

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 318
Judiciary

(Delegate Eckardt, *et al.*)

Ignition Interlock System Program - Mandatory Participation

This bill requires, rather than authorizes, the Motor Vehicle Administration (MVA) to establish an Ignition Interlock System Program, with a fee to cover program costs, 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. A person who is required to participate in the program must successfully complete it or that person is subject to suspension of the driver’s license. A person who is convicted of driving while the driver’s license is suspended or revoked as a result of driving while under the influence of alcohol, under the influence *per se*, impaired by alcohol, or after a failure to successfully complete the Ignition Interlock System Program is subject to mandatory imprisonment for not less than five days.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$954,000 in FY 2012 for additional personnel and related expenses to monitor and process program participants. TTF revenues increase significantly from program fees charged to participants in the Ignition Interlock System Program, which must cover the cost of the program, and from fees for corrected licenses. Out-years assume a stable caseload and reflect annualization and inflation. General fund revenues increase by \$249,800 in FY 2012 due to additional administrative hearings. Minimal increase in general fund expenditures due to the bill’s mandatory imprisonment provision.

(\$ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$.2	\$.3	\$.3	\$.3	\$.3
SF Revenue	\$ 1.0	\$ 1.2	\$ 1.3	\$ 1.3	\$ 1.4
GF Expenditure	-	-	-	-	-
SF Expenditure	\$ 1.0	\$ 1.2	\$ 1.2	\$ 1.3	\$ 1.3
Net Effect	\$.3	\$.3	\$.4	\$.3	\$.3

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

Local Effect: Potential increase in expenditures due to the bill's mandatory imprisonment provision.

Small Business Effect: Minimal. Vendors approved by MVA who 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 program by which a service provider must send information to MVA on individuals required to participate in the program at least every 30 days. The bill alters the parameters under which persons are required to participate in the Ignition Interlock System Program.

A person *must* participate in the Ignition Interlock System Program if the person is convicted of, or granted PBJ for, a first or other violation of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol. A notice of suspension or revocation sent to a person must include information about how the person can be required to participate in the program. In addition to any other required penalties, MVA must require the person to participate in the program for six months for a first violation, one year for the second violation, and three years for the third or subsequent violation, unless the court orders a longer period of program participation. The person's driver's license must also have a restriction that prohibits the person from driving a motor vehicle that is not equipped with an ignition interlock device for the entire time the person is required to participate in the program. This restriction may be modified if either the court or MVA expressly permits the person to drive a motor vehicle owned or provided by his or her employer without an ignition interlock device because that person is required to operate a motor vehicle in the course of employment.

MVA must require the person to complete the program successfully. If the person required to participate fails to successfully complete the program, MVA is required to suspend the driver's license for a period of six months for a first violation of driving while under the influence of alcohol, under the influence *per se*, or impaired by alcohol, and one year for a second or subsequent violation. A person who is convicted of driving while the driver's license is suspended or revoked as a result of driving while under the influence of alcohol, under the influence *per se*, impaired by alcohol, or due to a failure to successfully complete participation in the Ignition Interlock System Program is subject to mandatory minimum imprisonment for five days. The imprisonment penalty is not subject to suspension or probation.

MVA must establish a fee for program participation that is sufficient to cover the program costs, but the fee is waived for indigent persons. A program participant must be credited for any successful participation in the program that occurs before a hearing in court.

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.

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 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 \$249,750 in fiscal 2012 and \$333,000 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 2,664 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 13,320 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; and
- 10% reduction to reflect those offenders captured under existing law.

Assuming 1,480 drivers who have the requisite drunk driving convictions could qualify for participation anyway, the revenue estimate is based on 13,320 new program participants annually.

While the estimate assumes a stable caseload, the number of people subject to the 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. Another variable not addressed in this estimate is the extent to which program fee revenues may be reduced due to the number of participants who may be exempted from paying the required program fee due to indigency. As the number of people who may receive fee waivers cannot be reliably predicted, this estimate assumes that all eligible participants pay the required program fee.

The bill requires that MVA charge a fee to program participants to cover the cost of the program. MVA has not determined what fee would be charged, but it is likely that the fee would be charged to all 19,320 participants (6,000 current participants and 13,320 new participants), not just the new participants captured by the bill. MVA advises that it is contemplating a \$65 fee for the program which would result in TTF revenues increasing by \$941,850 in fiscal 2012 and \$1,255,800 in the out-years, assuming a stable caseload and no change in the fee.

However, the bill requires that program costs be covered by the charge that MVA must assess. For fiscal 2012, Legislative Services projects that implementation would cost

about \$954,000. Thus, MVA would have set the fee at about \$66 per participant to cover the projected costs in fiscal 2012 and to account for the October 1, 2011 effective date. In future years, the fee could range between \$62 and \$70; however, as the bill does not impose specific requirements regarding the charge, other than that the program costs be covered, MVA could vary the fee from year to year depending on the number of participants and the staffing and equipment required to administer the program. The fee estimate does not account for any current costs to administer the program, just the costs to expand it.

MVA advises that revenue from corrected license fees will be combined with revenues from the program participation fee to cover costs. The bill, however, requires that the fee for the program entirely cover program costs. Using revenue from other sources, even if they are related to program implementation, does not appear to be authorized by the bill.

Drivers who have their licenses suspended can acquire new licenses only by paying for a corrected license, for which MVA charges a \$30 fee. The bill requires six months participation in the Ignition Interlock System Program for a first offense, participation of one year for a second offense, and three years participation for third and subsequent offenses. Revenues for corrected licenses do not accrue to TTF until the driver completes the program. Data are not available to reliably estimate what proportion of the 13,320 drivers subject to the bill would have to participate for six months, one year, or three years or would have otherwise had their license suspended or revoked, thereby potentially paying a renewal or reinstatement fee anyway. Even so, *by way of illustration*, if all 13,320 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 \$299,700 and out-year revenues would increase by about \$399,600.

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 2,664 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.

Department of Public Safety and Correctional Services: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people sentenced to mandatory imprisonment is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Motor Vehicle Administration: TTF expenditures increase by an estimated \$954,033 in fiscal 2012, accounting for the October 1 effective date. This estimate reflects the cost of hiring 13.5 customer service agents to monitor driver participation in the Ignition Interlock System Program and 3.5 customer service agents to process driver records, field phone calls, and process correspondence. The penalty in the bill is administrative, and MVA has the primary responsibility for issuing the penalty and monitoring drivers who are subject to it. For this administrative penalty, 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 phone calls and correspondence can manage 4,000 cases annually. The estimate includes salaries, fringe benefits, one-time start-up costs, and other ongoing operating expenses.

Positions (Full-time Equivalents)	17
Salaries and Fringe Benefits	\$669,475
Administrative Hearings	199,800
Related Operating Expenses	<u>84,758</u>
Total Fiscal 2012 State Expenditures	\$954,033

Future year expenditures reflect full salaries with 4.4% annual increases and 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 2,664 administrative hearings that could occur under the bill, TTF expenditures are likely to increase by \$199,800 in fiscal 2012 and \$266,400 annually thereafter, assuming a stable caseload and no change in fees. These costs are reflected above.

Computer programming modifications to the driver licensing system and the revision and printing of forms that are likely required by the bill can be handled with existing resources

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: HB 743 of 2010 was heard by the House Judiciary Committee but received no further action. Its cross file, SB 564 of 2010, passed the Senate as amended and was heard by the House Judiciary Committee but received no further action. SB 735 of 2009 passed the Senate, as amended, and was then referred to the House Rules and Executive Nominations Committee, where no further action was taken. Its nonidentical cross file, HB 1217, was heard by the House Judiciary Committee, but no further action was taken. Another similar bill, HB 126 of 2006, was heard by the House Judiciary Committee, then withdrawn.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; 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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