

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 87

(Chair, Judicial Proceedings Committee)(By Request -  
Departmental - Transportation)

Judicial Proceedings

Judiciary

**Drunk Driving - Ignition Interlock System Program - Repeat Offenders**

This departmental bill establishes that specified repeat offenders of alcohol- and/or drug-related driving provisions must either submit to a suspension of the driver’s license for one full year or agree to and complete one full year of participation in the Ignition Interlock System Program (IISP). The bill repeals the authority of the Motor Vehicle Administration (MVA) to impose a 45-day mandatory suspension on these repeat offenders and issue a restricted license for participation in IISP for 10.5 months. Instead, if MVA issues a restricted license for participation in IISP, the bill expands the minimum period of participation to one full year. The bill also repeals the authority of MVA to grant an exemption to repeat offenders to drive an employer-owned or -provided vehicle without an ignition interlock device.

**Fiscal Summary**

**State Effect:** Federal fund revenues are maintained for transportation projects rather than being subject to diversion for alcohol education programs. Potential minimal increase in general fund revenues and Transportation Trust Fund (TTF) expenditures due to additional administrative hearings. Enforcement can be handled with existing resources.

**Local Effect:** Federal fund revenues are maintained for transportation projects rather than being subject to diversion for alcohol education programs.

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

## Analysis

**Bill Summary:** The bill applies to a repeat offender who was convicted of:

- driving under the influence of alcohol or under the influence of alcohol per se and convicted of the same offense, or convicted of driving while impaired by a controlled dangerous substance, within five years of the previous conviction; or
- driving while impaired by a controlled dangerous substance and driving under the influence of alcohol or under the influence per se within five years of the previous conviction.

The bill also specifies that a repeat offender must participate in IISP for at least one year to be exempt from the requirement to participate in IISP, as specified, after completion of the one-year suspension period.

A repeat offender, as specified, may not operate a motor vehicle owned or provided by the offender's employer if it is not equipped with an ignition interlock device.

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

- under the influence of alcohol or under the influence of alcohol per se; or
- while impaired by a controlled dangerous substance.

*License Suspension or Ignition Interlock System Program Participation:* MVA is required to impose a one-year suspension on an individual who is convicted of driving (1) under the influence of alcohol or under the influence of alcohol per se, more than once within a five-year period; (2) under the influence of alcohol or under the influence of alcohol per se and driving while impaired by a controlled dangerous substance within a five-year period; or (3) while impaired by a controlled dangerous substance and driving under the influence of alcohol or under the influence per se within a five-year period.

The first 45 days is a mandatory license suspension (also referred to as a "hard" suspension), which is not subject to modification by MVA. MVA may, however, issue a restricted license for the remainder of the one-year period if the driver participates in IISP and maintains an ignition interlock device on a motor vehicle owned or operated by the driver for the remainder of the one-year period.

The restricted license prohibits the individual from driving a motor vehicle that is not equipped with an ignition interlock device, unless otherwise exempted. The license

restricts the individual to driving only to and from work, school, an ignition interlock service facility, or an alcohol treatment program if the person was convicted of driving under the influence of alcohol or under the influence of alcohol per se more than once within a five-year period. An individual convicted more than once of driving (1) under the influence of alcohol or under the influence of alcohol per se within five years of being convicted of driving while impaired by a controlled dangerous substance or (2) while impaired by a controlled dangerous substance within five years of being convicted of driving under the influence of alcohol or under the influence of alcohol per se is restricted to driving only to and from work, school, an ignition interlock service facility or an alcohol or a drug treatment program.

A driver subject to this sanction may request a hearing on the suspension or may request participation in IISP subject to the 45-day hard suspension and participation in IISP for the remainder of the one-year period. MVA may issue a restricted license to the driver so he or she can participate in IISP under the following conditions:

- the driver's license is not already under suspension at the time of the request;
- the alcohol and/or drug-related violation did not stem from circumstances involving the death of or serious physical injury to another person;
- the driver surrenders a valid Maryland driver's license or signs a statement certifying that the driver no longer has possession of the license; and
- the person elects in writing, within the same time limit for requesting a hearing, to adhere to requirements for participating in IISP for the remainder of the one-year period after the 45-day hard suspension.

If the driver does not request a hearing or participation in IISP or, if, after a hearing, MVA finds that the person was convicted of the aforementioned alcohol and/or drug-related driving offenses, MVA must suspend the driver's license for one year. However, MVA may modify the suspension to issue a restricted license to the driver to enable the driver to participate in IISP for the remainder of the one-year period following the 45-day hard suspension. A person who participates in IISP for at least three months after MVA modifies the one-year suspension, as specified, is exempt from being required to participate in IISP after the expiration of the one-year suspension period, as specified.

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

*Exemption for Employer-owned or -provided Motor Vehicle:* MVA has discretion to allow an IISP participant to drive an employer-owned or -provided motor vehicle without an ignition interlock device during the course of employment. MVA may exempt the participant for that limited purpose if the driver provides acceptable information to MVA regarding the driver's current employment and the need to operate a motor vehicle provided by the employer as part of his or her job duties. MVA may grant this exemption without the necessity of an administrative hearing.

*Sanctions Upon Failure to Adhere to Program Requirements or Otherwise Successfully Participate:* A driver who is subject to mandatory participation for the remainder of the one-year period after the 45-day hard suspension is also subject to mandatory license suspension for one year if he or she fails to participate in the program or does 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 subject to suspension under these circumstances may request a hearing. If 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. 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.

*Maximum Penalties for Driving Under the Influence of Alcohol or While Impaired by a Controlled Dangerous Substance:* A person who drives or attempts to drive a vehicle while under the influence of alcohol or under the influence of alcohol per se, or who drives or attempts to drive a vehicle while impaired by a controlled dangerous substance, is subject to the following maximum judicial penalties:

- for a first offense, a fine of up to \$1,000 and/or imprisonment for up to one year;
- for a second offense, a fine of up to \$2,000 and/or imprisonment for up to two years; and
- for a third or subsequent offense, a fine of up to \$3,000 and/or imprisonment for up to three years.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while impaired by drugs or alcohol or under the influence of alcohol may count as a prior conviction if it occurs within five years of the subsequent violation.

Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving under the influence of alcohol, driving under the influence of alcohol per se, or driving while impaired by a controlled dangerous substance is considered a prior conviction.

*Mandatory Minimum Penalties for Repeat Offenders:* Subsequent convictions for driving under the influence, under the influence per se, or while impaired by a controlled dangerous substance also carry mandatory minimum penalties.

A person who is convicted of driving under the influence of alcohol or under the influence of alcohol per se twice within five years is subject to a mandatory minimum penalty of imprisonment for not less than five days.

A person who is convicted of driving under the influence of alcohol or under the influence of alcohol per se three or more times within five years is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

A person who is convicted of driving while impaired by a controlled dangerous substance twice within five years is subject to a mandatory minimum penalty of imprisonment for not less than five days.

A person who is convicted of driving while impaired by a controlled dangerous substance three or more times within five years is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

These penalties are not subject to suspension or probation. The offenders are also required to undergo alcohol and drug abuse assessments and potentially participate in certain drug and alcohol abuse treatment programs.

For purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving under the influence of alcohol, driving under the influence of alcohol per se, or driving while impaired by a controlled dangerous substance is considered a prior conviction.

*Other Judicial Sanctions:* In addition to any other penalties for driving (1) under the influence of alcohol; (2) under the influence of alcohol per se; or (3) while impaired by a controlled dangerous substance, 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 bill is intended to conform to federal standards the repeat offender provisions for the offenses of driving (1) under the influence of alcohol, under the influence of alcohol per se or (2) while impaired by a controlled dangerous substance.

The federal Moving Ahead for Progress in the 21<sup>st</sup> Century law (MAP-21) reauthorized surface transportation programs for federal fiscal 2013 and 2014 and changed some provisions to encourage greater installation and use of ignition interlock devices. Before enactment of MAP-21, states were subject to a reduction in federal highway funds unless those convicted of a repeat drunk driving offense (*i.e.*, another offense within five years of the previous drunk driving offense) received a mandatory one-year driver's license suspension which included a 45-day "hard" suspension followed by installation and use of an ignition interlock device for the balance of the year. Under MAP-21, states must eliminate the 45-day "hard" suspension requirement and instead require a repeat offender to install and use an ignition interlock device for at least one year, to avoid loss or diversion of federal highway funds.

MAP-21 also specifies that states require drivers using ignition interlock devices to drive only vehicles with those devices, including vehicles owned by others that the driver needs to use for employment purposes. States that do not conform to this provision are subject to having highway funds diverted to alcohol education programs.

In January 2012, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration notified MVA that Maryland's law with respect to repeat offenders did not conform to MAP-21 provisions in two ways:

- MVA has authority to grant repeat offenders an exemption which allows them to operate work vehicles that are not equipped with ignition interlock devices; and
- Maryland law permits a 45-day hard suspension for offenders and requires participation in IISP for only the remaining 10.5 months, while federal law specifies that states must require repeat offenders to participate in IISP for a full 12 months to avoid reduction or diversion of federal highway grant funds.

According to MVA, if Maryland law regarding repeat offenders does not conform to MAP-21 provisions, the State is subject to having up to \$12 million of federal highway funds diverted from its transportation projects to alcohol education programs.

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

#### **State Fiscal Effect:**

*Administrative Hearings:* Potential minimal increase in general fund revenues to the extent that additional people request administrative hearings due to the longer period of mandatory ignition interlock participation required 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:* The bill is not expected to significantly alter the number of drivers participating in IISP. Potential minimal increase in TTF expenditures for MVA to the extent that additional people request administrative hearings due to the longer period of the required suspension or period of program participation. MVA is required to reimburse the Office of Administrative Hearings at least \$100 for each hearing related to driver's license suspensions or revocations.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 14, 2014  
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## Appendix – Ignition Interlock System Programs

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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.

## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Motor Vehicles – Driving Under the Influence of Alcohol – Repeat Offender Sanctions-Conformity with the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration

BILL NUMBER: SB 87

PREPARED BY: Department of Transportation

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

There may be a possible impact on small businesses that employ repeat offenders as drivers, as the business may be required to install ignition interlock devices on vehicles operated by such employees.