

# HOUSE BILL 1038

R3

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CF SB 621

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By: **Delegates McComas, Aumann, Barnes, Bartlett, Eckardt, Frank, Haddaway, Impallaria, Jennings, McDonough, Norman, Riley, Rosenberg, Sophocleus, Stifler, and Stocksdales**

Introduced and read first time: February 15, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving – Evidence – Qualified Medical Person**

3 FOR the purpose of providing for the admissibility in evidence of a certified statement  
4 by a qualified medical person who obtained blood from a defendant charged  
5 with certain alcohol– or drug–related driving offenses without the testimony of  
6 the qualified medical person under certain circumstances; providing for certain  
7 exceptions; repealing certain procedures; and generally relating to altering  
8 certain evidentiary provisions concerning the admissibility of a certain certified  
9 statement by a qualified medical person under certain circumstances.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 10–304(a) and 10–306  
13 Annotated Code of Maryland  
14 (2006 Replacement Volume and 2009 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 10–304(c)  
18 Annotated Code of Maryland  
19 (2006 Replacement Volume and 2009 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Courts and Judicial Proceedings**

23 10–304.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section the following words have the meanings indicated.

2 (2) “Qualified medical person” means any person permitted by law to  
3 withdraw blood from humans.

4 (3) “Qualified person” means a person who has received training in the  
5 use of the equipment in a training program approved by the toxicologist under the  
6 Postmortem Examiners Commission and who is either a police officer, a police  
7 employee, an employee of the office of the Chief Medical Examiner, or a person  
8 authorized by the toxicologist under the Postmortem Examiners Commission.

9 (c) (1) (i) The blood shall be obtained by a qualified medical person  
10 using equipment approved by the toxicologist under the Postmortem Examiners  
11 Commission acting at the request of a police officer.

12 (ii) A certified statement by the qualified medical person who  
13 obtained the blood shall be prima facie evidence of that person’s qualifications and  
14 that the blood was obtained in compliance with this section.

15 (iii) [1.] A certified statement that complies with the  
16 requirements of this paragraph is admissible as [substantive evidence] **A BUSINESS**  
17 **RECORD** without the presence or testimony of the qualified medical person who  
18 obtained the blood **UNLESS THE DEFENDANT ESTABLISHES BY A**  
19 **PREPONDERANCE OF THE EVIDENCE THAT THE PERSON WAS NOT A QUALIFIED**  
20 **MEDICAL PERSON OR THAT THE BLOOD WAS NOT OBTAINED IN COMPLIANCE**  
21 **WITH THIS SECTION.**

22 [2. If the State decides to offer the certified statement  
23 without the testimony of the qualified medical person, the State shall, at least 30 days  
24 before trial, notify the defendant or the defendant’s attorney in writing of the State’s  
25 intention and deliver to the defendant or the defendant’s attorney a copy of the  
26 certified statement to be offered.

27 3. If the District Court is deprived of jurisdiction under  
28 circumstances in which a defendant is entitled to and demands a jury trial, or appeals  
29 from the District Court to a circuit court, the State is not required to file a second  
30 notice.

31 (iv) 1. If the defendant desires the qualified medical person  
32 to be present and testify at trial, the defendant shall notify the court and the State in  
33 writing no later than 20 days before trial.

34 2. If the District Court is deprived of jurisdiction under  
35 circumstances in which a defendant is entitled to and demands a jury trial, or appeals  
36 from the District Court to a circuit court, the defendant shall notify the circuit court  
37 and the State in writing no later than 20 days before trial.

1                   3.     If the timely and proper notice required under this  
2 subparagraph is provided by the defendant, the certified statement is inadmissible  
3 without the testimony of the qualified medical person.

4                   4.     Failure to give the timely and proper notice  
5 constitutes a waiver of the defendant's right to the presence and testimony of the  
6 qualified medical person.]

7                   (2)    The test of blood shall be conducted by a qualified person using  
8 equipment approved by the toxicologist under the Postmortem Examiners Commission  
9 in a laboratory approved by the toxicologist.

10 10-306.

11           (a)    (1)    (i)    Subject to the provisions of paragraph (2) of this subsection,  
12 in any criminal trial in which a violation of § 16-113, § 16-813, or § 21-902 of the  
13 Transportation Article, or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the  
14 Criminal Law Article is charged or is an issue, a copy of a report of the results of a test  
15 of breath or blood to determine alcohol concentration signed by the technician or  
16 analyst who performed the test, is admissible as substantive evidence without the  
17 presence or testimony of the technician or analyst who performed the test.

18                   (ii)   Subject to the provisions of § 10-308(b) of this subtitle and  
19 paragraph (2) of this subsection, in any criminal trial in which a violation of § 21-902  
20 of the Transportation Article or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of  
21 the Criminal Law Article is charged, a copy of a report of the results of a test or tests  
22 of blood to determine drug or controlled dangerous substance content signed by the  
23 technician or analyst who performed the test, is admissible as substantive evidence  
24 without the presence or testimony of the technician or analyst who performed the test.

25                   (2)    To be admissible under paragraph (1) of this subsection, the report  
26 shall:

27                   (i)    Identify the technician or analyst as a "qualified person", as  
28 defined in § 10-304 of this subtitle;

29                   (ii)   State that the test was performed with equipment approved  
30 by the toxicologist under the Postmortem Examiners Commission at the direction of a  
31 police officer; and

32                   (iii)   State that the result of the test is as stated in the report.

33           (b)    (1)    (i)    Test results which comply with the requirements of  
34 subsection (a) of this section are admissible as substantive evidence without the  
35 presence or testimony of the technician or analyst who administered the test.

1                   (ii)     However, if the State decides to offer the test results without  
2 the testimony of the technician or analyst, it shall, at least 30 days before trial, notify  
3 the defendant or his attorney in writing of its intention and deliver to the defendant or  
4 his attorney a copy of the test results to be offered.

5                   (iii)    If the District Court is deprived of jurisdiction under  
6 circumstances in which a defendant is entitled to and demands a jury trial, or appeals  
7 from the District Court to the circuit court, the State is not required to file a second  
8 notice.

9                   (2)     (i)     If the defendant desires the technician or analyst to be  
10 present and testify at trial, the defendant shall notify the court and the State in  
11 writing no later than 20 days before trial.

12                   (ii)    If the District Court is deprived of jurisdiction under  
13 circumstances in which a defendant is entitled to and demands a jury trial, or appeals  
14 from the District Court to a circuit court, the defendant shall notify the circuit court  
15 and the State in writing no later than 20 days before trial.

16                   (iii)   If the timely and proper notice required under this  
17 paragraph is provided by the defendant, the test results are inadmissible without the  
18 testimony of the technician or analyst.

19                   (3)     Failure to give timely and proper notice constitutes a waiver of the  
20 defendant's right to the presence and testimony of the technician or analyst.

21                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2010.