HOUSE BILL 1014

E2, R3 4 lr 1512

By: Delegates Valentino-Smith, Clippinger, Howard, Hubbard, A. Kelly, Niemann, Swain, Valderrama, and Vaughn

Introduced and read first time: February 6, 2014

Assigned to: Judiciary

AN ACT concerning

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A BILL ENTITLED

2	Criminal Procedure - Preliminary Breath Test - Evidence

3 FOR the purpose of authorizing a court, in a certain revocation of probation 4 proceeding, to consider the results of a certain preliminary breath test of alcohol 5 concentration as evidence that the defendant failed to abstain from the use of 6 alcohol under certain circumstances; limiting a certain prohibition on the use, 7 by the State as evidence in a court action, of the result of a preliminary breath 8 test to prohibit its use to prove guilt or innocence; authorizing the State to use 9 the results of a preliminary breath test to prove probable cause or reasonable 10 grounds or in a certain revocation of probation proceeding; making a conforming 11 change; and generally relating to preliminary breath tests.

- 12 BY repealing and reenacting, with amendments,
- 13 Article Criminal Procedure
- 14 Section 6–231
- 15 Annotated Code of Maryland
- 16 (2008 Replacement Volume and 2013 Supplement)
- 17 BY repealing and reenacting, with amendments,
- 18 Article Transportation
- 19 Section 16–205.2
- 20 Annotated Code of Maryland
- 21 (2012 Replacement Volume and 2013 Supplement)
- 22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 23 MARYLAND, That the Laws of Maryland read as follows:
- 24 Article Criminal Procedure
- 25 6–231.

1	(A)	Before the revocation of any probation ordered under this title, and in
2	addition to	any other factors the court considers in connection with the determination
3	of an approp	priate sentence, the court shall:

- 4 (1) consider any evaluation or recommendation of any health 5 professional licensed under the Health Occupations Article;
- 6 (2) consider relevant information about the defendant's drug or alcohol 7 abuse; and
- 8 (3) make a finding on the record as to the defendant's amenability to treatment and the interest of justice.
- 10 (B) IN A PROCEEDING ON THE REVOCATION OF A PROBATION ORDERED
 11 UNDER THIS TITLE, THE COURT MAY CONSIDER THE RESULTS OF A
 12 PRELIMINARY BREATH TEST ADMINISTERED BY THE DEFENDANT'S PROBATION
 13 AGENT OR DRINKING MONITOR AS EVIDENCE THAT THE DEFENDANT FAILED TO
 14 ABSTAIN FROM THE USE OF ALCOHOL IF:
- 15 (1) THE BREATH TEST DEVICE WAS APPROVED FOR USE BY THE DIVISION OF PAROLE AND PROBATION; AND
- 17 (2) AT THE TIME OF TESTING, THE DEFENDANT HAD AN ALCOHOL
 18 CONCENTRATION OF MORE THAN 0.04 AS MEASURED BY GRAMS OF ALCOHOL
 19 PER 210 LITERS OF BREATH.

Article - Transportation

21 16–205.2.

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- (a) A police officer who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while under the influence of alcohol or while impaired by alcohol may, without making an arrest and prior to the issuance of a citation, request the individual to submit to a preliminary breath test to be administered by the officer using a device approved by the State Toxicologist.
- (b) The police officer requesting the preliminary breath test shall advise the person to be tested that neither a refusal to take the test nor the taking of the test shall prevent or require a subsequent chemical test pursuant to § 16–205.1 of this subtitle.
- (c) (1) The results of the preliminary breath test shall be used as a guide for the police officer in deciding whether an arrest should be made and may not be used as evidence by the State in any court action TO PROVE GUILT OR INNOCENCE.

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October 1, 2014.

(2)

The results of the preliminary breath test may be used as evidence

2	by a defendant in a court action.
3 4	(3) [The] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE taking of or refusal to submit to a preliminary breath test is not
5	admissible in evidence in any court action.
6 7	(4) THE STATE MAY USE THE RESULTS OF A PRELIMINARY BREATH TEST:
8 9	(I) TO PROVE PROBABLE CAUSE OR REASONABLE GROUNDS; AND
10	(II) IN A REVOCATION OF PROBATION PROCEEDING IN
11	ACCORDANCE WITH § 6–231 OF THE CRIMINAL PROCEDURE ARTICLE.
12 13 14	(5) [Any] EXCEPT AS PROVIDED IN § 6-231 OF THE CRIMINAL PROCEDURE ARTICLE, ANY evidence pertaining to a preliminary breath test may not be used in a civil action.
15 16 17 18	(d) Refusal to submit to a preliminary breath test shall not constitute a violation of § 16–205.1 of this subtitle and the taking of a preliminary breath test shall not relieve the individual of the obligation to take the test required under § 16–205.1 of this subtitle if requested to do so by the police officer.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect