Edward Coyne _FAV-SB498
Uploaded by: Coyne, Edward
Position: FAV

WRITTEN TESTIMONY of Edward J. Coyne, Deputy State's Attorney for Carroll County, IN SUPPORT OF SB 498 / HB 1529

The Fourth Amendment to the United States Constitution and case law from the U.S. Supreme Court spell out that search warrants are the preferred method of obtaining evidence. Consent is one of the widely accepted alternatives to the preference for search warrants. Transportation Article §16-205.1 covers the implied consent law for obtaining evidence in drunk and drugged driving cases. Even though consent is a permissible alternative to a search warrant, it should not be a limitation on law enforcement that prohibits law enforcement from obtaining a search warrant from a neutral judge in drunk or drugged driving cases.

This bill would help clarify and put to rest any confusion that the implied consent law could limit the ability of law enforcement to obtain a search warrant from a Judge to get evidence from a suspected drunk or drugged driver.

The Carroll County State's Attorney's Office joins the Maryland State's Attorneys' Association in requesting that this committee give SB 498 / HB 1529 a favorable review.

Coyne_FAV_SB498
Uploaded by: Daggett, David
Position: FAV

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The Fourth Amendment to the United States Constitution and case law from the U.S. Supreme Court spell out that search warrants are the preferred method of obtaining evidence. Consent is one of the widely accepted alternatives to the preference for search warrants. Transportation Article §16-205.1 covers the implied consent law for obtaining evidence in drunk and drugged driving cases. Even though consent is a permissible alternative to a search warrant, it should not be a limitation on law enforcement that prohibits law enforcement from obtaining a search warrant from a neutral judge in drunk or drugged driving cases.

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The Carroll County State's Attorney's Office joins the Maryland State's Attorneys' Association in requesting that this committee give SB 498 / HB 1529 a favorable review.

Doggett_FAV_SB498
Uploaded by: Daggett, David
Position: FAV

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.

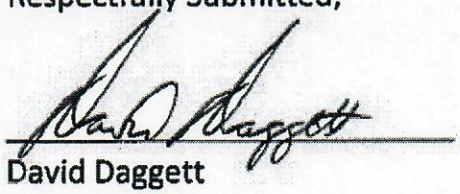
The Supreme Court of the United States tells us that the police must almost always seek a warrant prior to drawing blood in a garden variety impaired driving case. Some members of the Maryland judiciary have determined that law enforcement may not do so. We respectfully disagree with this judicial interpretation.

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

Ready_FAV_SB498
Uploaded by: Daggett, David
Position: FAV

JUSTIN READY
Legislative District 5
Carroll County

Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 21, 2020

Senate Bill 498 Drunk and Drugged Driving - Testing – Warrants

Senate Bill 498 would correct confusion about allowing a police officer to obtain a search warrant for a blood sample.

Currently the law authorizes an officer, if they have a reasonable belief that drugs were a factor in an accident, to take a blood draw only in cases involving fatalities or a life-threatening injury. For other cases that don't fall into this category, the law is currently being interpreted by some as a prohibition on a search warrant for a blood draw. In order to allow law officers to effectively deal with impaired drivers that do not fall into the above category, SB 498 permits an officer to make a determination when necessary to take blood and test for drugs in order to protect others on the road.

I respectfully request a favorable on Senate Bill 498.

MCPA-MSA_FAV_SB498
Uploaded by: Mansfield, Andrea
Position: FAV

Maryland Chiefs of Police Association
Maryland Sheriffs' Association

MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 21, 2020

RE: **SB 498 Drunk and Drugged Driving – Testing - Warrants**

POSITION: SUPPORT

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 498. This bill would explicitly authorize law enforcement officers to seek a judicial warrant to require individuals suspected of drunk or drugged driving to submit to a test to determine the individual's alcohol, drug, or controlled dangerous substance content.

Under Criminal Procedure Article §1-203, a law enforcement officer may request a judge to issue a search warrant if there is probable cause to believe evidence of a crime may be discovered. Although driving while under the influence of alcohol, drugs, controlled dangerous substances, or a combination is a criminal offense, some judges have declined to issue search warrants. The explanation the judges provided was that §16-205.1 of the Transportation Article is the sole method to obtain a sample for testing alcohol or drug concentration.

SB 498 clarifies that a sample may be obtained through a judicially issued search warrant. Drunk and drugged driving is an extremely serious offense. This bill helps to ensure law enforcement has a valuable resource available to allow successful prosecution of those who have endangered the safety of all Marylanders.

For these reasons, MCPA and MSA SUPPORT SB 498 and urge a FAVORABLE Committee report.

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Thomas_Woodward_FAV_SB498
Uploaded by: Woodward, Tom
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State of Maryland
Department of State Police

Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: **February 21, 2020**

BILL NUMBER: **Senate Bill 498** **POSITION: Support**

BILL TITLE: **Drunk and Drugged Driving – Testing - Warrants**

REVIEW AND ANALYSIS:

This legislation seeks to establish an exception to the prohibition on compelling a person to undergo a test of a person's breath or blood if compelled by a valid judicial warrant.

The acquisition of evidence is a major part of any criminal investigation, be it a major or less serious crime. The responsibility for the collection of evidence falls primarily upon law enforcement officers. Driving while impaired by alcohol, drugs or a combination is a criminal act that kills over 10,000 people every year in the United States and around 150 each year in Maryland. An important piece of evidence in an impaired driving case is evidence of alcohol or drugs in the driver's system. That evidence, according to our Transportation Article, comes from the measurement of alcohol and/or drugs in a driver's breath or blood. Transportation Article 16-205.1 prohibits a law enforcement officer from requiring a driver to provide a breath or blood specimen except in the case of a serious or fatal motor vehicle crash. This prohibition prevents a law enforcement officer from fulfilling a major responsibility and deprives the Court of valuable evidence that could help the Court render an appropriate sentence in the case of a conviction.

When criminal suspects refuse to voluntarily provide means by which law enforcement may obtain evidence of a crime, a law enforcement officer may apply for a search and seizure warrant to a Judge of a Maryland court. Currently however, Chief Judge John Morrissey has informed all Maryland District Court judges that no search warrant should be issued for blood or breath specimens except in cases involving a fatality or life threatening injury crash.

Over the last three years, 2017 through 2019, Maryland has averaged a test refusal rate of 44.2% for drug impaired driving cases, all of which involve blood specimens, In comparison, the average test refusal rate for our neighboring states, for the three years of 2016 through 2018, are much lower; Delaware - 0.34%, New Jersey - 19.39%, Pennsylvania - 8.22%, Virginia - 5.43%, and West Virginia - 32.9%, while the national average rate for test refusal is 7.67%

Clarifying our existing law to clearly authorize a judge to issue a search warrant upon proper application would be a logical step in helping secure evidence of a crime; the crime of driving under the influence or while impaired.

For these reason, the Department of State Police urge the committee to give Senate Bill498 a favorable report.

ACLUMD_Holness_UNF_SB 498
Uploaded by: Holness, Toni
Position: UNF

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PUBLIC POLICY DIRECTOR

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WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

Testimony for the Senate Judicial Proceedings Committee

February 21, 2020

SB 498 Drunk and Drugged Driving - Testing – Warrants

UNFAVORABLE

The ACLU of Maryland urges an unfavorable report on SB 498, which would allow for Marylanders to be compelled to take an alcohol, drug, or CDS test if there is a valid warrant.

It is indisputable that a test of a person's blood, breath, or urine is a search under the Fourth Amendment, only justified by a warrant or subject to an exception to the warrant requirement.[1] One such exception to the warrant requirement may arise "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment."[2] However, the Court has explicitly held that exigency depends on the totality of the circumstances.[3] In *McNeely*, the Court held that there is no "per se exigency" that justifies an exception to the 4th Amendment's warrantless search requirement.[4] As such, warrantless nonconsensual blood tests in all drunk-driving cases are unconstitutional.[5]

Under state law, Marylanders may not be required to take a drug or alcohol test unless there has been a car accident in which someone dies or suffers life-threatening injuries.[6] In 2016, the U.S. Supreme Court Justice Samuel Alito, writing for the Court in *Birchfield v. North Dakota*, held that the Fourth Amendment forbids the police from conducting warrantless blood tests.[7]

Although the Court's decision allowed for blood tests pursuant to a warrant, it is nonetheless bad policy to further sanction such tests under state law. Alcohol and drug-related public safety concerns are best addressed in the

1 *Missouri v. McNeely*, 569 U.S. 141, 166, 133 S.Ct. 1552, 1569-70 (2013).
2 *Kentucky v. King*, 563 U.S. 452, 460 (2011).
3 *McNeely*, 133 S. Ct. at 1556.
4 *Id.* at 1562-63.
5 *Id.* at 1556.
6 Md. Code Ann., Transportation, § 16-205.1.
7 *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016).

healthcare context, through substance use disorder treatment and education about the dangers of driving under the influence. We respectfully urge the committee to explore these avenues, instead of granting greater authority to law enforcement to engage in intrusive practices against Marylanders.

For these reasons, we urge an unfavorable report for SB 498.