

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 773
Judiciary

(Delegate Valentino-Smith, *et al.*)

Judicial Proceedings

Drunk and Drugged Driving - Evidence of Blood Test

This bill modifies procedures relating to the admissibility of evidence of a blood test in prosecutions for alcohol- and/or drug-related offenses. Specifically, it eliminates the need for a certified statement from the qualified medical person who conducted a blood test (in lieu of that person's in-person testimony at trial) to establish that the blood was properly obtained. Instead, the bill establishes that testimony from a law enforcement officer who witnessed the taking of the blood specimen, and reasonably believed the person was a qualified medical person, is sufficient evidence that (1) the person was a qualified medical person and (2) the blood was obtained in compliance with State law. The bill also alters the definition of "qualified medical person" to include a person permitted (by law, or otherwise) to withdraw blood from a human who uses specified equipment approved by State law. The bill does not alter a defendant's federal and State constitutional right to confront any witnesses at trial.

Fiscal Summary

State Effect: Efficiency savings for the Judiciary, State Police, and governmental personnel who conduct blood testing of defendants. Revenues are not affected.

Local Effect: Efficiency savings as reported above apply to circuit courts, State's Attorneys, law enforcement, and government medical personnel. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: 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. 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 elect to 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.

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: None.

Cross File: SB 1008 (Senator Cassilly) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Health and Mental Hygiene, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2016
md/kdm Revised - Enrolled Bill - May 4, 2016
Revised - Correction - August 23, 2016

Analysis by: Michelle Davis

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