

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 743
Judiciary

(Delegate Kramer, *et al.*)

Drunk Driving Elimination Act

This bill requires, rather than authorizes, the Motor Vehicle Administration (MVA) to establish an Ignition Interlock System Program, with a fee to cover program costs, and to establish minimum standards for all service providers. The bill requires, rather than permits, participation from persons who have been convicted of or granted probation before judgment (PBJ) for specified alcohol-related driving offenses. A person who is required to participate in the program must successfully complete it or that person is subject to suspension of the driver’s license. A person who is convicted of driving while the driver’s license is suspended or revoked as a result of driving while under the influence of alcohol, under the influence *per se*, impaired by alcohol, or after a failure to successfully complete the Ignition Interlock System Program is subject to mandatory imprisonment for not less than five days.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$1.2 million in FY 2011 for additional personnel and related expenses to monitor and process program participants. TTF revenues increase significantly from program fees charged to participants in the Ignition Interlock System Program, which must cover the cost of the program, and from fees for corrected licenses. Out-years assume a stable caseload and include annualization and inflation. General fund revenues increase by \$249,600 in FY 2011 due to additional administrative hearings. Potential minimal increase in general fund expenditures due to the bill’s mandatory imprisonment provision.

(\$ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$0.2	\$0.3	\$0.3	\$0.3	\$0.3
SF Revenue	\$1.2	\$1.3	\$1.4	\$1.4	\$1.5
GF Expenditure	-	-	-	-	-
SF Expenditure	\$1.2	\$1.3	\$1.4	\$1.4	\$1.5
Net Effect	\$0.2	\$0.3	\$0.3	\$0.3	\$0.3

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in expenditures due to the bill's mandatory imprisonment provision.

Small Business Effect: Minimal. Vendors approved by MVA who install ignition interlock systems may receive additional income under the bill due to higher levels of participation.

Analysis

Bill Summary: MVA is required to establish a protocol for the program by which a service provider must send information to MVA on individuals required to participate in the program at least every 30 days. The bill alters the parameters under which persons are required to participate in the Ignition Interlock System Program.

A person *must* participate in the Ignition Interlock System Program if the person is convicted of, or granted PBJ for, a first or other violation of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol. A notice of suspension or revocation sent to a person must include information about how the person can be required to participate in the program. In addition to any other required penalties, MVA must require the person to participate in the program for six months for a first violation, one year for the second violation, and three years for the third or subsequent violation, unless the court orders a longer period of program participation. The person's driver's license must also have a restriction that prohibits the person from driving a motor vehicle that is not equipped with an ignition interlock device for the entire time the person is required to participate in the program. This restriction may be modified if either the court or MVA expressly permit the person to drive a motor vehicle owned or provided by his or her employer without an ignition interlock device, because that person is required to operate a motor vehicle in the course of employment.

MVA must require the person to complete the program successfully. If the person required to participate fails to successfully complete the program, MVA is required to suspend the driver's license for a period of six months for a first violation of driving while under the influence of alcohol, under the influence *per se*, or impaired by alcohol, and one year for a second or subsequent violation. A person who is convicted of driving while the driver's license is suspended or revoked as a result of driving while under the influence of alcohol, under the influence *per se*, impaired by alcohol, or due to a failure to successfully complete participation in the Ignition Interlock System Program is subject to a mandatory minimum imprisonment of five days. The imprisonment penalty is not subject to suspension or probation.

MVA must establish a fee for program participation that is sufficient to cover the program costs, but the fee is waived for indigent persons. A program participant must be

credited for any successful participation in the program that occurs before a hearing in court.

Current Law: A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol; or
- impaired by drugs, or combination of drugs and alcohol.

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by MVA. A person convicted of driving under the influence or under the influence *per se* is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory alcohol abuse assessment. A conviction for lesser included offenses subjects the violator to a fine of \$500 and/or imprisonment for up to two months. However, for repeat offenders, maximum prison terms increase to a year. If an offender is transporting a minor at the time of the alcohol- and/or drug-related driving offense, fines and sanctions increase.

MVA is authorized to establish an Ignition Interlock System Program for alcohol-impaired drivers and establish protocols for minimum standards for approved system providers.

A person may participate in the program if the person's driver's license is suspended or revoked for alcohol-related driving offenses or for the accumulation of points that lead to license suspension or revocation for these offenses. Also, a person may participate if the person's driver's license has an alcohol restriction or if MVA modifies a suspension or issues a restricted license to the person. The suspension of the driver's license may be lessened or avoided if a driver is eligible for and participates in the program under several circumstances: (1) the driver refused to take a test for alcohol or drugs; (2) the driver took a test and the result was 0.15 blood alcohol content (BAC) or greater; or (3) the driver has a subsequent conviction for driving while under the influence of alcohol, or under the influence *per se*. A person may participate if he/she is ordered to participate by a court.

A notice of suspension or revocation from MVA issued as a result of a conviction for an alcohol-related driving offense must include information about the program and the qualifications for admission. MVA is authorized to issue a restricted license to a person who participates in the program during the period that the driver's license is suspended. If the driver's license has been revoked for specified alcohol-related driving offenses or for the accumulation of points resulting from driving while under the influence of alcohol

or under the influence of alcohol *per se*, MVA may reinstate the license and impose a period of suspension in lieu of the license revocation. MVA is also authorized to establish a fee for program participation. A person who is required to participate must be monitored by MVA and pay the fee required by MVA.

If a person is required to operate a motor vehicle in the course of employment that is owned or provided by the person's employer, the person may operate that vehicle without an ignition interlock system, with the express permission of the court or the Administrator of MVA.

Background: According to the 2008 final report of the Maryland Task Force to Combat Driving Under the Influence of Drugs and Alcohol, the use of ignition interlock systems has been shown to lead to long-lasting changes in driver behavior and the reduction of recidivism. The task force advises that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that Michigan, Pennsylvania, Virginia, and West Virginia have extended required times for ignition interlock use for certain drunk driving violations and, when offenders are required to use ignition interlock systems, recidivism is reduced by 60% to 95%.

According to the National Conference of State Legislatures (NCSL), about 1.4 million drivers are arrested nationwide for alcohol impairment annually. About 146,000 ignition interlock devices are in use, a proportion of 10%. Forty-seven states and the District of Columbia authorize or mandate the use of an ignition interlock system to deter alcohol-impaired driving. The three states that do not authorize use of an ignition interlock system are Alabama, South Dakota, and Vermont. Judges in the jurisdictions with ignition interlock systems have the discretion to order installation as part of sentencing for convicted drunk drivers. Fewer than half of the states with ignition interlock mandate its use. In states where the use of ignition interlock is mandatory, it is usually required either for repeat offenders, or drivers with high blood alcohol content, and as a condition of probation, or in exchange for limited restoration of driving privileges.

Increasingly, however, states are requiring the use of ignition interlock devices for any standard drunk driving conviction (BAC of 0.08 or higher) – even for first offenses. In 2005, New Mexico became the first state in the country to enact legislation requiring the use of ignition interlock devices for all convicted drunk drivers, including first-time offenders. As of January 2010, 10 other states (Alaska, Arizona, Arkansas, Hawaii, Illinois, Louisiana, Nebraska, New York, Utah, and Washington) mandate the use of ignition interlock for any drunk driving conviction.

Contained in the proposed federal Surface Transportation Extension Act of 2009 (H.R. 3617 and S.1498, also known as the reauthorization of SAFETEA-LU) are provisions that would require states to enact and enforce ignition interlock laws or risk the loss of 1% to 5% of federal highway funds. For example, one provision requires

states to impose use of an ignition interlock device for at least six months on a person convicted of the standard drunk driving offense. NCSL has estimated that the sanction of 5% of federal highway funds would cause Maryland to lose \$14.0 million. For all 50 states, a 5% sanction would mean a total loss of \$880.9 million. No state has mandated participation in an ignition interlock program absent a conviction for a drunk driving offense.

State Revenues: General fund revenues increase \$249,563 in fiscal 2011 and \$332,750 annually thereafter due to the fees paid to the Office of Administrative Hearings (OAH) for hearings on the mandatory participation in the Ignition Interlock System Program required under the bill. MVA advises that about 20% of those subject to participation are likely to request an administrative hearing and pay the \$125 filing fee. Legislative Services estimates that 2,662 new participants are likely to pay the fee for the administrative hearing.

TTF revenues increase significantly in fiscal 2011 and in future years under the bill. MVA advises that under current law, there are currently 8,200 ignition interlock participants and that about 6,000 participants join the program annually. MVA estimates that the bill's requirements add an additional 15,510 participants annually, consisting of:

- 10,500 drivers granted PBJ for driving under the influence of alcohol, under the influence of alcohol *per se*, and while impaired by alcohol;
- 4,300 drivers convicted for the first time of one of the offenses mentioned above; and
- 710 drivers convicted for a second, third, or subsequent time of one of the offenses mentioned above.

Legislative Services advises that the projected number of new participants should be adjusted downward to reflect those who could be captured under current law provisions. Assuming 2,200 drivers who have one or more drunk driving convictions could qualify for participation anyway, which is also consistent with the 2,200 who are currently in the program and leave due to completion or failure, the revenue estimate is based on 13,310 new program participants annually.

While the estimate assumes a stable caseload, the number of people subject to this bill will necessarily vary because some people will be required to participate for six months and others will be required to participate for one year, three years, or perhaps even longer if required to do so by a court. Only limited information is available to determine which participants would be subject to six-month, one-year, or three-year requirements, so the projected impact does not take that variable into account. Also not addressed in this fiscal estimate is the impact of the program on future participants. Those people who

successfully complete the program are projected to be less likely to be repeat offenders. In future years, if the program works as intended, the population subject to program participation may decrease. This could also reduce the need for some of the new personnel allocated to implement the bill's provisions. The extent to which recidivism and the numbers of repeat offender participants could be reduced in future years cannot be reliably estimated.

The bill requires that MVA charge a fee to program participants to cover the cost of the program. MVA has not determined what fee would be charged, but it is likely that the fee would be charged to all 21,510 participants (8,200 current participants and 13,310 new participants), not just the new participants captured by the bill. MVA advises that it is contemplating a \$50 fee for the program which would result in TTF revenues increasing by \$806,625 in fiscal 2011 and \$1,075,500 in the out-years, assuming a stable caseload and no change in the fee.

However, the bill requires that program costs be covered by the charge that MVA must assess. For fiscal 2011, Legislative Services projects that implementation would cost about \$1.2 million. Thus, MVA would have set the fee at about \$80 per participant to cover the projected costs in fiscal 2011 and to account for the October 1, 2010 effective date. In future years, the fee could range between \$60 and \$75; however, as the bill does not impose specific requirements regarding the charge, other than that the program costs be covered, MVA could vary the fee from year to year depending on the number of participants and the staffing and equipment required to administer the program. This estimate does not account for any current costs to administer the program, just the costs to expand it.

Drivers who have their licenses suspended can acquire new licenses only by paying for a corrected license, for which MVA charges a \$30 fee. The bill requires six months participation in the Ignition Interlock System Program for a first offense, participation of one year for a second offense, and three years participation for third and subsequent offenses. Revenues for corrected licenses do not accrue to TTF until the driver completes the program. Data is not available to reliably estimate what proportion of the 13,310 drivers subject to the bill would have to participate for six months, one year, or three years or would have otherwise had their license suspended or revoked, thereby potentially paying a renewal or reinstatement fee anyway. Even so, *by way of illustration*, if all 13,310 drivers paid \$30 for a corrected license fee within one year of participation in the Ignition Interlock System Program, fiscal 2011 revenues would increase by about \$299,475 and out-year revenues would increase by about \$399,300.

State Expenditures:

Office of Administrative Hearings: It is anticipated that OAH will be able to handle any additional workload due to the bill with existing resources. In fiscal 2008, OAH disposed of 28,635 MVA administrative hearings. In fiscal 2009, OAH disposed of 26,056 MVA

hearings. The additional 2,662 cases anticipated under this bill may further constrain OAH resources; however, Legislative Services still advises that the additional workload can be addressed with existing resources.

Department of Public Safety and Correctional Services: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people sentenced to mandatory imprisonment is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Motor Vehicle Administration: TTF expenditures increase by an estimated \$1,201,833 in fiscal 2011, accounting for the October 1 effective date. This estimate reflects the cost of hiring 18 customer service agents to monitor driver participation in the Ignition Interlock System Program and process driver records, field phone calls, and process correspondence. The penalty in the bill is administrative, and MVA has the primary responsibility for issuing the penalty and monitoring drivers who are subject to it. For this administrative penalty, MVA advises that one customer service agent who monitors program participants can manage a caseload of 1,025 drivers annually. A customer service agent who processes phone calls and correspondence can manage 2,733 cases annually. The estimate includes salaries, fringe benefits, one-time start-up costs, and other ongoing operating expenses.

Positions	18
Salaries and Fringe Benefits	\$692,443
Computer Programming	125,000
Related Operating Expenses	<u>384,390</u>
Total Fiscal 2011 State Expenditures	\$1,201,833

Future year expenditures reflect full salaries with 4.4% annual increases and 3% turnover, 1% annual increases in ongoing operating expenses, and a stable caseload.

MVA advises that about 20% of the new population of drivers is likely to request an administrative hearing. MVA pays \$150 for every administrative hearing. Accordingly, for the additional 2,662 administrative hearings that could occur under the bill, TTF expenditures are likely to increase by \$299,475 in fiscal 2011 and \$399,300 annually thereafter, assuming a stable caseload and no change in fees.

Computer programming modifications to the driver licensing system that are likely required by the bill could result in a one-time expenditure of \$125,000 in fiscal 2011 only.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: SB 735 of 2009 passed the Senate, as amended, and was then referred to the House Rules and Executive Nominations Committee, where no further action was taken. Its nonidentical cross file, HB 1217, was heard by the House Judiciary Committee, but no further action was taken. Another similar bill, HB 126 of 2006, was heard by the House Judiciary Committee, then withdrawn.

Cross File: SB 564 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Carroll, Harford and Montgomery counties; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Governors Highway Safety Association; National Conference of State Legislatures; Department of Legislative Services

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