

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1129  
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Criminal Justice  
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Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, the results of a private forensic laboratory analysis may be admissible in evidence as a business record or as a public record when the chemist who performed the analysis is unavailable to testify. However, these exceptions are not available for a forensic analysis conducted in a criminal case by a laboratory affiliated with law enforcement, including the Texas Department of Public Safety crime laboratory. C.S.S.B. 1129 amends the Code of Criminal Procedure to allow admission of a certificate of analysis and a chain of custody affidavit without requiring those individuals to appear in court. The right of a party to summon a witness or to introduce admissible evidence relevant to the results of the analysis is not limited.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Articles 38.41 and 38.42, as follows:

#### **Art. 38.41. CERTIFICATE OF ANALYSIS**

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

Sec. 2. Provides that this article does not limit the right of a party to summon a witness or to introduce admissible evidence relevant to the results of the analysis.

Sec. 3. Requires a certificate of analysis under this article to contain certain information certified under oath.

Sec. 4. Requires an affidavit to be filed with the clerk of the court and a copy to be provided by fax, hand delivery, or certified mail, return receipt requested, to the opposing party, not later than the 20th day before the trial begins in a proceeding in which a certificate of analysis under this article is to be introduced. Provides that the certificate 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 certificate 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. Provides that a certificate of analysis is sufficient for purposes of this article if it uses a certain form or if it otherwise substantially complies with this article.

#### **Art. 38.42. CHAIN OF CUSTODY AFFIDAVIT**

Sec. 1. Provides that 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. Provides that 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. Requires a chain of custody affidavit under this article to contain certain information stated under oath.

Sec. 4. Requires an affidavit to be filed with the clerk of the court and a copy to be provided by fax, hand delivery, or certified mail, return receipt requested, to the opposing party, 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. Provides that 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. Provides that a chain of custody affidavit is sufficient for purposes of this article if it uses a certain form or if it otherwise substantially complies with this article.

SECTION 2. Effective date: September 1, 2003.