

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 description of the analyst's educational
22 background, training, and experience;

23 (3) a statement that the analyst's duties of
24 employment included the analysis of physical evidence for one or

1 more law enforcement agencies;

2 (4) a description of the tests or procedures conducted
3 by the analyst;

4 (5) a statement that the tests or procedures used were
5 reliable and approved by the laboratory employing the analyst; and

6 (6) the results of the analysis.

7 Sec. 4. Not later than the 10th day before the trial begins
8 in a proceeding in which a certificate of analysis under this
9 article is to be introduced, the affidavit must be filed with the
10 clerk of the court and a copy must be provided by fax, hand
11 delivery, or certified mail, return receipt requested, to the
12 opposing party.

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

16 CERTIFICATE OF ANALYSIS

17 BEFORE ME, the undersigned authority, personally appeared
18 _____, who being duly sworn, stated as follows:

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

22 I am employed by the _____, which was authorized to conduct
23 the analysis referenced in this affidavit. Part of my duties for
24 this laboratory involved the analysis of physical evidence for one
25 or more law enforcement agencies.

26 My educational background is as follows: (description of
27 educational background)

1 My training and experience that qualify me to perform the
2 tests or procedures referred to in this affidavit and determine the
3 results of those tests or procedures are as follows: (description
4 of training and experience)

5 I received the physical evidence listed on laboratory report
6 no. _____ (attached) on the _____ day of _____, 20__. On the
7 date indicated in the laboratory report, I conducted the following
8 tests or procedures on the physical evidence: (description of
9 tests and procedures)

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

12 _____

13 Affiant

14 SWORN TO AND SUBSCRIBED before me on the ____ day of _____,
15 20__.

16 _____

17 Notary Public, State of Texas

18 Art. 38.42. CHAIN OF CUSTODY AFFIDAVIT

19 Sec. 1. A chain of custody affidavit that complies with this
20 article is admissible in evidence on behalf of the state or the
21 defendant to establish the chain of custody of physical evidence
22 without the necessity of any person in the chain of custody
23 personally appearing in court.

24 Sec. 2. This article does not limit the right of a party to
25 summon a witness or to introduce admissible evidence relevant to
26 the chain of custody.

27 Sec. 3. A chain of custody affidavit under this article must

1 contain the following information stated under oath:

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

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

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

7 (4) the date, method of receipt, and name of the person
8 from whom or location from which the item of physical evidence was
9 received;

10 (5) the date, method of transfer, and name of the
11 person to whom or location to which the item of physical evidence
12 was transferred; and

13 (6) a statement that the item of evidence was
14 transferred in essentially the same condition as received except
15 for any minor change resulting from field or laboratory testing
16 procedures.

17 Sec. 4. Not later than the 10th day before the trial begins
18 in a proceeding in which a chain of custody affidavit under this
19 article is to be introduced, the affidavit must be filed with the
20 clerk of the court and a copy must be provided by fax, hand
21 delivery, or certified mail, return receipt requested, to the
22 opposing party.

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

26 CHAIN OF CUSTODY AFFIDAVIT

27 BEFORE ME, the undersigned authority, personally appeared

1 Notary Public, State of Texas

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