

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1015

(Delegates Arora and Clippinger)

Judiciary

Judicial Proceedings

Drunk Driving - Transporting a Minor - Ignition Interlock System Program

This bill requires an individual who is convicted of transporting a minor younger than age 16 while driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol to participate in the Ignition Interlock System Program (IISP).

Fiscal Summary

State Effect: Minimal increase in Transportation Trust Fund (TTF) revenues due to IISP fees and fees assessed for corrected driver's licenses. Minimal increase in general fund revenues and TTF expenditures due to additional administrative hearings. Enforcement can be handled with existing resources.

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: If a driver convicted of the offense of transporting a minor younger than age 16 while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol fails to participate in IISP as required, the Motor Vehicle Administration (MVA) must suspend the individual's license indefinitely until the program is successfully completed. Such a driver must participate in IISP for at least six months, operating under a newly issued restricted license, the first time the requirement is imposed. Mandatory participation periods increase if the requirement is imposed more than one time. A driver who does not initially become a participant may reapply to MVA to become a participant at a later time. If the driver is removed due to

violations of the program's requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal.

A driver who is required to participate in IISP under the bill's provisions is prohibited from driving a motor vehicle without an ignition interlock device, unless otherwise exempt. A violation is a misdemeanor and the offender is subject to maximum penalties of a \$1,000 fine and/or one year imprisonment for the first offense and, for a second or subsequent offense, maximum penalties of a \$1,000 fine and/or two years imprisonment.

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*; or
- impaired by alcohol.

A person may not violate these provisions while transporting a minor. A person convicted of driving while under the influence of alcohol, or under the influence of alcohol *per se*, while transporting a minor is subject to (1) for a first offense, maximum penalties of a fine of \$2,000 and/or two years imprisonment; (2) for a second offense, maximum penalties of a fine of \$3,000 and/or three years imprisonment; and (3) for a third or subsequent offense, maximum penalties of a fine of \$4,000 and/or four years imprisonment.

A person convicted of driving while impaired by alcohol and transporting a minor is subject to (1) for a first offense, maximum penalties a fine of \$1,000 and/or imprisonment for six months and (2) for a second or subsequent offense, maximum penalties of a \$2,000 fine and/or imprisonment for one year.

Mandatory Program Participation: A driver must participate in IISP as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;
- is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a blood alcohol concentration (BAC) at the time of testing of 0.15 or greater;
- is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol *and* within the preceding five years was convicted of any specified alcohol- and/or drug-related driving offense; or
- was younger than age 21 and violated the alcohol restriction imposed on the driver's license or committed the specified alcohol-related driving offense.

A driver who is required to participate in the program must be in the program for six months the first time the requirement is imposed. For the second time, the driver must participate for one year. For the third or any subsequent time the requirement is imposed, the driver must participate for three years. A court and MVA may also impose a longer participation period in accordance with other Maryland Vehicle Law provisions.

MVA must immediately issue a license to a driver who successfully completes the program and whose license is not otherwise suspended, revoked, refused, or canceled.

Sanctions for Program Participants: A driver who is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a BAC of 0.15 or greater is subject to a mandatory indefinite license suspension until the driver successfully completes IISP. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do not complete it. Periods of mandatory participation must run concurrently for a driver who is subject to participation in the program due to more than one provision of the law.

A driver who is eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15, and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, has to participate in the program for one year. If the driver does not participate, MVA must suspend the driver's license for the full suspension period otherwise required.

A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is timely requested, the suspension must be stayed pending the decision at the administrative hearing.

Any driver who is mandated to participate in the program, or who requests ignition interlock program entry and is not otherwise exempt, must not drive a motor vehicle without an ignition interlock device in violation of an ignition interlock system restriction on the participant's driver's license. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine for a first offense and two years imprisonment and/or a \$1,000 fine for a second or subsequent offense.

Reconsideration of Refusal or Program Reentry: If a driver who is eligible or required to participate in IISP does not initially become a participant, that driver may apply to MVA to become a participant at a later time. MVA may reconsider any suspension or revocation of the driver's license arising out of the same circumstances and allow the driver to participate in the program.

If MVA removes a driver from the program due to violation of the program requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal. If the driver reenters the program under these circumstances, that driver must participate in the program for the entire period that was initially assigned for successful completion of the program without any credit for participation that occurred before the driver was removed from the program.

Mandatory Warnings: MVA is required to warn a driver, in a notice of proposed suspension or revocation, about the required participation in IISP if the driver is convicted of a subsequent alcohol-related driving offense. MVA must also warn all drivers younger than age 21 at the issuance of their licenses about the required participation in the program for any violation of the driver's alcohol restriction on the license or the commission of any alcohol-related driving offense, as specified. However, a driver may not raise the absence of a warning or the failure to receive a warning as a basis for limiting the authority of MVA to require participation in IISP.

Judicial Sanctions: In addition to any other penalties for driving while (1) under the influence of alcohol; (2) under the influence of alcohol *per se*; or (3) impaired by alcohol or in addition to any other condition of probation, a court may prohibit a person who is either convicted for any of these offenses, or granted probation before judgment, from operating a motor vehicle that is not equipped with an ignition interlock device for up to three years.

Background: The Department of State Police reports that, for the five-year period from 2008 through 2012, the average number of crashes annually involving a driver impaired by alcohol and/or drugs was 8,035. The average number of fatal crashes annually was 158 with an average of 175 fatalities annually during the period. The average number of crashes with injuries involving an impaired driver annually was 2,782, and the average number of persons injured annually in these crashes was 4,192.

Exhibit 1 shows the citations filed and guilty dispositions in the District Court for driving under the influence of alcohol, under the influence of alcohol *per se*, and while impaired by alcohol for fiscal 2013.

Exhibit 1
Driving Under the Influence/Driving While Impaired Citations
Fiscal 2013

<u>Offense</u>	<u>Citations Filed</u>	<u>Guilty Dispositions</u>
Driving Under the Influence of Alcohol – All*	36,524	3,279
Driving Under the Influence of Alcohol	22,187	N/A
Driving Under the Influence of Alcohol <i>Per se</i>	14,140	N/A
Driving Under the Influence/Transport Minor	187	N/A
Driving While Impaired by Alcohol	22,467	3,170
Driving While Impaired by Alcohol/Transport Minor	199	N/A

* Citations do not add to overall total due to the way District Court captures data.
Source: District Court of Maryland

For additional information about the implementation of IISP in Maryland and the implementation of similar programs in other states, please see **Appendix – Ignition Interlock System Programs**.

State Fiscal Effect: Any impact on State finances is expected to be minimal as the total number of citations filed for these offenses while transporting a minor was 386 in fiscal 2013, according to the Administrative Office of the Courts. Moreover, a portion of the 187 who were driving under the influence while transporting a minor have already been subject to IISP participation under current law. Further, the bill limits mandatory IISP participation to those transporting a minor *younger than age 16*.

Administrative Hearings: Minimal increase in general fund revenues to the extent that additional people request administrative hearings due to the mandatory ignition interlock participation requirement in the bill. The filing fee for an administrative hearing is \$150. Any increase in hearings can be handled by the Office of Administrative Hearings.

Motor Vehicle Administration: Minimal increase in TTF revenues due to additional fees required for participation in IISP and corrected licenses. The fee to participate in IISP is \$47. A corrected license fee of \$30 is assessed to add a license restriction before program participation and then again to remove the restriction after program participation is completed.

Minimal increase in TTF expenditures for MVA to the extent that additional people request administrative hearings. MVA is required to reimburse the Office of Administrative Hearings \$100 for each hearing related to driver's license suspensions or revocations.

Additional Information

Prior Introductions: HB 32 of 2013, a similar bill, received an unfavorable report from the House Judiciary Committee. HB 608 of 2012, another similar bill, was heard by the House Judiciary Committee but received no further action.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, National Conference of State Legislatures, National Highway Transportation Safety Administration, www.RothInterlock.org, Department of Legislative Services

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Appendix – Ignition Interlock System Programs

Chapter 557 of 2011 (The Drunk Driving Reduction Act) has increased the number of participants in Maryland's Ignition Interlock System Program. Before enactment of the law, about 8,000 drivers participated in the program annually. Since the law went into effect on October 1, 2011, an estimated 4,400 new drivers have started in the ignition interlock program. According to a national survey of ignition interlock programs completed by the traffic safety advocacy group Roth Interlock.org, Maryland ranks eighth in the nation in the number of ignition interlock participants with 10,925 participants as of June 2013. Roth Interlock has also found that, nationally, about 304,600 ignition interlock devices are in use. If compared to the national estimate of 1.4 million impaired driving arrests annually, the national rate of device use among offenders is about 22%. In Maryland, participants generally are repeat offenders or offenders who refused a blood alcohol concentration (BAC) test or had a BAC test result of 0.15 or more.

A participant must pay a fee to the Motor Vehicle Administration (MVA) (\$47) and, unless exempted due to financial hardship, a fee to an ignition interlock vendor for device installation and maintenance. The fees to vendors are not regulated by MVA. The participant must have the device serviced and data downloaded by the vendor every 30 days. MVA monitors participants through the data reports from the vendors. Violations, such as attempting to start or operate a vehicle with a BAC greater than 0.025, failing to submit to a retest after starting the vehicle, tampering with the interlock device, having another person blow into the device, or operating a vehicle without a device, can result in removal from the program or an extension of the person's required period of participation.

In 2010, MVA altered its regulations to address an initial test failure that may result from transient mouth alcohol from certain foods, medication, or mouthwash. These regulations specify that, if there is a successful retest within five minutes of a failure, the failure is not counted against the driver.

Use of Ignition Interlock in Other States: 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 devices has been shown to lead to long-lasting changes in driver behavior and the reduction of recidivism. The task force advised that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that, when offenders are required to use ignition interlock devices, recidivism is reduced by at least 60% and as much as 95%.

According to the National Conference of State Legislatures (NCSL), all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. Judges in many of the jurisdictions with ignition interlock systems have the discretion to order installation as part of sentencing for convicted drunk drivers. Fewer than one-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 for drivers with a high BAC and either as a condition of probation or in exchange for limited restoration of driving privileges.

As the use of these devices has become more widespread, some states have required the use of ignition interlock devices for any standard drunk driving conviction (BAC of 0.08 or higher) – 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. NCSL also reports that, as of January 2014, 14 other states (Alaska, Arizona, Arkansas, Connecticut, Hawaii, Kansas, Louisiana, Nebraska, New York, Oregon, Tennessee, Utah, Virginia, and Washington) mandate the use of ignition interlock for any drunk driving conviction.