

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**

House Bill 1014  
Judiciary

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

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**Criminal Procedure - Preliminary Breath Test - Evidence**

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This bill expands the circumstances under which the results of a preliminary breath test (PBT) may be used as evidence. The State may use the results of a PBT (1) in a prosecution to prove probable cause or reasonable grounds and (2) in a probation revocation proceeding, as specified in the bill.

In a probation revocation proceeding, a court may consider the results of a PBT administered by the defendant's probation agent or drinking monitor as evidence that the defendant failed to abstain from alcohol if the PBT device was approved for use by the Division of Parole and Probation and, at the time of testing, the defendant had a blood alcohol concentration (BAC) exceeding 0.04, as measured by grams of alcohol per 210 liters of breath.

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**Fiscal Summary**

**State Effect:** The bill is primarily procedural in nature. It is anticipated that the Judiciary and the Department of Public Safety and Correctional Services can handle any increase in caseload with existing resources. Enforcement can be handled with existing resources. Revenues are not materially affected.

**Local Effect:** Enforcement can be handled with existing resources.

**Small Business Effect:** None.

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## Analysis

### Current Law:

*Preliminary Breath Test:* Without making an arrest and prior to the issuance of a citation, a police officer who has reasonable grounds to believe that a person has been driving or attempting to drive while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol may request that the person submit to a PBT. The officer who administers the test must use a device approved by the State Toxicologist. The results of a PBT must be used only as a guide by a police officer to determine whether or not an arrest for an alcohol-related driving offense should be made.

The taking of or refusal to submit to a PBT is not admissible as evidence, and the State may not use the results as evidence in any court action. A defendant, however, may use the results of a PBT as evidence in a court action. In a civil action, evidence pertaining to a PBT may not be used. Refusal to submit to a PBT is not a violation of the Maryland Vehicle Law which specifies that a person who drives on the highways of the State has deemed to consent to a chemical test of blood or breath if requested to do so by a police officer who has detained the person on suspicion that the person committed an alcohol- and/or drug-related driving offense.

*Chemical Test of Blood or Breath:* A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense.

However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in the death of or a life-threatening injury to another person.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures. An offender's license or driving privilege must be suspended by the Motor Vehicle Administration for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal unless the driver participates in the Ignition Interlock System Program for at least one year.

*Alcohol Concentration – Presumptions:* A test is admissible at trial to show a driver's specific BAC. Alcohol concentration is measured by grams of alcohol per 100 milliliters

of blood or grams of alcohol per 210 liters of breath. If a test of blood or breath is admitted as evidence, statutory provisions establish the applicable evidentiary presumption based on the specific test results. An alcohol test requested by a police officer after detaining a driver on suspicion of committing an alcohol-related driving offense test is usually a breath test, but sometimes it is a blood test.

If a person has an alcohol concentration at the time of testing of 0.08 or more, the person is considered under the influence of alcohol *per se*. A test result of 0.08 or more also subjects a driver to an administrative *per se* license suspension. An alcohol concentration at the time of testing of at least 0.07 but less than 0.08 constitutes *prima facie* evidence that the person was driving while impaired by alcohol. An alcohol concentration at the time of testing of more than 0.05 but less than 0.07 may not give rise to any presumption that the person was or was not under the influence of alcohol or that the person was or was not driving while impaired by alcohol. An alcohol concentration at the time of testing of 0.05 or less creates the presumption that the person was not under the influence of alcohol and was not driving while impaired by alcohol. An alcohol concentration at the time of testing of 0.02 or more is *prima facie* evidence that the person was driving with alcohol in the person's blood. This rule is used mainly to prove a violation of an alcohol restriction on a driver's license.

*Revocation of Probation:* Before the revocation of probation, and in addition to any other factors the court considers when determining an appropriate sentence, the court must consider any evaluation or recommendation of any licensed health professional, consider relevant information about the defendant's drug or alcohol abuse, and make a finding on the record regarding the defendant's amenability to treatment and the interest of justice.

**Background:** In 2013, the Department of State Police offered 5,652 PBTs to drivers. Of those, a PBT was refused 1,237 times and the test was administered 4,415 times. The Department of State Police also reports that 871 drivers consented to and took a PBT but refused a test of blood or breath when requested by the officer, and 731 drivers refused a PBT and a test of blood or breath when requested to do so.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Dorchester, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2014  
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