

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1391  
Judiciary

(Delegate Ciliberti, *et al.*)

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Driving Under the Influence of Alcohol - Subsequent Offenders - Mandatory  
Ignition Interlock

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This bill requires a court to order at least two years of participation in the State's Ignition Interlock System Program (IISP) as a sentence, part of a sentence, or condition of probation for a third or subsequent violation of driving while under the influence of alcohol or under the influence of alcohol *per se*. If a person fails to submit satisfactory proof of participation within three days of the date of sentencing, the court must order the impoundment or immobilization of any motor vehicle solely owned by the person for up to one year and in accordance with specified procedures. The registered owner of the impounded motor vehicle is responsible for all costs incurred as a result of the immobilization of the motor vehicle or the towing, preserving, and storing of the impounded motor vehicle, including the cost of notifications.

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Fiscal Summary

**State Effect:** General fund expenditures increase by \$108,200 in FY 2019 only. Costs associated with impoundment or immobilization are required to be repaid; therefore, there is likely no material impact on Department of State Police (DSP) expenditures, as discussed below. Potential minimal increase in Transportation Trust Fund (TTF) and general fund revenues.

**Local Effect:** Expenditures may increase minimally, as discussed below; revenues likewise may increase minimally due to required repayment of costs incurred for impoundment or immobilization.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** In addition to other requirements, a court must direct the Motor Vehicle Administration (MVA) to place an ignition interlock restriction on the person's license and must require the person to have the ignition interlock system monitored for proper use and accuracy at least semiannually by an approved entity.

A person who is ordered to participate in IISP under the bill may not solicit or have another person start or attempt to start a motor vehicle equipped with ignition interlock. Additionally, a person may not start or attempt to start a motor vehicle equipped with ignition interlock to assist another person, nor may a person tamper with or in any way attempt to circumvent an ignition interlock system that is installed under the bill. A person may not knowingly furnish a motor vehicle that is not equipped with a functioning ignition interlock system to another person who is prohibited from operating such a vehicle. Violation of these prohibitions is subject to a fine of up to \$500 and/or imprisonment for up to two months.

A police department may use its own personnel, equipment, and facilities, or other persons, equipment, and facilities, to immobilize motor vehicles or remove, preserve, and store impounded motor vehicles.

The court may require the registered owner of a motor vehicle that is immobilized under the bill to post a bond or other adequate security that is equal to the actual costs of immobilizing or impounding the motor vehicle, including required notices.

A police department must send an immobilization or impoundment notice with specified information to the registered owner of the motor vehicle and any secured party within seven days of executing the court order, and must promptly return an immobilized or impounded motor vehicle upon payment of all actual costs.

The bill may not be construed to prohibit a lienholder from exercising the lienholder's rights under law, including the right to sell a motor vehicle that has been impounded or immobilized under the bill, in the event of a default of an obligation giving rise to the lien. The bill specifies additional requirements and procedures for lienholders seeking to sell an impounded or immobilized motor vehicle, including required notice to the police department and disposition of sale proceeds.

The bill also does not affect requirements relating to abandoned vehicles under the Transportation Article.

## **Current Law:**

### *Ignition Interlock System Program*

For information on IISP, including offenses subject to mandatory participation, please refer to the **Appendix – Ignition Interlock System Programs.**

A driver who participates in IISP may not solicit or have another person start or attempt to start a car with an ignition interlock device. A person may not attempt to start or start a car with an ignition interlock device to give an operable motor vehicle to the driver participating in IISP. It is a crime to tamper with or, in any way, try to circumvent an installed ignition interlock system. A person may not knowingly furnish a motor vehicle that is not equipped with a working ignition interlock device to a driver who the person knows may not drive a motor vehicle that does not have the device. A person who violates any of these provisions is subject to maximum penalties of a \$500 fine and/or two months imprisonment.

A person who participates in IISP, but drives a vehicle without an ignition interlock device, is subject to a maximum fine of \$1,000 and/or up to one year imprisonment. Subsequent offenders are subject to maximum penalties of \$1,000 and/or two years imprisonment.

### *Alcohol- and/or Drug-related Driving Offenses*

Under the Transportation Article, 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;
- impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or
- impaired by a controlled dangerous substance (CDS).

**Exhibit 1** shows the maximum penalties for these offenses.

State law does not prescribe specifically the impoundment of motor vehicles for alcohol- and/or drug-related driving offenses. However, § 16-303.1 of the Transportation Article establishes that, as a sentence, a part of a sentence, or a condition of probation, a court may order impoundment or immobilization for up to 180 days of a solely owned vehicle used in commission of the crimes of driving while a person's license or privilege to drive is suspended or revoked in the State.

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**Exhibit 1**  
**Current Maximum Penalties for Alcohol and/or Drug-related Driving Offenses**

**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or While Impaired  
by a CDS**

|                             |   |
|-----------------------------|---|
| First Offense               | 1 year imprisonment and/or fine of \$1,000  |
| Second Offense              | 2 years imprisonment and/or fine of \$2,000 |
| Third or Subsequent Offense | 3 years imprisonment and/or fine of \$3,000 |

**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or While Impaired  
by a CDS While Transporting a Minor**

|                             |   |
|-----------------------------|---|
| First Offense               | 2 years imprisonment and/or fine of \$2,000 |
| Second Offense              | 3 years imprisonment and/or fine of \$3,000 |
| Third or Subsequent Offense | 4 years imprisonment and/or fine of \$4,000 |

**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**

|                             |   |
|-----------------------------|---|
| First Offense               | 2 months imprisonment and/or fine of \$500  |
| Second Offense              | 1 year imprisonment and/or fine of \$500    |
| Third or Subsequent Offense | 3 years imprisonment and/or fine of \$3,000 |

**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 While Transporting a  
Minor**

|                             |  |
|-----------------------------|--|
| First Offense               | 6 months imprisonment and/or fine of \$1,000 |
| Second Offense              | 1 year imprisonment and/or fine of \$2,000   |
| Third or Subsequent Offense | 4 years imprisonment and/or fine of \$4,000  |

CDS: controlled dangerous substance

Notes: All listed offenses are misdemeanors. Additionally, for the offense of driving under the influence of alcohol, under the influence *per se*, or while impaired by a CDS, a repeat conviction or convictions within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as specified, as well as a mandatory alcohol or drug abuse assessment.

Source: Department of Legislative Services

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*Abandoned Vehicles – Impoundment*

An “abandoned vehicle” is defined, among other things, as any motor vehicle, trailer, or semitrailer that is inoperable and left unattended on public property for more than 48 hours or that has remained illegally on public property for more than 48 hours. In addition, the definition includes a vehicle that has been left unattended on any portion of a controlled access highway for more than 24 hours.

A person may not abandon a vehicle on any public property. The last known registered owner of an abandoned vehicle is considered to be the *prima facie* owner of the vehicle at the time of abandonment as well as the person who abandoned it. A police department is authorized to take any abandoned vehicle into custody using its own personnel, equipment, and facilities. In addition, subject to specified requirements, a police department may use other persons, equipment, and facilities for removing, preserving, and storing abandoned vehicles.

As soon as reasonably possible – but no more than seven days after it takes an abandoned vehicle into custody – a police department must send a notice by certified U.S. mail with a return receipt requested to (1) the last known registered owner of the vehicle and (2) each secured party, as shown on MVA records.

The notice must include specified information, including information about the vehicle and the location of the facility where the vehicle is held. In general, a vehicle may be reclaimed within three weeks after the date of the notice, after payment of all towing, preservation, and storage charges resulting from taking or placing the vehicle in custody. (In Baltimore City and Montgomery County, the vehicle must be reclaimed within 11 working days after receipt of the notice and payment of any applicable charges.) Failure to reclaim the vehicle within the appropriate time period is considered (1) a waiver of the owner's or secured party's right, title, and interest in the vehicle; (2) a consent to the sale of the vehicle at public auction; and (3) a consent by the owner (other than a lessor) to the retention of the vehicle for public purposes as specified in the Transportation Article.

In Baltimore City and Prince George's and Montgomery counties, a police department or its agent may seek to recover costs of impoundment, storage, and sale of a vehicle, as specified in the Transportation Article. If a police department or its agent seeks to exercise this option, the required notice must include additional information specifying the consequences of failing to reclaim the vehicle within the specified time period.

**Background:** According to the Judiciary, in fiscal 2017, there were 5,558 guilty dispositions for alcohol- and/or drug-related driving offenses in the District Court. The Maryland State Commission on Criminal Sentencing Policy reports that 83 individuals were convicted in circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2017.

According to the Governors Highway Safety Association, as of June 2017, 29 states have laws regarding vehicle impoundment, immobilization, or confiscation for alcohol-impaired driving offenses; of these, one state (Virginia) borders Maryland.

**State Revenues:** TTF revenues may increase minimally beginning in fiscal 2019, to the extent additional individuals participate in IISP and pay the required \$47 fee. General fund

revenues may also increase minimally as a result of the bill's monetary penalty from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase by \$108,160 in fiscal 2019 only for the Judiciary to make one-time programming changes to implement the bill's requirements. The Judiciary also advises that the bill has a potentially significant operational impact, as the District Court must track and verify proof of timely IISP participation and order subsequent impoundment or immobilization of vehicles, if necessary.

The bill requires at least two years of participation in IISP as a sentence, part of a sentence, or condition of probation for a third or subsequent violation of driving while under the influence of alcohol or under the influence of alcohol *per se* (§ 21-902(a) of the Transportation Article). This analysis assumes that the bill applies only to individuals who are convicted under § 21-902(a) and whose prior convictions were also specifically under § 21-902(a) of the Transportation Article, and not to individuals whose prior convictions were for other offenses under § 21-902 of the Transportation Article (*e.g.*, driving while impaired by alcohol, while impaired by alcohol and/or drugs, or while impaired by a CDS).

MVA advises that, in fiscal 2017, 149 individuals were convicted for a third or subsequent offense of driving under the influence of alcohol or under the influence of alcohol *per se* (in which all prior convictions were also specifically for driving under the influence of alcohol or under the influence of alcohol *per se* or an equivalent offense reported to MVA by another state). MVA advises that any additional participation in IISP as a result of the bill can be handled with existing resources.

DSP advises that, in order to impound vehicles under the bill, DSP must establish secure locations within DSP barracks for vehicle storage at a cost of approximately \$12,000 per location, and that each secure enclosure accommodates four average-sized vehicles. Thus, DSP advises that the bill results in potentially significant storage costs, particularly since vehicles may be held for up to one year.

The Department of Legislative Services (DLS) notes that the bill requires an individual whose vehicle has been impounded or immobilized under the bill to pay all actual costs, including storage costs. DSP may also contract with another entity for impoundment services. Thus, assuming such costs are assessed on a cost-recovery basis, DLS advises that the bill's vehicle immobilization and impoundment provisions do not materially affect DSP expenditures.

Finally, general fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City.

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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

**Local Expenditures:** The bill also requires local police departments to immobilize or impound vehicles under specified circumstances. Again, assuming associated costs are assessed on a cost-recovery basis, DLS advises that the bill's vehicle immobilization and impoundment provisions do not materially affect local expenditures. Some local jurisdictions also advise that they already contract with third-party entities for impoundment services, and that any additional requirements under the bill can likely be handled through existing contracts.

Expenditures may increase minimally 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 approximately \$40 to \$170 per inmate in recent years.

Expenditures may also increase minimally, to the extent circuit courts must also track and verify timely IISP participation and order subsequent impoundment or immobilization.

**Small Business Effect:** Operators of registered vehicle towing and impoundment companies may obtain additional business as a result of the bill. Authorized IISP providers may see an increase in monthly maintenance fees due to more people participating in IISP for longer periods of time.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); Governors Highway Safety Association; Department of Legislative Services

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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><br><br>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<br><br>One year for the second time the driver is required to participate<br><br>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><br><br>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<br><br>One year for the second time the driver is required to participate<br><br>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<br><br>One year for the second time the driver is required to participate<br><br>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.