

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 188  
Judiciary

(Delegate Shewell, *et al.*)

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Probation or Work Release - Controlled Dangerous Substance or Alcohol  
Testing - Chemist or Analyst as Witness

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This bill repeals a provision subjecting a chemist or analyst who performs a laboratory test confirming that a defendant used a controlled dangerous substance or alcohol to cross-examination by any party to a revocation of probation or work release proceeding.

The bill also repeals the procedural requirements that must be met in order for this cross-examination to take place.

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Fiscal Summary

**State Effect:** The bill's procedural changes to revocation of probation or work release hearings would not affect State finances.

**Local Effect:** The bill's procedural changes to revocation of probation or work release hearings would not affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** In a revocation of probation or work release proceeding, a laboratory test ("lab test"), performed by a laboratory certified by the Department of Health and Mental Hygiene (DHMH) and approved by the Division of Parole and Probation of the Department of Public Safety and Correctional Services (DPSCS), indicating that a defendant has used a controlled dangerous substance (CDS) or alcohol in violation of a

condition of the defendant's probation or work release, is considered sufficiently reliable to justify revocation of the defendant's probation or work release.

The lab report must:

- identify the chemist or analyst who performed the lab test as an individual qualified, according to DHMH-approved standards, to perform the laboratory test;
- be signed by the chemist or analyst who performed the lab test; and
- contain a statement that (1) the material delivered to the chemist or analyst was properly tested under procedures and equipment approved by DHMH; (2) the lab test procedures are reliable; and (3) the lab test indicates that the defendant used a CDS or alcohol.

The lab report is *prima facie* evidence of the lab test results. Testimony in court from an expert witness from the laboratory supporting the contents of the lab report is not required. However, if a lab report or statement is admitted into evidence, the chemist or analyst who performed the lab test is subject to cross-examination by any party to the proceeding. If a defendant wishes to cross-examine the chemist or analyst, the defendant must file a written demand at least five days before the hearing. The prosecution must then require the presence of the chemist or analyst who performed the test or any individual in the chain of custody or control as a prosecution witness.

The above-mentioned provisions apply so long as a copy of the lab report or statement to be introduced is mailed, delivered, or made available to defense counsel or the defendant personally when the defendant is not represented by counsel, at least 10 days prior to the introduction of the lab report or statement at the hearing.

Parties to revocation of probation or work release proceedings are still entitled to introduce evidence supporting or contradicting the evidence contained in or the presumptions raised by the lab report.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2006  
nas/jr

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