

By: Bivins

S.B. No. 1129

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the admissibility in a criminal proceeding of certain  
3 laboratory analyses of physical evidence or statements as to the  
4 chain of custody of physical evidence.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 38, Code of Criminal Procedure, is  
7 amended by adding Articles 38.41 and 38.42 to read as follows:

8 Art. 38.41. CERTIFICATE OF ANALYSIS

9 Sec. 1. A certificate of analysis that complies with this  
10 article is admissible in evidence on behalf of the state or the  
11 defendant to establish the results of a laboratory analysis of  
12 physical evidence conducted by or for a law enforcement agency  
13 without the necessity of the analyst personally appearing in court.

14 Sec. 2. This article does not limit the right of a party to  
15 summon a witness or to introduce admissible evidence relevant to  
16 the results of the analysis.

17 Sec. 3. A certificate of analysis under this article must  
18 contain the following information certified under oath:

19 (1) the names of the analyst and the laboratory  
20 employing the analyst;

21 (2) a statement that the laboratory employing the  
22 analyst is accredited by a nationally recognized board or  
23 association that accredits crime laboratories;

24 (3) a description of the analyst's educational

1 background, training, and experience;

2 (4) a statement that the analyst's duties of  
3 employment included the analysis of physical evidence for one or  
4 more law enforcement agencies;

5 (5) a description of the tests or procedures conducted  
6 by the analyst;

7 (6) a statement that the tests or procedures used were  
8 reliable and approved by the laboratory employing the analyst; and

9 (7) the results of the analysis.

10 Sec. 4. Not later than the 20th day before the trial begins  
11 in a proceeding in which a certificate of analysis under this  
12 article is to be introduced, the certificate must be filed with the  
13 clerk of the court and a copy must be provided by fax, hand  
14 delivery, or certified mail, return receipt requested, to the  
15 opposing party. The certificate is not admissible under Section 1  
16 if, not later than the 10th day before the trial begins, the  
17 opposing party files a written objection to the use of the  
18 certificate with the clerk of the court and provides a copy of the  
19 objection by fax, hand delivery, or certified mail, return receipt  
20 requested, to the offering party.

21 Sec. 5. A certificate of analysis is sufficient for  
22 purposes of this article if it uses the following form or if it  
23 otherwise substantially complies with this article:

24 CERTIFICATE OF ANALYSIS

25 BEFORE ME, the undersigned authority, personally appeared  
26 \_\_\_\_\_, who being duly sworn, stated as follows:

27 My name is \_\_\_\_\_. I am of sound mind, over the age of 18

1 years, capable of making this affidavit, and personally acquainted  
2 with the facts stated in this affidavit.

3 I am employed by the \_\_\_\_\_, which was authorized to  
4 conduct the analysis referenced in this affidavit. Part of my  
5 duties for this laboratory involved the analysis of physical  
6 evidence for one or more law enforcement agencies. This laboratory  
7 is accredited by \_\_\_\_\_.

8 My educational background is as follows: (description of  
9 educational background)

10 My training and experience that qualify me to perform the  
11 tests or procedures referred to in this affidavit and determine the  
12 results of those tests or procedures are as follows: (description  
13 of training and experience)

14 I received the physical evidence listed on laboratory report  
15 no. \_\_\_\_\_ (attached) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_. On the  
16 date indicated in the laboratory report, I conducted the following  
17 tests or procedures on the physical evidence: (description of  
18 tests and procedures)

19 The tests and procedures used were reliable and approved by  
20 the laboratory. The results are as indicated on the lab report.

21 \_\_\_\_\_

22 Affiant

23 SWORN TO AND SUBSCRIBED before me on the \_\_\_ day of \_\_\_\_\_,  
24 20\_\_.

25 \_\_\_\_\_

26 Notary Public, State of Texas

1           Art. 38.42. CHAIN OF CUSTODY AFFIDAVIT

2           Sec. 1. A chain of custody affidavit that complies with this  
3 article is admissible in evidence on behalf of the state or the  
4 defendant to establish the chain of custody of physical evidence  
5 without the necessity of any person in the chain of custody  
6 personally appearing in court.

7           Sec. 2. This article does not limit the right of a party to  
8 summon a witness or to introduce admissible evidence relevant to  
9 the chain of custody.

10          Sec. 3. A chain of custody affidavit under this article must  
11 contain the following information stated under oath:

12                   (1) the affiant's name and address;

13                   (2) a description of the item of evidence and its  
14 container, if any, obtained by the affiant;

15                   (3) the name of the affiant's employer on the date the  
16 affiant obtained custody of the physical evidence;

17                   (4) the date and method of receipt and the name of the  
18 person from whom or location from which the item of physical  
19 evidence was received;

20                   (5) the date and method of transfer and the name of the  
21 person to whom or location to which the item of physical evidence  
22 was transferred; and

23                   (6) a statement that the item of evidence was  
24 transferred in essentially the same condition as received except  
25 for any minor change resulting from field or laboratory testing  
26 procedures.

27          Sec. 4. Not later than the 20th day before the trial begins

1 in a proceeding in which a chain of custody affidavit under this  
2 article is to be introduced, the affidavit must be filed with the  
3 clerk of the court and a copy must be provided by fax, hand  
4 delivery, or certified mail, return receipt requested, to the  
5 opposing party. The affidavit is not admissible under Section 1 if,  
6 not later than the 10th day before the trial begins, the opposing  
7 party files a written objection to the use of the affidavit with the  
8 clerk of the court and provides a copy of the objection by fax, hand  
9 delivery, or certified mail, return receipt requested, to the  
10 offering party.

11 Sec. 5. A chain of custody affidavit is sufficient for  
12 purposes of this article if it uses the following form or if it  
13 otherwise substantially complies with this article:

14 CHAIN OF CUSTODY AFFIDAVIT

15 BEFORE ME, the undersigned authority, personally appeared  
16 \_\_\_\_\_ , who being by me duly sworn, stated as  
17 follows:

18 My name is \_\_\_\_\_ . I am of sound mind, over  
19 the age of 18 years, capable of making this affidavit, and  
20 personally acquainted with the facts stated in this affidavit.

21 My address is \_\_\_\_\_ .

22 On the \_\_\_\_ day of \_\_\_\_\_ , 20\_\_ , I was employed by  
23 \_\_\_\_\_ .

24 On that date, I came into possession of the physical evidence  
25 described as follows: (description of evidence)

26 I received the physical evidence from \_\_\_\_\_ (name  
27 of person or description of location) on the \_\_\_\_ day of

1 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (method of receipt).

2 This physical evidence was in a container described and  
3 marked as follows: (description of container)

4 I transferred the physical evidence to \_\_\_\_\_  
5 (name of person or description of location) on the \_\_\_\_\_ day of  
6 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (method of delivery).

7 During the time that the physical evidence was in my custody,  
8 I did not make any changes or alterations to the condition of the  
9 physical evidence except for those resulting from field or  
10 laboratory testing procedures, and the physical evidence or a  
11 representative sample of the physical evidence was transferred in  
12 essentially the same condition as received.

13 \_\_\_\_\_

14 Affiant

15 SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of  
16 \_\_\_\_\_, 20\_\_\_\_\_.

17 \_\_\_\_\_

18 Notary Public, State of Texas

19 SECTION 2. This Act takes effect September 1, 2003.