

1-1 By: Bivins S.B. No. 1129  
1-2 (In the Senate - Filed March 11, 2003; March 17, 2003, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 23, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 23, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1129 By: Hinojosa

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the admissibility in a criminal proceeding of certain  
1-11 laboratory analyses of physical evidence or statements as to the  
1-12 chain of custody of physical evidence.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 38, Code of Criminal Procedure, is  
1-15 amended by adding Articles 38.41 and 38.42 to read as follows:

1-16 Art. 38.41. CERTIFICATE OF ANALYSIS

1-17 Sec. 1. A certificate of analysis that complies with this  
1-18 article is admissible in evidence on behalf of the state or the  
1-19 defendant to establish the results of a laboratory analysis of  
1-20 physical evidence conducted by or for a law enforcement agency  
1-21 without the necessity of the analyst personally appearing in court.

1-22 Sec. 2. This article does not limit the right of a party to  
1-23 summon a witness or to introduce admissible evidence relevant to  
1-24 the results of the analysis.

1-25 Sec. 3. A certificate of analysis under this article must  
1-26 contain the following information certified under oath:

1-27 (1) the names of the analyst and the laboratory  
1-28 employing the analyst;

1-29 (2) a statement that the laboratory employing the  
1-30 analyst is accredited by a nationally recognized board or  
1-31 association that accredits crime laboratories;

1-32 (3) a description of the analyst's educational  
1-33 background, training, and experience;

1-34 (4) a statement that the analyst's duties of  
1-35 employment included the analysis of physical evidence for one or  
1-36 more law enforcement agencies;

1-37 (5) a description of the tests or procedures conducted  
1-38 by the analyst;

1-39 (6) a statement that the tests or procedures used were  
1-40 reliable and approved by the laboratory employing the analyst; and

1-41 (7) the results of the analysis.

1-42 Sec. 4. Not later than the 20th day before the trial begins  
1-43 in a proceeding in which a certificate of analysis under this  
1-44 article is to be introduced, the certificate must be filed with the  
1-45 clerk of the court and a copy must be provided by fax, hand  
1-46 delivery, or certified mail, return receipt requested, to the  
1-47 opposing party. The certificate is not admissible under Section 1  
1-48 if, not later than the 10th day before the trial begins, the  
1-49 opposing party files a written objection to the use of the  
1-50 certificate with the clerk of the court and provides a copy of the  
1-51 objection by fax, hand delivery, or certified mail, return receipt  
1-52 requested, to the offering party.

1-53 Sec. 5. A certificate of analysis is sufficient for  
1-54 purposes of this article if it uses the following form or if it  
1-55 otherwise substantially complies with this article:

1-56 CERTIFICATE OF ANALYSIS

1-57 BEFORE ME, the undersigned authority, personally appeared  
1-58 \_\_\_\_\_ , who being duly sworn, stated as follows:

1-59 My name is \_\_\_\_\_ . I am of sound mind, over the age of 18  
1-60 years, capable of making this affidavit, and personally acquainted  
1-61 with the facts stated in this affidavit.

1-62 I am employed by the \_\_\_\_\_ , which was authorized to  
1-63 conduct the analysis referenced in this affidavit. Part of my

duties for this laboratory involved the analysis of physical evidence for one or more law enforcement agencies. This laboratory is accredited by \_\_\_\_\_.

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

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

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

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

Affiant

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

Notary Public, State of Texas

Art. 38.42. CHAIN OF CUSTODY AFFIDAVIT

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

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

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

- (1) the affiant's name and address;
- (2) a description of the item of evidence and its container, if any, obtained by the affiant;
- (3) the name of the affiant's employer on the date the affiant obtained custody of the physical evidence;
- (4) the date and method of receipt and the name of the person from whom or location from which the item of physical evidence was received;
- (5) the date and method of transfer and the name of the person to whom or location to which the item of physical evidence was transferred; and
- (6) a statement that the item of evidence was transferred in essentially the same condition as received except for any minor change resulting from field or laboratory testing procedures.

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

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

CHAIN OF CUSTODY AFFIDAVIT

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

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

3-1 My address is \_\_\_\_\_.  
3-2 On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I was employed by  
3-3 \_\_\_\_\_.

3-4 On that date, I came into possession of the physical evidence  
3-5 described as follows: (description of evidence)

3-6 I received the physical evidence from \_\_\_\_\_ (name  
3-7 of person or description of location) on the \_\_\_\_\_ day of  
3-8 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (method of receipt).

3-9 This physical evidence was in a container described and  
3-10 marked as follows: (description of container)

3-11 I transferred the physical evidence to \_\_\_\_\_  
3-12 (name of person or description of location) on the \_\_\_\_\_ day of  
3-13 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (method of delivery).

3-14 During the time that the physical evidence was in my custody,  
3-15 I did not make any changes or alterations to the condition of the  
3-16 physical evidence except for those resulting from field or  
3-17 laboratory testing procedures, and the physical evidence or a  
3-18 representative sample of the physical evidence was transferred in  
3-19 essentially the same condition as received.

3-20 \_\_\_\_\_  
3-21 Affiant  
3-22 SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of  
3-23 \_\_\_\_\_, 20\_\_\_\_.

3-24 \_\_\_\_\_  
3-25 Notary Public, State of Texas  
3-26 SECTION 2. This Act takes effect September 1, 2003.

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