

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1038

(Delegate McComas, *et al.*)

Judiciary

Drunk and Drugged Driving - Evidence - Qualified Medical Person

This bill establishes that a certified statement from a qualified medical person of the person's qualifications to withdraw blood to test for alcohol, drug, or controlled dangerous substance content is admissible as a business record. However, the statement is not admissible as a business record if the defendant establishes, by a preponderance of the evidence, that the person was not a qualified medical person or that the blood was not obtained in compliance with statutory requirements. For a certified statement that is admissible as a business record, the bill repeals notice requirements for the submission of the statement. The bill does not alter requirements for the qualifications of a technician or analyst who conducts tests of blood or breath specimens nor does it alter the standards that govern the admissibility, as evidence, of the test results of blood or breath in a criminal trial.

Fiscal Summary

State Effect: Efficiency savings for the Judiciary, State Police, and governmental medical personnel who conduct blood testing of defendants. Efficiency savings in the Judiciary could be partially offset by a potential increase in expenditures from increased court continuances that could occur under the bill.

Local Effect: Efficiency savings as reported above apply to circuit courts, State's Attorneys, law enforcement, and governmental medical personnel. To the extent increased expenditures for additional court continuances occur due to the bill's provisions, expenditure savings in the circuit courts may be partially offset.

Small Business Effect: None.

Analysis

Current Law: A writing or record made in the regular course of business as a memorandum or documentation of an act, transaction, event or occurrence is admissible to prove the act, transaction, event, or occurrence. A “business” includes business, profession, and occupation of every kind. The practice of the business must be to make written records of its acts at the time they are done or within a reasonable time after the acts. The lack of personal knowledge of the maker of the written notice may affect the weight given to the evidence but not its admissibility. (*See* Courts and Judicial Proceedings Article § 10-101.)

Blood obtained for the purpose of a test in a law enforcement investigation of specified alcohol- and/or drug-related driving offenses must be obtained by a “qualified medical person.” A “qualified medical person” means a person permitted by law to withdraw blood from humans. The qualified medical person must use equipment approved by the State Toxicologist under the Postmortem Examiners Commission (State Toxicologist) and act at the request of a police officer.

A certified statement signed by the qualified medical person who obtained blood is *prima facie* evidence of that person’s qualifications and that the blood was obtained lawfully. Generally, the certified statement is admissible as substantive evidence without the presence or testimony of the medical person. However, if the State decides to offer a certified statement without the presence or testimony of the qualified medical person, the State must notify the defendant or the defendant’s attorney in writing at least 30 days before trial. If the defendant appeals from the District Court or demands a jury trial, a second notification about the use of the certified statement or test results is not required. A defendant may request in writing, no later than 20 days before trial, that the qualified medical person who took a test sample and prepared a certified statement testify in person. If the defendant makes a proper request, the certified statement and test results are inadmissible without the testimony of the qualified medical person. Failure of the defendant to provide timely and proper notice is a waiver of the defendant’s right to demand the presence and testimony of the qualified medical person.

A test of a blood sample obtained from a defendant must be conducted by a “qualified person” using equipment and in a laboratory approved by the State Toxicologist. A “qualified person” means a person who has received training in the use of testing equipment in an approved training program. Such a person may be a police officer, employee of the Chief Medical Examiner, or other approved person. The qualified person (generally referred to in statute as the “technician” or “analyst”) is not required to be a qualified *medical* person.

Background: In criminal prosecutions for various alcohol- and/or drug-related driving offenses in which a blood test is to be offered in evidence, a defendant may require the presence at trial of a nurse (or other “qualified” medical person) who withdrew the blood sample as well as the technician or analyst who performed the test. If the defendant requests that the nurse who withdrew the blood be present and testify at trial, the State’s Attorney may request that the court issue a subpoena for the nurse to appear as a witness. At trial, the State’s Attorney would elicit testimony from the nurse regarding the manner in which the blood was withdrawn; the legal qualifications of the witness to withdraw blood; the equipment used to withdraw the blood; how the blood sample was handled after it was obtained including, the chain of custody; and whether the withdrawal of blood was done at the request of a police officer. Generally, there is no factual dispute as to these matters.

Designation of a certified statement by the nurse or other qualified medical person as a business record may reduce the number of subpoenas to nurses and other qualified medical personnel solely for the introduction of blood test results, unless the defendant offers evidence that the person was not a qualified medical person or that the blood was not withdrawn in accordance with statutory requirements.

Although a specimen of breath is generally taken from a defendant charged with an alcohol- and/or drug-related driving offense, there are prosecutions in which blood would be withdrawn from a defendant instead of or in addition to a specimen of breath: (1) when a defendant refuses a breath test and the defendant was involved in an accident causing death or life-threatening injury to another person; (2) when a police officer has reasonable grounds to believe that the defendant was under the influence of a drug, any combination of drugs, a combination of one or more drugs or alcohol, or a controlled dangerous substance; or (3) when a defendant is unconscious or otherwise incapable of refusing to submit to a breath test.

Additional Information

Prior Introductions: Similar bills, HB 212 of 2003 and HB 733 of 2002, received unfavorable reports from the House Judiciary Committee. Similar legislation was also considered during the 1998 session.

Cross File: SB 621 (Senator Jacobs) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State’s Attorneys’ Association, Maryland Department of Transportation, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510