SB 870

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 870 (Senator Waldstreicher)
Judicial Proceedings

Drunk Driving Offenses - Ignition Interlock System Program

This bill expands mandatory participation in the Maryland Interlock Ignition System Program (IISP) to include (1) an individual who is granted probation before judgment (PBJ) for driving while under the influence of alcohol or under the influence of alcohol *per se*, including for an offense committed while transporting a minor, and (2) an individual who is convicted of or granted PBJ for driving while impaired by alcohol, including for an offense committed while transporting a minor (under current law, with respect to impaired driving, participation is mandatory only for an individual convicted of committing an offense while transporting a minor younger than age 16). The bill makes various technical and conforming changes.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues increase by $298,800 in FY 2021, as discussed below; future year revenues reflect annualization. TTF expenditures increase by $324,900 in FY 2021; future year expenditures reflect annualization and the elimination of one-time costs.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	$298,800	$398,400	$398,400	$398,400	$398,400
SF Expenditure	$324,900	$380,800	$389,500	$403,000	$417,000
Net Effect	($26,100)	$17,600	$9,000	($4,600)	($18,600)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: 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. Driving under the influence of alcohol *per se* means driving with a blood alcohol concentration (BAC) of 0.08 or higher. BAC is measured, at the time of testing, as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Exhibit 1 display the number of violations, guilty dispositions, and PBJs granted in the District Court and the circuit courts for these offenses in fiscal 2019.

Exhibit 1
Violations for Specified Offenses in the District Court and Circuit Courts
Fiscal 2019

Offense	Violations	Guilty Dispositions	PBJs Granted
Driving while under the influence of alcohol or under the influence of alcohol *per se*	19,955	1,916	2,011
Driving while under the influence of alcohol or under the influence of alcohol *per se* while transporting a minor	370	34	8
Driving while impaired by alcohol	22,521	2,785	2,850
Driving while impaired by alcohol while transporting a minor	376	24	5

PBJ: Probation before judgment

Source: Judiciary (Administrative Office of the Courts)

Required Ignition Interlock System Use

In addition to any other penalty, a court may prohibit a person from driving a motor vehicle without an ignition interlock device for up to three years, if the person is convicted or granted PBJ for a violation of driving under the influence of alcohol or under the influence

of alcohol *per se*; driving while impaired by alcohol; or committing any of certain specified violations while transporting a minor.

An individual must participate in IISP if:

- convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*;
- convicted of transporting a minor while impaired by alcohol, if the minor was younger than age 16;
- convicted of homicide or 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 combination of one or more drugs and alcohol; or
- ordered to participate by a court due to a conviction for driving while impaired by alcohol or while impaired by a drug, combination of drugs, or combination of one or more drugs and alcohol, if the trier of facts finds beyond a reasonable doubt that the driver refused a test.

If an individual specified above fails to participate in or successfully complete the program, the Motor Vehicle Administration (MVA) must suspend the individual's license until the individual successfully completes the program.

In addition, an individual must participate in IISP as a condition of modification of a license suspension or revocation or issuance of a restricted license (1) if convicted of driving while impaired by alcohol, including an offense committed while transporting a minor, if the individual has been convicted of any specified alcohol- or drug-related driving offense within the preceding five years or (2) if the individual is younger than age 21, for a violation of an alcohol-related driving offense.

Generally, an individual must participate in the program for (1) six months, for the first time the individual is required to participate; (2) one year, for the second time the individual is required to participate, and (3) three years, for the third or subsequent time the individual is required to participate.

An individual who is not otherwise required to participate in IISP may participate under specified circumstances, including if the individual's license is revoked for driving while impaired by alcohol or impaired by alcohol and drugs, if the individual's license has an alcohol restriction, or if MVA modifies a license suspension or issues the individual a restricted license.

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

Driving Under the Influence of Alcohol or Under the Influence of Alcohol Per Se

A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* is subject to maximum penalties of (1) for a first offense, a $1,000 fine and/or 1 year imprisonment; (2) for a second offense, a $2,000 fine and/or 2 years imprisonment; (3) for a third offense, a $5,000 fine and/or 5 years imprisonment; and (4) for a subsequent offense, a $10,000 fine and/or 10 years imprisonment.

Penalties for first and second offenses increase if the offense is committed while transporting a minor. A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* while transporting a minor is subject to maximum penalties of (1) for a first offense, a $2,000 fine and/or 2 years imprisonment; (2) for a second offense, a $3,000 fine and/or 3 years imprisonment; (3) for a third offense, a $5,000 fine and/or 5 years imprisonment; and (4) for a subsequent offense, a fine of $10,000 and/or 10 years imprisonment.

Driving While Impaired by Alcohol

A person convicted of driving while impaired by alcohol is subject to maximum penalties of (1) for a first offense, a fine of $500 and/or two months imprisonment; (2) for a second offense, a fine of $500 and/or 1 year imprisonment; (3) for a third offense, a $5,000 fine and/or 5 years imprisonment; and (4) for a subsequent offense, a $10,000 fine and/or 10 years imprisonment.

Penalties for first and second offenses increase if the offense is committed while transporting a minor. A person convicted of driving while impaired by alcohol while transporting a minor is subject to maximum penalties of (1) for a first offense, a fine of $1000 and/or 1 year imprisonment; (2) for a second offense, a $2,000 fine and/or 2 years imprisonment; (3) for a third offense, a $5,000 fine and/or 5 years imprisonment; and (4) for a subsequent offense, a $10,000 fine and/or 10 years imprisonment.

Administrative Penalties

In addition to specified maximum monetary and incarceration penalties, alcohol- and drug-related offenses are subject to points assessment by MVA, which makes the driver subject to either suspension or revocation of the driver's license. For a conviction of driving while under the influence of alcohol or under the influence of alcohol *per se* or while impaired by a controlled dangerous substance (CDS), MVA must assess 12 points against

the driver's license, and the license is subject to revocation. For a conviction of driving while impaired by alcohol, a drug, combination of drugs, or combination of one or more drugs and alcohol, MVA must assess 8 points against the driver's license, and the license is subject to suspension. A driver who accumulates 8 or 12 points against his or her driver's license within a two-year period is subject to license suspension or revocation, respectively.

License Revocation and Suspension

MVA may revoke the license of an individual who is convicted of (1) driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS or (2) driving while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol and who was previously convicted of two or more drunk or drugged driving violations within a three-year period.

MVA may suspend for up to 60 days the license of an individual who is convicted of driving while impaired by alcohol or while impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol. In addition. MVA may impose a suspension for up to one year if an individual is convicted more than once within a five-year period of any combination of drunk or drugged driving offenses; however, a restricted license for the period of suspension may be issued to a person who participates in IISP.

State Revenues: The bill expands the circumstances under which participation in IISP is mandatory. According to figures provided by the Maryland Department of Transportation (MDOT), the bill results in an additional 5,947 participants annually, based on the number of individuals granted PBJ for driving while under the influence of alcohol or under the influence of alcohol *per se* and the number of individuals convicted of or granted PBJ for driving while impaired by alcohol within the past three years and the existing rate of IISP participation among these individuals. To enroll in the program, an individual must pay a $47 participation fee and a $20 fee to obtain a license with an interlock restriction. Accordingly, TTF revenues increase by an estimated $298,840 in fiscal 2021 and approximately $398,450 annually thereafter, which accounts for the bill's October 1, 2020 effective date.

State Expenditures: As discussed above, an additional 5,947 interlock cases annually are anticipated as a result of the bill. MDOT advises that, based on existing caseloads and staffing levels, it needs one employee to process every 1,000 participants. Therefore, six additional regular, full-time staff are needed to manage the increase in interlock cases under the bill.

Accordingly, TTF expenditures increase by $324,936 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring

six customer service agents to handle the increase in IISP cases. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6
Salaries and Fringe Benefits	$292,738
Operating Expenses	32,198
Total FY 2021 State Expenditures	**$324,936**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: Authorized service providers for IISP likely see a significant increase in monthly maintenance fees due to an increased number of individuals participating in IISP.

Additional Information

Prior Introductions: HB 813 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 814, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 952 (Delegates Atterbeary and J. Lewis) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2020
rh/aad

Analysis by: Elizabeth J. Allison

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

Appendix – Ignition Interlock System Programs

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 that 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 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 2018, a total of 29 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 87 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.

Chapters 65 and 66 of 2019 modified the definition of "ignition interlock system" to mean, among other things, that the device has a camera (1) with the capability of recording still images of the person taking the test of the person's blood alcohol level; (2) without the capability to record sound; (3) without the capability to record video; and (4) that records images only while the device is testing the blood alcohol level of the person taking the test or if the device is being tampered with.

Exhibit 1
Mandatory Participation in the Ignition Interlock System Program

Category of Participant	Participation Period
Driver who committed administrative *per se* offense of refusing to take a test or took a test with a BAC result of 0.15 or more[1]	One year
Driver convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* with a BAC test result of 0.08 or more[2] 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 *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol[2]	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 while impaired by alcohol and the minor was younger than age 16[3] Subsequent offender convicted of driving while under the influence of alcohol or under the influence *per se* or impaired by alcohol and, within the preceding five years, convicted of any drunk or drugged driving offense in the Transportation Article[4]	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[4]	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

[1]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.
[2]Chapter 512 of 2016.
[3]Chapter 631 of 2014.
[4]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, up through fiscal 2019. MVA advises that, between October 1, 2011, and September 30, 2019, 2,994 drivers who were removed from IISP for noncompliance reentered the program at a later time.

Exhibit 2
Ignition Interlock System Program Participation
Fiscal 2013-2019

Fiscal Year	Total Annual Participation	Successful Completions	Unsuccessful Participants
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
2018	18,373	5,575	1,797
2019	19,411	6,521	1,501

Source: Maryland Department of Transportation

MVA advises that in fiscal 2019 there were 19,411 unique drivers in IISP and 6,893 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 2018. For example, in 2018, the latest year for which national data is available, there were 36,560 traffic fatalities nationally and 10,511 of those fatalities, or 29%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 501 traffic fatalities, 122, or 24%, involved a driver with a BAC of 0.08 or higher, a significant improvement over the prior year.

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 [still the most current

model guidelines]. 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 DC 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, 28 states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia) and DC mandate the use of ignition interlock for any drunk driving conviction. Pennsylvania has a similar law that is unique because it requires the use of ignition interlock for first time offenders only if the BAC is 0.10 or higher. 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. As of May 2019, NCSL reports that 22 states (Arizona, Colorado, Florida, Hawaii, Illinois, Idaho, Iowa, Kentucky, Maryland, 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, Hawaii, Idaho, Iowa, Montana, North Dakota, South Dakota, Utah, Washington, and Wyoming. Delaware previously had a "24/7 Sobriety Monitoring" program in place; however, in 2018, a new law was enacted replacing the program. The legislation requires the Division of Substance Abuse and Mental Health to establish rehabilitation programs for drivers whose licenses have been revoked for driving under the influence of alcohol, drugs, or both alcohol and drugs.