

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 Third Reader

House Bill 1447  
 Judiciary

(Delegate Vallario, *et al.*)

Judicial Proceedings

Ignition Interlock System Program - Administrative Offenses - Out-of-State  
 Licensed Drivers

This bill establishes that the Motor Vehicle Administration (MVA) may restrict a nonresident’s driving privilege and may modify a suspension or revocation of a nonresident’s driving privilege imposed by the State for an administrative *per se* offense if the individual participates in the State’s Ignition Interlock System Program (IISP). MVA must immediately reinstate the nonresident’s driving privilege if the nonresident successfully completes IISP and the nonresident’s license is not refused, revoked, suspended, or canceled under the laws of the nonresident’s state. The bill makes a series of technical and conforming changes to administrative *per se* offense and IISP procedures.

Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) revenues increase by approximately \$14,300 in FY 2019 and by approximately \$19,100 annually thereafter. Expenditures are not materially affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$14,300	\$19,100	\$19,100	\$19,100	\$19,100
Expenditure	0	0	0	0	0
Net Effect	\$14,300	\$19,100	\$19,100	\$19,100	\$19,100

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## Analysis

**Current Law/Background:** A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. A person must submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person was driving or attempting to drive while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;
- impaired by drugs and/or drugs and alcohol; or
- impaired by a controlled dangerous substance (CDS).

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions for test results indicating a blood alcohol concentration (BAC) of at least 0.08 but less than 0.15 at the time of testing. If the person refuses the test or takes a test that results in a BAC of 0.08 or more at the time of testing, the police officer must advise the person of the administrative sanctions, including participation in IISP, that must be imposed for refusal to take a test or a test result of 0.08 or more and notice and hearing procedures.

Administrative *per se* offenses pertain to a driver who is detained on suspicion of a drunk or drugged driving offense or violation of an alcohol restriction and is requested by a police officer to take a test for alcohol, a drug, or a CDS. The offenses are (1) taking a test of blood or breath with a result of at least 0.08 BAC but less than 0.15 BAC; (2) taking a test

of blood or breath with a result of at least 0.15 BAC; or (3) refusing to take a test of blood or breath.

A driver is subject to a license suspension for an administrative *per se* offense. The applicable periods of suspension, based on the type of offense and whether it is a first or subsequent offense, are contained in **Exhibit 1**. The administrative *per se* offenses apply to State and nonresident drivers.

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**Exhibit 1**  
**Administrative *Per Se* Offenses and Periods of License Suspension**

<u>Administrative <i>Per Se</i> Offense</u>	<u>1st Offense</u>	<u>Subsequent Offense</u>	<u>1st Fatality</u>	<u>Subsequent Fatality</u>
Test Result: 0.08 to 0.14 BAC	180 days	180 days	6 months	1 year
Test Result: 0.15 BAC or Greater	180 days	270 days	1 year	Revocation
Test Refusal	270 days	2 years	270 days	2 years

Source: Department of Legislative Services

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Although administrative *per se* penalties apply to nonresident drivers, nonresident drivers are not eligible to have a suspension or revocation of their nonresident driving privileges modified through participation in IISP. The Department of Legislative Services (DLS) recently conducted a survey of other states' ignition interlock program requirements. DLS advises that, based on this survey, approximately 30 states allow nonresidents to participate in an ignition interlock program.

For a more detailed discussion of the implementation of IISP in Maryland, including the categories of offenders that are required to participate, please see **Appendix – Ignition Interlock System Programs**.

**State Fiscal Effect:** MVA advises that, between calendar 2012 and 2016, an average of 1,449 orders of suspension were issued annually to out-of-state licensed drivers; more than 75% of these orders were issued to drivers licensed in bordering jurisdictions (Delaware, Pennsylvania, Virginia, West Virginia, and the District of Columbia). MVA further advises that the IISP participation rate for administrative *per se* offenses (committed by in-state drivers) is 28%. Assuming that the participation rate for out-of-state licensed drivers is the same as for in-state drivers, MVA estimates that the bill results in approximately 406 new IISP participants annually.

MVA charges participants in IISP a program fee. For fiscal 2018, the fee is \$47, but in future years, the fee may vary depending on the number of participants and the expenditures that, by statute, must be covered. Indigent participants are exempt from paying this fee. Thus, TTF revenues increase by approximately \$14,312 in fiscal 2019 and by approximately \$19,082 annually thereafter, which accounts for the bill's October 1, 2018 effective date.

Finally, MVA advises that it must revise and reprint forms to reflect the bill's changes at a one-time cost of \$22,658. However, DLS advises that these costs are likely absorbable as part of MVA's routine functions.

**Small Business Effect:** Authorized service providers for IISP may see an increase in monthly maintenance fees and installations due to more individuals participating in IISP. According to MVA's website, there are seven certified ignition interlock providers in the State.

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### **Additional Information**

**Prior Introductions:** None.

**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 Traffic Safety Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2018  
md/kdm Third Reader - March 29, 2018

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## Appendix – Ignition Interlock System Programs

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An ignition interlock device connects a motor vehicle's ignition system to a breath analyzer that measures a driver's blood alcohol concentration (BAC). The device prevents the car from starting if the driver's BAC exceeds a certain level. The device also periodically retests the driver after the motor vehicle has been started. 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. The Maryland Ignition Interlock System Program (IISP) was established through regulation in 1989 and codified by Chapter 648 of 1996. The Motor Vehicle Administration (MVA) in the Maryland Department of Transportation is responsible for administering IISP.

IISP has undergone changes in the last several years which have increased the number of alcohol-impaired drivers who are either mandated or authorized to participate in IISP. Both Chapter 557 of 2011 and Chapter 631 of 2014 expanded the circumstances under which drunk drivers are required to participate in IISP. Among other provisions, Chapter 557 of 2011 established a minimum six-month participation period for specified alcohol-related driving offenses, including for alcohol restriction violations committed by drivers younger than age 21.

Chapter 631 of 2014 established mandatory participation for alcohol-related offenses involving the transport of a minor younger than age 16. According to the District Court, during fiscal 2017, a total of 127 citations were issued to drivers for transporting a minor while driving under the influence of alcohol or under the influence of alcohol *per se*, and 172 citations were issued to drivers for transporting a minor while impaired by alcohol. It is unknown how many of these drivers were transporting minors younger than age 16 at the time they were cited.

Chapter 512 of 2016, titled the "Drunk Driving Reduction Act of 2016" (also known as "Noah's Law"), further expanded the circumstances for mandatory participation in IISP. The law requires offenders convicted of the following crimes to participate:

- a person convicted the first time of driving or attempting to drive under the influence of alcohol or under the influence of alcohol *per se* (including a person whose license is suspended or revoked for accumulation of points for those violations);
- a person required to participate by court order due to a conviction for driving while impaired by alcohol or while impaired by a drug, any combination of drugs, or a

combination of one or more drugs and alcohol, and the trier of fact found beyond a reasonable doubt that the person refused a requested test;

- a person whose license has been revoked for a conviction of homicide by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; and
- a person whose license has been revoked for a conviction of life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol.

**Exhibit 1** summarizes the categories of offenders that are required to participate in IISP and the corresponding minimum participation periods.

Chapter 512 of 2016 also set forth the required elements for successful participation in IISP. A certification from the service provider must state that in the three consecutive months preceding the participant's date of release there was not:

- an attempt to start a vehicle with a BAC of 0.04 or higher, unless a subsequent test performed within 10 minutes registers a BAC lower than 0.04;
- a failure to take or pass a random test with a BAC of 0.025 or lower, unless a subsequent test performed within 10 minutes registered a BAC lower than 0.025; or
- a failure of the participant to appear at the approved service provider for required maintenance, repair, calibration, monitoring, inspection, or device replacement.

**Exhibit 1**  
**Mandatory Participation in the Ignition Interlock System Program**

Category of Participant	Participation Period
Driver who committed administrative <i>per se</i> offense of refusing to take a test or took a test with a BAC result of 0.15 or more <sup>1</sup>	One year
Driver convicted of driving while under the influence of alcohol or under the influence of alcohol <i>per se</i> with a BAC test result of 0.08 or more <sup>2</sup>  Driver convicted of either (1) homicide by motor vehicle or (2) life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol <i>per se</i> ; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol <sup>2</sup>	Six months for the first time the driver is required to participate  One year for the second time the driver is required to participate  Three years for the third or subsequent time the driver is required to participate
Driver convicted of transporting a minor younger than age 16 while impaired by alcohol <sup>3</sup>  Subsequent offender convicted of driving while under the influence of alcohol or under the influence <i>per se</i> or impaired by alcohol and, within the preceding five years, convicted of any drunk or drugged driving offense in the Transportation Article <sup>4</sup>	Six months for the first time the driver is required to participate  One year for the second time the driver is required to participate  Three years for the third or subsequent time the driver is required to participate
Driver younger than age 21 who violated the license alcohol restriction or committed any alcohol-related driving offense <sup>4</sup>	Six months for the first time the driver is required to participate  One year for the second time the driver is required to participate  Three years for the third or subsequent time the driver is required to participate

<sup>1</sup>Participation is considered “mandatory” because a driver who commits these offenses is only eligible for a modification of a license suspension if the driver participates in IISP for one year.

<sup>2</sup>Chapter 512 of 2016

<sup>3</sup>Chapter 631 of 2014

<sup>4</sup>Chapter 557 of 2011

BAC: blood alcohol concentration

Source: Department of Legislative Services

**Exhibit 2** provides an overview of IISP participation since enactment of Chapter 557 of 2011 and Chapter 631 of 2014. MVA advises that, between October 1, 2011, and September 30, 2017, 1,843 drivers who left IISP reentered the program at a later time.

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**Exhibit 2**  
**Ignition Interlock System Program Participation**  
**Fiscal 2013-2017**

<u>Fiscal Year</u>	<u>New Driver Assignments</u>	<u>Successful Completions</u>	<u>Unsuccessful Participants</u>
2013	14,884	4,383	2,496
2014	15,299	4,648	2,569
2015	15,171	4,842	2,634
2016	14,816	4,901	1,153
2017	16,289	4,307	1,293

Source: Maryland Department of Transportation

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MVA advises that, in fiscal 2017, there were 16,263 unique drivers in IISP and 6,579 first-time referrals.

*National Outlook and Safety Improvement Efforts*

According to data from the National Highway Traffic Safety Administration (NHTSA), nationally the percentage of highway fatalities associated with alcohol impairment has hovered around 30% from 1995 through 2016. For example, in 2016, the latest year for which national data is available, there were 37,461 traffic fatalities nationally and 10,497 of those fatalities, or 28%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 505 traffic fatalities, 130, or 26%, involved a driver with a BAC of 0.08 or higher.

The proportion of traffic fatalities due to alcohol impairment, which has decreased only slightly in over 20 years, concerns traffic safety advocates. Accordingly, NHTSA has recommended that states increase the use of ignition interlock devices to address alcohol-impaired driving. In November 2013, NHTSA released *Model Guidelines for State Ignition Interlock Programs*. The document contains recommendations for legislation and administrative changes to improve program administration, vendor oversight, data security and privacy, device reliability, and driver notification and licensing.



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%.

#### *Use of Ignition Interlock in Other States*

According to 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 (BAC of 0.08 or higher). According to NCSL, 25 states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia) mandate the use of ignition interlock for any drunk driving conviction. In other states where the use of ignition interlock is mandatory, it is required either for repeat offenders or for drivers with a high BAC or both.

States are also experimenting with ways to improve participant accountability and program compliance. NCSL reports that 16 states (Florida, Hawaii, Illinois, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia and Washington) have begun requiring some drunk driving offenders to install a type of ignition interlock device that contains a camera. The captured images are intended to ensure that the correct person is using the device to start the vehicle. Some states have also implemented “24/7 Sobriety Monitoring” programs, which combine treatment and punitive sanctions such as breath and urine testing, ankle bracelets, transdermal drug patches, and incarceration. States that have adopted this approach include Alaska, Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.