

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 212  
Judiciary

(Delegate Anderson, *et al.*)

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Vehicle Laws - Preliminary Breath Test - Evidence

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This bill creates an exception to the ban on the evidentiary use of the results of a preliminary breath test by the State in any court action by authorizing the State to use the test results as evidence to establish probable cause to arrest a person.

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Fiscal Summary

**State Effect:** The bill's changes can be handled with existing resources.

**Local Effect:** The bill's changes can be handled with existing resources.

**Small Business Effect:** None.

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Analysis

**Current Law:** A police officer who has reasonable grounds to believe that a person has been driving or attempting to drive a motor vehicle while under the influence of or impaired by alcohol may request that the person take a preliminary breath test using an approved device. The police officer may make the request without arresting the person and prior to issuing a citation. The request to take a preliminary breath test does not either prevent or require a subsequent chemical test of blood or breath.

If administered, the test results must be used by a police officer as a guide to determine whether an arrest must be made, but the results may not be used as evidence by the State in any court action. The defendant may use the test results, however, as evidence in a court action. Contrary to test results, the taking or refusal to take a preliminary breath test is not admissible as evidence in any court action and, in a civil action, any evidence

pertaining to a preliminary breath test is inadmissible. The sanctions that apply for refusal to take a chemical test of blood or breath do not apply to refusal to take a preliminary breath test. Also, agreeing to a preliminary breath test does not exempt a person from the obligation to take a chemical test of blood or breath if requested to do so by a police officer.

**Background:** Preliminary breath tests may be offered to support reasonable grounds to suspect impaired driving in connection with a police request for a driver to submit to a test of blood or breath prior to the imposition of administrative sanctions stemming from a refusal to submit to such tests, which are admissible in court.

In *Harmon v. State*, 147 Md. App. 452 (2002), the Court of Special Appeals held that State law 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 Maryland Vehicle Law.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Carroll and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2009  
ncs/ljm

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Analysis by: Karen D. Morgan

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