

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 40 (Chairman, Judicial Proceedings Committee)
(By Request – Departmental – Public Safety and Correctional Services)

Judicial Proceedings

Maryland Parole and Probation Hearings - Evidence - Preliminary Breath Tests

This departmental bill allows the results of a preliminary breath test to be used as evidence by the State or a defendant in a violation of probation proceeding or a parole revocation hearing.

Fiscal Summary

State Effect: None. The bill's provisions would have no fiscal impact on either the Division of Parole and Probation or the Motor Vehicle Administration. Any additional incarcerations or other related costs that may result from additional revocations of parole or probation are not expected to measurably affect State operations or finances.

Local Effect: None. Any additional incarcerations or other related costs that may result from additional revocations of parole or probation are not expected to measurably affect local governments operations or finances.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Under the State's vehicle laws, the results of a preliminary breath test are used as a guide by a police officer in deciding whether an arrest should be made and may not be used as evidence by the State in any court action. The results of such a test may be used as evidence by a defendant in a court action. The taking or refusal to submit to a

preliminary breath test is not admissible in evidence in any court action. Any evidence pertaining to such a test may not be used in a civil action.

Background: Preliminary breath tests are routinely administered to offenders being monitored or supervised by the Division of Parole and Probation. Most of these tests are administered to individuals who are on probation for drunk driving and who are court ordered to submit to alcohol or substance-abuse testing. The sole purpose of such a test is to determine whether an offender who has been ordered to remain alcohol-free has used any amount of alcohol.

In *Harmon v. State*, 147 Md. App 452 (2002), the Court of Appeals held that the current Transportation Article provision governing preliminary breath tests prohibits the State from using the results of such a test in any court action, even if the purposes of administering the test are not the same as when a police officer is making a determination of arrest under the State's vehicle laws.

Preliminary breath tests are often offered as a precursor to probable cause in connection with a police request for a driver to submit to a chemical, breath, or blood test prior to a license suspension or disqualification stemming from a refusal to submit to such tests, which are admissible in court.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Transportation (Motor Vehicle Administration), Department of Public Safety and Correctional Services (Division of Parole and Probation), Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2004
mh/jr

Analysis by: Guy G. Cherry

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