

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 733
Judiciary

(Delegate Morhaim)

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

This bill repeals a requirement that the State provide at least 30 days notice and deliver a copy of a certified statement of a qualified medical person who obtained blood of a defendant charged with alcohol or drug-related driving offenses, if the State decides to offer the certified statement without testimony.

The bill also repeals procedures that allow a defendant charged with alcohol or drug-related driving offenses to request the presence and testimony of the qualified medical person who obtained the blood. 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.

The bill also requires, rather than permits, a court to quash a defendant's subpoena for the toxicologist if the defendant fails to comply with procedural requirements.

Fiscal Summary

State Effect: Efficiency savings for the Judiciary, State's Attorney's Offices, Postmortem Examiners Commission, and governmental medical personnel who conduct blood testing of defendants.

Local Effect: See above.

Small Business Effect: None.

Analysis

Current Law: A certified statement offered by the qualified medical person who obtained blood pursuant to an investigation of an alcohol or drug-related driving offense is prima facie evidence of that person's qualifications and that the blood was obtained lawfully. The certified statement is substantive evidence without the presence or testimony of the medical person. However, if the State decides to offer the certified statement without testimony by the medical person, the defendant or the defendant's attorney must receive notification 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 is not required.

A defendant may request in writing, no later than 20 days before trial, that the qualified medical person who took a blood sample and prepared a certified statement testify in person concerning the specifics of the certified statement. If the defendant makes a proper request, the certified statement is 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 defendant who desires the presence and testimony of the toxicologist at trial must file a request for subpoena at least 20 days before trial in the appropriate court. A trial postponement that exceeds 30 days requires a new subpoena for the toxicologist from the defendant. The court may quash a subpoena if it is not in compliance with the law. A motion to quash a defendant's subpoena may be filed by any party or the Attorney General.

The person tested may have his or her chosen physician administer a test in addition to the test administered at the police officer's direction. If no test is offered or administered, the person may request testing. Evidence bearing on the date of the certificate, or a change in testing equipment since the date of the certificate, may still be introduced.

Additional Information

Prior Introductions: An identical prior introduction, HB 241 of the 1998 session, received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Wicomico County, Allegany County, Montgomery County, Prince George's County, Talbot County, Judiciary (Administrative Office of the Courts), Baltimore City, Department of Legislative Services

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