HB 423

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 423 (Delegate K. Young, *et al.*)
Judiciary

Driving Under the Influence - Ignition Interlock System Program

This bill requires a person convicted the first time of driving under the influence of alcohol or under the influence of alcohol *per se* to participate in the Ignition Interlock System Program (IISP).

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues increase by $82,900 in FY 2016 due to additional IISP and corrected license fees. Out-years reflect annualization and assume no changes in caseload or fees. Minimal increase in general fund revenues and TTF expenditures due to additional administrative hearings. Enforcement can be handled with existing resources.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	-	-	-	-	-
SF Revenue	$82,900	$130,500	$130,500	$130,500	$130,500
SF Expenditure	-	-	-	-	-
Net Effect	$82,900	$130,500	$130,500	$130,500	$130,500

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

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: Potential meaningful. The five certified ignition interlock service providers in the State are likely to sell a larger number of devices and related services as a result of the bill.

Analysis

Bill Summary: The Motor Vehicle Administration (MVA) is required to indefinitely suspend the driver's license of a driver subject to the bill who either fails to participate in IISP or does not complete the program until the driver successfully completes it.

A driver subject to the bill must participate in IISP for at least six months, operating under a newly restricted license the first time the requirement is imposed. Mandatory participation periods increase if the requirement is imposed more than one time. A driver who does not initially become a participant may reapply to MVA to become a participant at a later time. If the driver is removed due to violations for the program's requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal. A driver who is required to participate in IISP under the bill is prohibited from driving a motor vehicle without an ignition interlock device, unless otherwise exempt. A violation is a misdemeanor, and the offender is subject to maximum penalties of a $1,000 fine and/or one year imprisonment for the first offense and, for a second or subsequent offense, maximum penalties of $1,000 fine and/or two years imprisonment.

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*. 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.

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

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

Mandatory Program Participation: A driver must participate in IISP as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;
- is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a BAC at the time of testing of 0.15 or greater;
- is convicted of driving under the influence of alcohol, under the influence of alcohol *per se,* or while impaired by alcohol *and* transporting a minor younger than age 16;
- is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol *and* within the preceding five years was convicted of any specified alcohol- and/or drug-related driving offense; or
- was younger than age 21 and violated the alcohol restriction imposed on the driver's license or committed the specified alcohol-related driving offense.

A driver who is required to participate in the program must be in the program for six months the first time the requirement is imposed. For the second time, the driver must participate for one year. For the third or any subsequent time the requirement is imposed, the driver must participate for three years. A court and MVA may also impose a longer participation period in accordance with other Maryland Vehicle Law provisions.

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

Sanctions for Program Participants: A driver who is convicted of the following offenses is subject to a mandatory indefinite license suspension until the driver successfully completes IISP: (1) driving while under the influence of alcohol or under the influence of alcohol *per se* and having a BAC of 0.15 or greater or (2) driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol and transporting a minor younger than age 16. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do 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 eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15, and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, has to participate in the program for one year. If the driver does not participate, MVA must suspend the driver's license for the full suspension period otherwise required.

A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is 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. MVA must also warn all drivers younger than age 21 at the issuance of their licenses about the required participation in the program for any violation of the driver's alcohol restriction on the license or the commission of any alcohol-related driving offense, as specified. 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.

Judicial Sanctions: In addition to any other penalties for driving while under the influence of alcohol or under the influence of alcohol *per se*, 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: Exhibit 1 shows the citations filed and guilty dispositions in the District Court for driving under the influence of alcohol, under the influence of alcohol *per se*, and while impaired by alcohol for fiscal 2014.

Exhibit 1
Driving Under the Influence/Driving While Impaired
Citations and Dispositions in the District Court
Fiscal 2014

Offense	Citations Filed	Guilty Dispositions
Driving Under/Impaired – All*	65,519	6,136
Driving Under the Influence of Alcohol	22,436	2,782
Driving Under the Influence of Alcohol *Per Se*	14,303	N/A
Driving Under the Influence/Transport Minor	177	N/A
Driving While Impaired by Alcohol	22,545	3,065
Driving While Impaired by Alcohol/Transport Minor	194	N/A

*Citations do not add to overall total due to the way District Court captures data.
Source: District Court of Maryland

This exhibit contains limited information from the District Court in that it pertains to citations, not cases or defendants. Multiple citations may be issued to a single defendant, based on the circumstances of a case. A State's Attorney may decide to pursue charges based on one or more citations and not pursue other citations, depending upon the evidence, witness availability and reliability, and other factors. This exhibit also does not account for the number of citations that were disposed of with guilty findings after trial in the circuit courts. During fiscal 2014, 11,778 citations issued under all provisions of § 21-902 of the Transportation Article (not just driving under the influence of alcohol or under the influence of alcohol *per se,* which are the subjects of the bill) were referred to the circuit courts for jury trials. It is unknown how many of these citations were disposed of with a guilty finding.

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

State Fiscal Effect: The total number of guilty citations for driving under the influence of alcohol or under the influence of alcohol *per se* is 2,782 for fiscal 2014, according to the District Court. MVA advises that 1,181 of these convictions were for driving with a BAC of 0.15 or higher. Individuals with these convictions would already be subject to mandatory ignition interlock participation. Also additional convictions would already be subject to ignition interlock for committing driving under the influence while transporting

a minor younger than age 16, and due to accumulation of points. Accordingly, this estimate is based on 1,500 new participants in IISP annually, assuming no changes in caseload or fees.

Motor Vehicle Administration: TTF revenues increase by $82,875 in fiscal 2016 (accounting for the bill's October 1, 2015 effective date) and by $130,500 annually thereafter due to additional fees required for participation in IISP and corrected license fees. The fee to participate in IISP is $47. A corrected license fee of $20 is assessed to add a license restriction before program participation and then again to remove the restriction after program participation is completed.

Minimal increase in TTF expenditures for MVA to the extent that additional people request administrative hearings. MVA is required to reimburse the Office of Administrative Hearings for all hearings related to driver's license suspensions or revocations, and the cost averages out to about $160 for each hearing.

Administrative Hearings: Minimal increase in general fund revenues to the extent that additional people request administrative hearings due to the mandatory ignition interlock participation provision in the bill. The filing fee for an administrative hearing is $150. The Office of Administrative Hearings advises that any increase in hearings can be handled within existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 212 (Senator Young, *et al.*) - Judicial Proceedings.

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

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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 drivers after they have started a motor vehicle. According to the National Conference of State Legislatures, 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. Chapter 557 of 2011 (The Drunk Driving Reduction Act) expanded the circumstances under which a drunk driver is required to participate in IISP. The law established that a driver must participate for at least six months in IISP if (1) required by court order; (2) convicted of specified alcohol-related driving offenses; (3) convicted of a specified alcohol-related driving offense within five years of a prior conviction for a specified alcohol- and/or drug-related driving offense; or (4) an alcohol-related license restriction was violated or an offense committed and the driver was younger than age 21. The law also eased some barriers to participation by allowing drivers to apply for participation at a time later than when the driver first becomes eligible. Also, if a driver fails IISP due to a violation of program requirements, MVA is authorized to allow the driver to reenter the program after a period of 30 days from the date of removal.

Chapter 631 of 2014 further expanded the types of alcohol-impaired drivers required to participate in IISP. A driver must participate in IISP or face suspension of his or her driver's license if convicted of transporting a minor younger than age 16 while driving (1) under the influence of alcohol *per se*; (2) under the influence of alcohol; or (3) while impaired by alcohol. According to the District Court, during fiscal 2014 (just before the law took effect), a total of 176 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 194 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.

Exhibit 1 provides an overview of IISP participation since enactment of Chapter 557 of 2011 and Chapter 631 of 2014:

Ignition Interlock System Program Participation
Fiscal 2012-2015

Fiscal Year	New Driver Assignments	Successful Completions	Unsuccessful Participants
2012 (3/4 year)	8,751	2,982	1,530
2013	10,015	4,383	2,496
2014	10,443	4,648	2,569
2015 (1/2 year)	5,822	2,440	1,338

Source: Maryland Department of Transportation

MVA advises that, since October 2011, 1,139 drivers who left IISP reentered the program at a later time.

National Outlook and Safety Improvement Efforts: According to data from the National Highway Transportation Safety Administration (NHTSA) the percentage of highway fatalities associated with alcohol impairment has hovered around 30% from 1995 to 2013. In 2013, the latest year for which national data is available, there were 32,719 traffic fatalities nationally and 10,076 of those fatalities, or 30.7%, involved a driver with BAC of 0.08 or higher. For the same period in Maryland, out of a total of 465 traffic fatalities, 141, or 30.3%, involved a driver with BAC of 0.08 or higher.

Of concern to traffic safety advocates is that, while the number of fatal traffic accidents has trended downward, especially over the last 10 years, the proportion of traffic fatalities due to alcohol impairment has continued to hover around 30%. NHTSA has recommended that states increase the use of ignition interlock devices. 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.

In an effort to communicate more effectively the consequences of alcohol-impaired driving and reduce the number of drunk drivers on Maryland highways, the Maryland Highway Safety Office released a mobile application in November 2013 called "ENDUI." It is available for Android or Apple cellphones and tablets at no cost. It allows users to (1) report suspected drunk drivers; (2) call 9-1-1 in an emergency; (3) call a designated driver or find taxis or other public transportation; and (4) access educational information about the impact of impairment on driving skills.

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 December 2014, 18 other states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Kansas, Louisiana, Mississippi, Nebraska, New Hampshire, New York, Oregon, Tennessee, Utah, Virginia, and Washington) mandate the use of ignition interlock for any drunk driving conviction.

States are also experimenting with ways to improve participant accountability and program compliance. NCSL reports that 13 states (Hawaii, Illinois, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, South Dakota, Tennessee, Texas, Vermont, 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. Oregon enacted a similar requirement that goes into effect in June 2015. Some states have also implemented "24/7 Sobriety Monitoring" programs, which combine treatment and punitive sanctions such as breath and urine testing, ankle bracelets, drug patches, and incarceration. States that have adopted this approach include Alaska, Montana, North Dakota, South Dakota, Washington, and Wyoming.