

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 212  
Judiciary

(Delegate Morhaim, *et al.*)

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**Drunk and Drugged Driving - Evidence - Certified Statement by Qualified  
Medical Person**

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This bill provides for the admissibility of a certified statement by a qualified medical person, without the person's presence or testimony, in cases involving alcohol- and drug-related driving offenses.

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**Fiscal Summary**

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

**Local Effect:** See above.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill provides, for the purpose of blood evidence in specified alcohol- and drug-related driving cases, that a certified statement by the qualified medical person who obtained blood shall be prima facie evidence of that person's qualifications and that the blood was obtained properly, and is admissible without the presence or testimony of the qualified medical person who obtained the blood. The certified statement is not prima facie evidence that the person was qualified to withdraw blood and

that the blood was obtained lawfully if the defendant establishes by a preponderance of the evidence that the person was not qualified or the blood was not obtained lawfully.

The bill repeals the requirement for a defendant to notify the court and the State in writing 20 days before a trial if the defendant wishes the qualified medical person to be present and testify at trial. It also repeals the requirement that the defendant notify the circuit court and the State, in writing, no later than 20 days before trial, if the defendant is entitled to and demands a jury trial, or if the defendant appeals from the District Court to the circuit court. The bill repeals the provision that waives the defendant's right to the presence and testimony of the qualified medical person if notice by the defendant is not timely and properly given.

If the State does not comply with the requirement to notify the defendant or the defendant's attorney at least 30 days before trial, and the State decides to offer a certified statement without a qualified medical person's testimony, then the statement is inadmissible without the testimony of the qualified medical person.

The bill specifies that its provisions do not preclude a defendant from requesting a subpoena for a qualified medical person who withdrew blood from the defendant or introducing any other competent evidence bearing on an issue at trial.

**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 blood must 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. 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 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 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. 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.

**Background:** In criminal prosecutions for various alcohol- 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 who withdrew blood that was tested by a qualified person (that is, a police officer, police employee, Office of the Chief Medical Examiner employee, or a person authorized by the toxicologist from the Postmortem Examiners Commission). If the defendant requests that the nurse be present at trial, the State's attorney may request the court to issue a subpoena for the nurse to appear as a witness. At trial, the State's attorney would have the nurse testify that he or she was legally qualified to withdraw blood, that he or she used approved equipment to withdraw the blood, and that the withdrawal of blood was done at the request of a police officer. Generally, there is no factual dispute as to these matters. However, if the nurse fails to appear, the nurse's certified statement is not admissible and does not establish prima facie evidence of the nurse's qualifications and that the blood was obtained pursuant to current legal requirements.

If a certified statement by the nurse or other qualified medical person is considered prima facie evidence that the blood evidence was obtained properly, then the State substantially reduces the number of subpoenas to nurses and other qualified medical personnel solely for the introduction of blood test results.

Generally, a specimen of breath is taken from a defendant charged with an alcohol- and drug-related driving offense. However, there are cases that are covered by this bill in which blood would be withdrawn from a defendant instead: (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, 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.

**State Fiscal Effect:** The bill's repeal of the requirement for the defendant to provide timely and proper notice of an intention to seek personal testimony from a qualified medical person could increase the number of court dates. Repeal of this provision could allow a defendant to appear at trial and request a continuance to subpoena the qualified medical person who withdrew blood pursuant to an alcohol- or drug-related driving offense case. This could result in an increase in trial dates and the additional resources needed from court and law enforcement personnel could offset the efficiency savings that would otherwise be realized from this bill.

**Local Fiscal Effect:** See above.

## **Additional Information**

**Prior Introductions:** A similar bill, HB 733, was introduced in the 2002 session. It was referred to the Judiciary Committee, where it received an unfavorable report. Another similar bill, HB 241 of the 1998 session, also received an unfavorable report from the Judiciary Committee.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Karen D. Morgan

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