

2012 PCAO Proposed Legislation

Topic: The SCOTUS Bullcoming case held that only the analyst who conducted the work could testify as to the examination. This might be cured with a notice and demand statute

Proposed Text: §13-4076: Admission into evidence of certain certificates of analysis. In any hearing or trial of any criminal offense, a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if the attorneys for the State intends to offer it into evidence in a preliminary hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) the requirements of subsection of § 13-4077 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection A of § 13-4077, when any such analysis or examination is performed in any laboratory operated by any state, county or municipal laboratory or authorized by such laboratory to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the Federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics Laboratory, the Federal Drug Enforcement Administration, the Forensic Document Laboratory of the U.S. Department of Homeland Security, or the U.S. Secret Service Laboratory. For the purposes of this section, §13-4078 and §13-4077, the term "certificate of analysis" includes reports of analysis and results of any laboratory examination. §13-4077: Procedures for notifying accused of certificate of analysis; waiver; continuances.

In any trial and in any hearing other than a preliminary hearing, in which the attorneys for the State intends to offer a certificate of analysis into evidence in lieu of testimony pursuant to §13-4076, the attorneys for the State shall:

1. Provide by mail, delivery, or otherwise, a copy of the certificate to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 30 days prior to the hearing or trial;
2. Provide simultaneously with the copy of the certificate so provided under subdivision 1 a notice to the accused of his right to object to having the certificate admitted without the person who performed the analysis or examination being present and testifying;
 - A. The accused may object in writing to admission of the certificate of analysis, in lieu of testimony, as evidence of the facts stated therein and of the results of the analysis or examination. Such objection shall be filed with the court hearing the matter, with a copy to the attorneys for the State, no more than 14 days after the certificate and notice were filed with the clerk by the attorneys for the State or the objection shall be deemed waived. If timely objection is made, the certificate shall not be admissible into evidence unless (i) the testimony of the person who performed the analysis or examination is admitted into evidence describing the facts and results of the analysis or examination

during the State of Arizona's case-in-chief at the hearing or trial and that person is present and subject to cross-examination by the accused, (ii) the objection is waived by the accused or his counsel in writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the certificate.

B. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by §13-4077 may be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the State of Arizona that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to §13-4077, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party.

C. Nothing in this section shall prohibit the admissibility of a certificate of analysis when the person who performed the analysis and examination testifies at trial or the hearing concerning the facts stated therein and of the results of the analysis or examination.

§13-4078: Certificate of analysis as evidence of chain of custody of material described therein

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by any state, county or municipal laboratory or authorized by such laboratory to conduct such analysis or examination, or performed by (ii) the Federal Bureau of Investigation; (iii) the federal Bureau of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug Enforcement Administration; (vi) the Postal Inspection Service; (vii) the U.S. Secret Service; or (viii) the Forensic Document Laboratory of the U.S. Department of Homeland Security shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.

RENUMBER 13-4077,

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