

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 360
Judiciary

(Delegates Simmons and McDermott)

Vehicle Laws - Ignition Interlock System Program - Mandatory Participation

This bill requires, rather than authorizes, the Motor Vehicle Administration (MVA) to establish an Ignition Interlock System Program, 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.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$496,300 in FY 2012 for additional personnel and related expenses to monitor and process program participants. Out-years assume a stable caseload and include annualization and inflation. General fund revenues increase by \$124,900 in FY 2012 due to additional administrative hearings. It is anticipated that the District Court can comply with the bill’s requirements with existing resources. Enforcement can be handled with existing resources.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$124,900	\$166,500	\$166,500	\$166,500	\$166,500
SF Expenditure	\$496,300	\$620,200	\$646,300	\$673,900	\$703,100
Net Effect	(\$371,400)	(\$453,700)	(\$479,800)	(\$507,400)	(\$536,600)

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

Local Effect: None.

Small Business Effect: Minimal. Vendors approved by MVA that 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 Ignition Interlock System Program for all service providers. The bill alters the parameters under which persons are required to participate in the program.

A person *must* participate in the Ignition Interlock System Program if the person is ordered to participate by a court, as specified. In addition to any other specified penalties, or in addition to any other condition of probation, the court must order a person granted PBJ for, or convicted of, driving while under the influence of alcohol, under the influence *per se*, or while impaired by alcohol to participate in the program for up to three years.

However, for a first violation of one of the aforementioned offenses or for a subsequent violation occurring at least 10 years after the most recent prior violation, the court has discretion to not order the defendant to participate in the Ignition Interlock System Program if the court finds and states on the record that the interests of the defendant and the public do not require that participation. The court must consider the following factors when deciding whether or not to require that the defendant participate in the program:

- whether the violation involved personal injury or property damage;
- whether the defendant refused a requested test of blood or breath at the time of the violation;
- the results of the test if the defendant submitted to a test;
- the hardships that program participation may impose on the defendant or the defendant's family;
- the participation in or completion of an appropriate course of treatment by the defendant;
- the probability that the defendant will commit another violation of driving while under the influence of alcohol or under the influence *per se* or while impaired by alcohol;
- the danger to the community presented by the defendant; and
- any other factors bearing on the interests of the defendant and the public.

If the court imposes participation in the program as a sentence or condition of probation, the court must state on the record the requirement for and period of participation in the program, notify MVA, as specified, and direct MVA to note the appropriate restriction on the defendant's driver's license.

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 a combination of drugs and alcohol.

A “test” means a test of a person’s breath or one specimen of blood to determine alcohol concentration, a test or tests of one specimen of blood to determine drug or controlled dangerous substance content or both a test of a person’s breath or a test of one specimen of blood to determine alcohol concentration *and* a test or tests of one specimen of blood to determine drug or controlled dangerous substance content.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. 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 life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person committed an alcohol- and/or drug-related driving offense.

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 one 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 under specified provisions of the Maryland Vehicle Law 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 concentration (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:

State Ignition Interlock Program: According to MVA, about 8,000 drivers participate annually in the Maryland Ignition Interlock Program. About 6,000 drivers are in the program at any one time and about 2,000 cycle out of the program on a recurring basis due either to successful completion or failure to complete the program. In fiscal 2010, 3,244 people successfully completed the program and 2,997 people withdrew due to failure to complete program requirements. Participants generally are repeat offenders or offenders who refused a BAC test or had a BAC test result of 0.15 or more.

A participant must pay a fee to an ignition interlock provider for device installation and maintenance unless exempted due to financial hardship. These fees are not regulated by MVA. MVA does not impose a program fee although it has statutory authority to do so. The participant must have the device serviced and data downloaded by the vendor every 30 days. Five vendors are certified by MVA to provide equipment for the program. 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. The new 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 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-eight states and the District of Columbia authorize or mandate the use of an ignition interlock system to deter alcohol-impaired driving. The two states that do not authorize use of an ignition interlock system are Alabama and South Dakota. 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 BAC, and as a condition of probation, or in exchange for limited restoration of driving privileges.

States are beginning to require 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 November 2010, 11 other states (Alaska, Arizona, Arkansas, Hawaii, Illinois, Louisiana, Nebraska, New York, Oregon, Utah, and Washington) mandate the use of ignition interlock for any drunk driving conviction.

State Revenues: General fund revenues increase \$124,875 in fiscal 2012 and \$166,500 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 1,332 new participants are likely to pay the fee for the administrative hearing.

TTF revenues increase significantly in fiscal 2012 and in future years under the bill. MVA advises that, under current law, there are currently 8,000 ignition interlock participants and that about 6,000 participants join the program annually. Legislative Services estimates that the bill's requirements add an additional 6,600 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;
- a 50% reduction adjustment, assuming that the court would order about 50% of those subject to the bill to actually participate in the program; and
- another 10% reduction to reflect those offenders captured under existing law.

Assuming 740 drivers who have the requisite drunk driving convictions could qualify for participation anyway, the revenue estimate is based on 6,660 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. According to national studies, 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. Also not addressed is the impact of the program on those participants who violate program provisions and are required to leave the program or are allowed to return to the program after a violation.

The bill does not alter the existing authority of MVA to charge a fee to program participants. The Maryland Vehicle Law does not specifically require cost recovery for the Ignition Interlock System Program.

Drivers who have their licenses suspended can acquire new licenses only by paying for a corrected license, for which MVA charges a \$30 fee. Revenues for corrected licenses do not accrue to TTF until the driver completes the program. Data are not available to reliably estimate the period of time that the 6,660 drivers subject to the bill would be required to participate in the program or would have otherwise had their licenses suspended or revoked, thereby potentially paying a renewal or reinstatement fee anyway. Even so, *by way of illustration*, if all 6,660 drivers paid \$30 for a corrected license fee within one year of participation in the Ignition Interlock System Program, fiscal 2013 revenues would increase by about \$149,850 and out-year revenues would increase by about \$199,800.

State Expenditures:

Office of Administrative Hearings: It is anticipated that OAH can likely handle the additional workload due to the bill with existing resources. In fiscal 2009, OAH disposed of 26,035 MVA administrative hearings. In fiscal 2010, OAH disposed of 23,069 MVA hearings. The additional 1,332 cases anticipated under this bill will constrain OAH resources and may delay cases. To the extent OAH needs additional staff resources to process the increased workload, OAH can request such staff through the annual budget process.

Motor Vehicle Administration: TTF expenditures increase by an estimated \$496,292 in fiscal 2012, accounting for the October 1 effective date. This estimate reflects the cost of hiring nine customer service agents to monitor driver participation in the Ignition Interlock System Program and process driver records, field phone calls, and process correspondence. Although the penalty in the bill is determined by the court, MVA has the primary responsibility for monitoring drivers who are subject to it. To implement the bill, MVA advises that one customer service agent who monitors program participants can manage a caseload of 1,000 drivers annually. A customer service agent who processes the phone calls and correspondence for participating drivers can manage 4,000 cases annually. The estimate includes salaries, fringe benefits, one-time start-up costs, and other ongoing operating expenses.

Positions	9
Salaries and Fringe Benefits	\$353,934
Administrative Hearings	99,900
Related Operating Expenses	<u>42,458</u>
Total Fiscal 2012 State Expenditures	\$496,292

Future year expenditures reflect full salaries with 4.4% annual increases, 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 \$100 for every administrative hearing. Accordingly, for the additional 1,332 administrative hearings that could occur under the bill, TTF expenditures are likely to increase by \$99,900 in fiscal 2012 and \$133,200 annually thereafter, assuming a stable caseload and no change in fees. These costs are reflected above.

Computer programming modifications to the driver licensing system that are likely required by the bill can be handled with existing resources.

Additional Information

Prior Introductions: HB 630 of 2010 was heard in the House Judiciary Committee but received no further action.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, National Highway Traffic Safety Administration, Governors Highway Safety Association, Insurance Institute for Highway Safety, National Conference of State Legislatures, Department of Legislative Services

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