WRITTEN TESTIMONY IN SUPPORT OF SB 498 and HB 1529

In 2013, the United States Supreme Court, in the landmark case of *Missouri vs. McNeely*, 569 U.S. 141 (2013) held that the natural dissipation of alcohol from the blood does not create a per se exigency exception permitting law enforcement to draw blood in a "garden variety" impaired driving case, absent a warrant.

The Supreme Court in *McNeely* explained and limited its prior decision in *Schmerber v. California*, 384 U.S. 757 (1966), in which it had upheld the warrantless blood draw in an impaired driving case because the officer "might reasonably have believed that he was encountered with an emergency, in which the delay in obtaining a warrant to draw blood would have threatened the destruction of evidence." That is, the alcohol in Schmerber's blood would have dissipated during the process of obtaining a warrant.

The *McNeely* court determined that the reasonableness of a warrantless search under the exigency exception to the warrant requirement must be evaluated on a case by case basis, based upon the totality of the circumstances. The Court went to great lengths to explain how warrants are much more easily obtained these days, what with electronic warrants and e mails.

The Supreme Court more recently decided *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), a case involving the constitutionality of additional criminal sanctions for refusing to take BAC tests. The Court held that the physical intrusion of a breath test is negligible and entails a minimum of inconvenience and therefore said additional penalties for refusing a breath test were constitutional. The Court determined that blood tests, on the other hand, are significantly more intrusive than are breath tests and in most situations a warrant was required prior to mandating a blood test.

Finally, in *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019), in a case involving a driver who was unconscious and deemed to be unable to give consent, the Supreme Court held that the police may almost always order a warrantless blood test to measure the suspect's BAC without being in conflict with the Fourth Amendment. The Court then went on to say that they did not rule out the possibility that in an unusual case the defendant would be able to show that his blood would not have been drawn if the police had not been seeking BAC information and the police could not have reasonably determined that the warrant application process would interfere with other pressing needs or duties.

What these four Supreme Court cases have in common is that, in one way or another, they all stress the importance of seeking a warrant in order to obtain blood evidence in a "run-of-the-mill" impaired driving case. By "run-of-the-mill" I am referring to cases that don't involve a fatality or life-threatening injury. In cases involving fatalities or life-threatening injuries, when an officer has a reasonable belief that the driver is impaired or under the influence, Maryland Transportation Code TA §16-205.1(c) authorizes a warrantless blood draw, using reasonable force if necessary. The Maryland Court of Special Appeals in *Colbert v. State*, 229 Md. App. 79 (2016) indicated that these are precisely the type of limited scenarios in which the Supreme Court would uphold a warrantless blood draw as explained in *Missouri. v. McNeely*.

The Maryland State's Attorneys' Association supports HB 1529 and SB 498. We believe it necessary as the Maryland Transportation Article §16-205.1 (b) has been interpreted by certain members of the judiciary to *prohibit* search warrants for blood results in run-of-the-mill impaired driving cases. Specifically, the language in that subsection that reads "Except as provided in subsection (c), a person *may not be compelled to take a test*" is being interpreted as prohibiting search warrants. As previously mentioned, subsection (c) relates to situations involving a fatality or life-threatening injury.

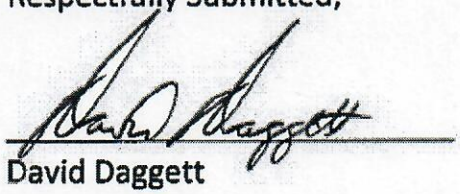
The Supreme Court of the United States tells us that the police must almost always seek a warrant prior to drawing blood in a garden variety impaired driving case. Some members of the Maryland judiciary have determined that law enforcement may not do so. We respectfully disagree with this judicial interpretation.

The Supreme Court stressed in all the above cases how serious they believe the nationwide scourge of impaired driving to be and opined that States should be able to develop reasonable guidelines to limit the carnage caused by impaired drivers.

Finally, as the Maryland appellate courts have consistently stated in cases involving TA §16-205.1, **"this section was enacted for the protection of the public, not for the protection of the accused. The purpose of this section is to protect other drivers on the road from those who would drive while intoxicated and to deter those who would otherwise decide to drive drunk."**

It is for these reasons that the Maryland State's Attorneys' Association is asking that you give HB 1529/SB498 a favorable review.

Respectfully Submitted,



David Daggett
Maryland State's Attorneys' Association