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By: Delegates Morhaim and M. Burns $\,$

Introduced and read first time: January 26, 1998

Assigned to: Judiciary

A BILL ENTITLED

1	AN ACT concerning		

Drunk and Drugged Driving - Evidence - Statements by Qualified Medical
Persons and Toxicologist

- 4 FOR the purpose of repealing a requirement that the State provide certain notice and
- 5 deliver a copy of a certain certified statement of a qualified medical person who
- 6 obtained blood of a defendant charged with certain alcohol- or drug-related
- 7 driving offenses; repealing certain procedures by which a defendant charged
- 8 with certain alcohol- or drug-related driving offenses may exercise the right to
- 9 the presence and testimony of the qualified medical person who obtained blood;
- providing that a statement signed by the toxicologist under the Postmortem
- Examiners Commission shall be prima facie evidence that a blood test was
- performed in a laboratory approved by the toxicologist and the statement is
- admissible in evidence without the necessity of the toxicologist personally
- appearing in court; requiring that a subpoena for the toxicologist shall be
- quashed if the defendant fails to comply with certain requirements; and
- generally relating to certain certified statements by qualified medical persons
- 17 and the toxicologist.
- 18 BY repealing and reenacting, with amendments,
- 19 Article Courts and Judicial Proceedings
- 20 Section 10-304
- 21 Annotated Code of Maryland
- 22 (1995 Replacement Volume and 1997 Supplement)
- 23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 24 MARYLAND, That the Laws of Maryland read as follows:

25 Article - Courts and Judicial Proceedings

26 10-304.

- 27 (a) (1) In this section the following words have the meanings indicated.
- 28 "Qualified medical person" means any person permitted by law to
- 29 withdraw blood from humans.

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3 4	(3) "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the toxicologist under the Postmortem Examiners Commission and who is either a police officer, a police employee, an employee of the office of the Chief Medical Examiner, or a person authorized by the toxicologist under the Postmortem Examiners Commission.				
8	(b) The test of breath shall be administered by a qualified person with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer. The officer arresting the individual may not administer the test of breath.				
	(c) (1) (i) The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist under the Postmortem Examiners Commission acting at the request of a police officer.				
13 14	(ii) A certified statement by the qualified medical person who obtained the blood [shall]:				
15 16	1. SHALL be prima facie evidence of that person's qualifications and that the blood was obtained in compliance with this section[.				
17 18	(iii) 1. A certified statement that complies with the requirements of this paragraph is]; AND				
19 20	2. IS admissible as substantive evidence without the presence or testimony of the qualified medical person who obtained the blood.				
23 24	[2. If the State decides to offer the certified statement without the testimony of the qualified medical person, the State shall, at least 30 days before trial, notify the defendant or the defendant's attorney in writing of the State's intention and deliver to the defendant or the defendant's attorney a copy of the certified statement to be offered.				
28	3. If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to a circuit court, the State is not required to file a second notice.				
	(iv) 1. If the defendant desires the qualified medical person to be present and testify at trial, the defendant shall notify the court and the State in writing no later than 20 days before trial.				
35	2. If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to a circuit court, the defendant shall notify the circuit court and the State in writing no later than 20 days before trial.				
	3. If the timely and proper notice required under this subparagraph is provided by the defendant, the certified statement is inadmissible without the testimony of the qualified medical person.				

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	4. Failure to give the timely and proper notice constitutes a waiver of the defendant's right to the presence and testimony of the qualified medical person.]
	(2) The test of blood shall be conducted by a qualified person using equipment approved by the toxicologist under the Postmortem Examiners Commission in a laboratory approved by the toxicologist.
9 10 11	(d) (1) (I) For the purpose of establishing that the test of breath or blood was administered with equipment approved by the toxicologist under the Postmortem Examiners Commission, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by [him] THE TOXICOLOGIST shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.
15 16 17 18	(II) FOR THE PURPOSE OF ESTABLISHING THAT THE TEST OF BLOOD WAS PERFORMED IN A LABORATORY APPROVED BY THE TOXICOLOGIST UNDER THE POSTMORTEM EXAMINERS COMMISSION, A STATEMENT SIGNED BY THE TOXICOLOGIST THAT THE LABORATORY WAS APPROVED BY THE TOXICOLOGIST SHALL BE PRIMA FACIE EVIDENCE OF THE APPROVAL, AND THE STATEMENT IS ADMISSIBLE IN EVIDENCE WITHOUT THE NECESSITY OF THE TOXICOLOGIST PERSONALLY APPEARING IN COURT.
	(2) (i) If a defendant desires the toxicologist to be present and testify at trial as a witness, the defendant shall file a request for a subpoena for the toxicologist at least 20 days before the trial in the appropriate court.
25	(ii) If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to the circuit court, another subpoena must be filed at least 20 days before the trial in the circuit court.
	(iii) If a trial date is postponed for any reason beyond 30 days from the trial date for which the subpoena was issued, the defendant shall file a new subpoena for the toxicologist.
	(iv) In addition to the requirements of Rule 4-265, the subpoena shall contain the name, address, and telephone number of the defendant or the defendant's attorney.
33 34	(3) A subpoena for the toxicologist [may] SHALL be quashed if a defendant fails to comply with the requirements of this subsection.
35 36	(4) A motion to quash a defendant's subpoena may be filed by any party or by the Attorney General.
	(e) The person tested is permitted to have a physician of the person's own choosing administer tests in addition to the one administered at the direction of the police officer, and in the event no test is offered or requested by the police officer, the

- 1 person may request, and the officer shall have administered, one or more of the tests
- 2 provided for in this section.
- 3 (f) Nothing in this section precludes the right to introduce any other 4 competent evidence bearing upon the date of the certificate or change in the
- 5 equipment since the date of the certificate.
- 6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 7 October 1, 1998.