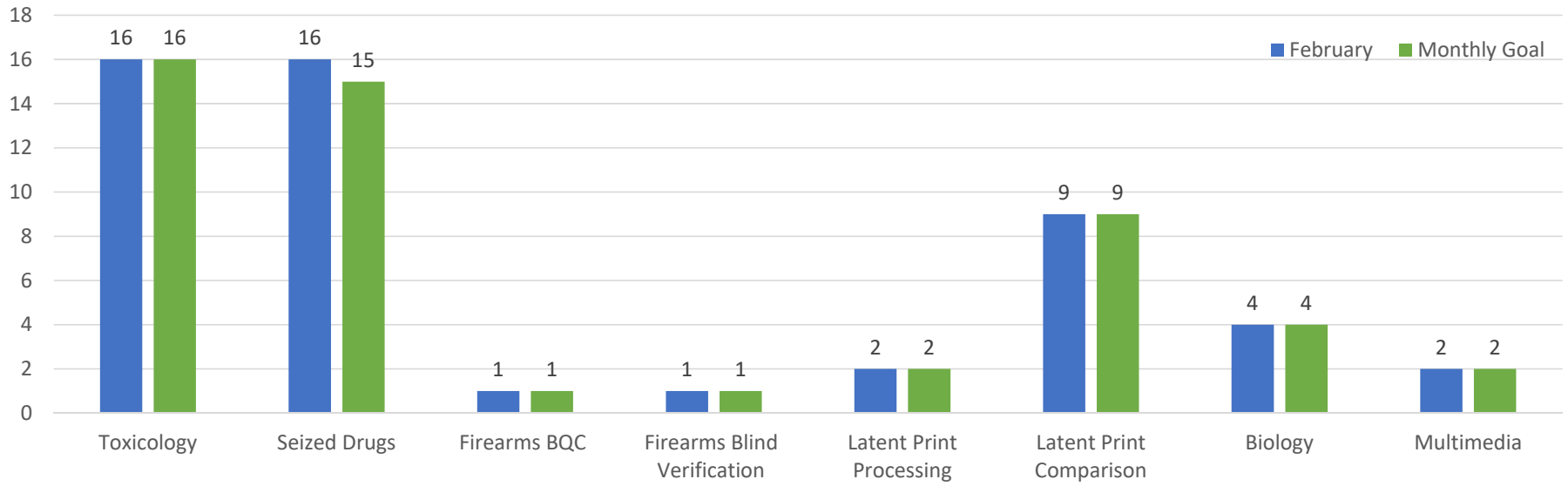
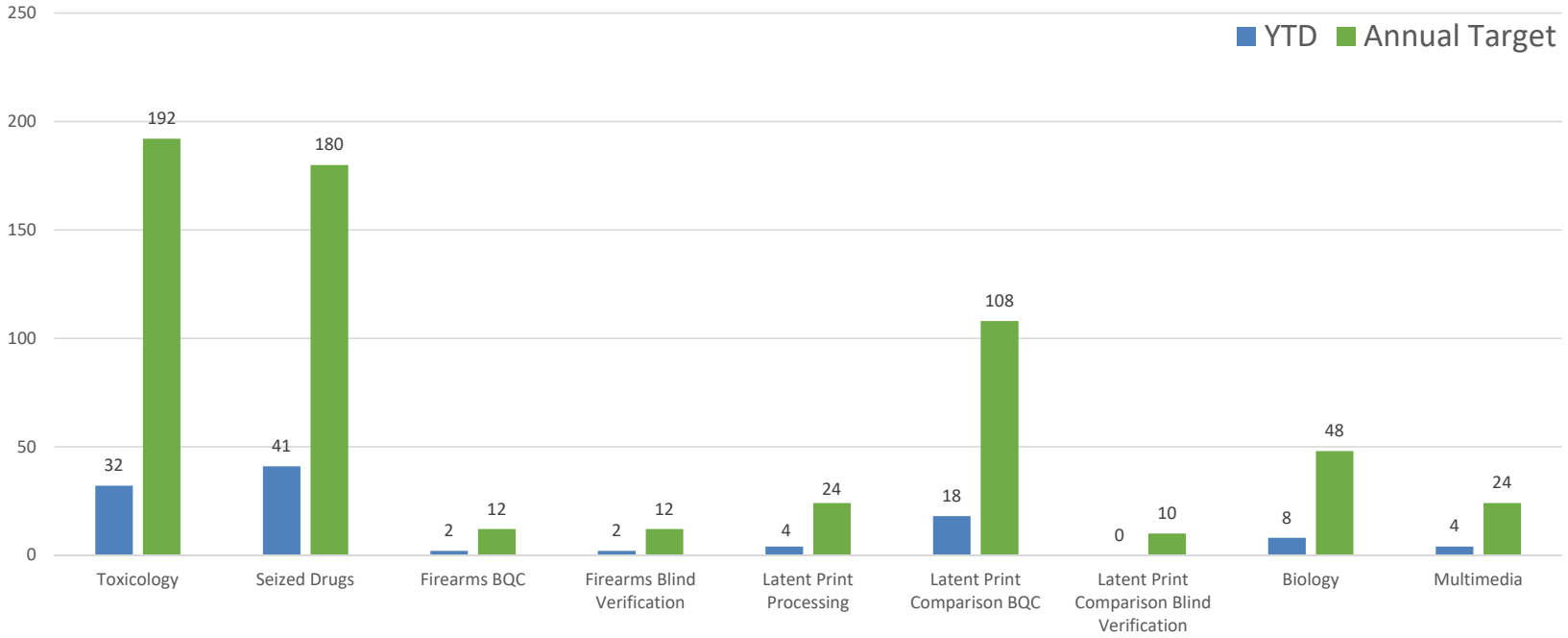
Quality Division Report
March 8, 2019

BQCs Submitted in February



2019 BQCs


250
200
150
100
50
0
YTD
Annual Target
32
192
41
180
2
12
2
12
4
24
18
108
0
10
8
48
4
24
Toxicology
Seized Drugs
Firearms BQC
Firearms Blind Verification
Latent Print Processing
Latent Print Comparison BQC
Latent Print Comparison Blind Verification
Biology
Multimedia

Blind Quality: Challenges and Accomplishments

- No blind verification submitted in latent prints this month due to the move
  - Goal of one/month will begin in March
- All but one BQC will be pulled from each toxicology drug confirmation batch
- BQC item submitted for forensic biology should have been negative for DNA, but yielded the preparer's profile
  - Investigating sample preparation
  - BQC was prepared in January 2018
- No blinds discovered by staff in February

Forensic Discipline	Cases Completed in February
Toxicology – BAC	7
Seized Drugs	20
Biology	3 (DNA) 1 (screening)
Firearms – Blind Verification (BV)	1
Firearms – Blind Quality Control (BQC)	0
Latent Print Processing	1
Latent Print Comparison	5
Multimedia	2

2019 Proficiency Testing (PT)

Discipline		Tests in Progress	Tests Completed	Comments
Seized Drugs		-	n/a	
Toxicology		4	n/a	
Firearms		1	n/a	
Crime Scene Unit		1	n/a	
Latent Prints		1	n/a	
Digital and Multimedia Unit	Audio/Video	-	n/a	
	Digital	-	n/a	
Forensic Biology		9*	n/a	* In January 12 PTs received, only 9 assigned Waiting for results from 1 external 2018 PT

2019 Testimony Data

- 9 analysts have testified in 2019
  - 3 testified in January
  - 6 testified in February
- 7 of 9 have been monitored
  - 1 testified for work done prior to HFSC employment – no monitoring needed
  - 1 transcript will be requested
- Quarterly transcript review
  - First 2019 round of transcript requests will be made in March
- In 2018, evaluations not completed for 3 staff members
  - All will be monitored through transcript review

Detailed Data

Quality Division Notifications

Incidents, Corrective and Preventive Actions

	Quality Notified	Summary of Notification	Comments
Biology			
2019-009 **IR**	2/1/2019	A Forensic Biology case file was missing original documentation that was later located and placed back into the case record.	
2019-013 **CAR**	2/11/2019	As a result of a change to the CODIS software that was made in April 2016, CODIS profiles that were eligible to be searched at the national level were only being searched at the state level and profiles that were eligible to be searched at the state level were only being searched locally. All profiles are now being searched at the appropriate level and no investigations were impeded by this oversight.	
2019-015 **IR**	2/20/2019	Three Forensic Biology proficiency samples were over-amplified causing the resulting data to be overblown. The samples were then re-amplied with the appropriate volumes and optimal concentration.	
Biology/Crime Scene			
2019-012 **CAR**	2/6/2019	The testimony of three HFSC staff members was not monitored during 2018 as is required by the HFSC Quality Manual.	
Crime Scene			
2019-014 **IR**	2/13/2019	During the processing of a vehicle at the vehicle examination building (VEB), the crime scene investigator (CSI) identified a possible shoe imprint on the exterior of the front passenger door. The shoe imprint was photographed and included in the notes and report. However, comparison quality photos were not captured as required by the Crime Scene Unit (CSU) standard operating procedure (SOP).	
Firearms			

HFSC's Quality Division investigates nonconforming work and helps develop solutions in compliance with accreditation and legal standards. With regard to the items listed above, the Division has not detected any use of inaccurate results in a criminal proceeding.

Quality Division Notifications

Incidents, Corrective and Preventive Actions

	Quality Notified	Summary of Notification	Comments
2019-016 **IR**	2/18/2019	A secondary independent check for pending multi-disciplinary requests was not completed on two NIBIN cases on the day the evidence items were processed. This check is required by the Firearms sectional SOP.	
2019-PAR2 **PAR**	2/7/2019	The LIMS barcodes for the Firearms vault locations were printed in close proximity causing incorrect chain of custody transfers.	
Seized Drugs			
2019-PAR1 **PAR**	2/7/2019	The Seized Drugs and the Latent Print processors standardized the handling and labeling process of items of evidence with requests for both these sections.	

HFSC's Quality Division investigates nonconforming work and helps develop solutions in compliance with accreditation and legal standards. With regard to the items listed above, the Division has not detected any use of inaccurate results in a criminal proceeding.