

Department of Legislative Services
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FISCAL AND POLICY NOTE
 First Reader

House Bill 813
 Judiciary

(Delegate Atterbeary, *et al.*)

Drunk Driving - Administrative Per Se Offenses - Ignition Interlock System Program

This bill alters the minimum required period of participation in the Maryland Ignition Interlock System Program (IISP) for specified administrative *per se* offenses and makes conforming changes. The bill establishes that the required period of participation is the same as the length of the required license suspension, rather than one year. The bill establishes an additional penalty that prohibits a person from operating a vehicle, unless it is equipped with an ignition interlock, for at least 180 days as a condition of the disposition of probation before judgement (PBJ) that a court may grant for a violation of specified alcohol-related driving offenses.

Fiscal Summary

State Effect: General fund expenditures increase by \$20,800 in FY 2020 only for computer programming costs. Transportation Trust Fund (TTF) expenditures increase by \$105,100 in FY 2020 for additional staff; out-year costs reflect annualization. TTF revenues increase by *at least* \$123,400 in FY 2020 due to increased IISP participation as discussed below; out-year revenues reflect annualization.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$123,400	\$164,500	\$164,500	\$164,500	\$164,500
GF Expenditure	\$20,800	\$0	\$0	\$0	\$0
SF Expenditure	\$105,100	\$127,300	\$131,500	\$136,000	\$140,700
Net Effect	(\$2,500)	\$37,200	\$33,000	\$28,500	\$23,800

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Individuals must participate in IISP as a condition of receiving a PBJ for driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol; or committing any of the specified violations while transporting a minor.

The bill additionally specifies that, if a police officer stops or detains any person on suspicion of committing an alcohol- and/or drug-related driving offense, the police officer must advise the person of administrative sanctions, *including the requirement to participate in IISP*, that are imposed for refusal to take a test and for test results indicating a blood alcohol concentration (BAC) level of *at least 0.08*.

Current Law/Background: A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. A person must submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in 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 was driving or attempting to drive while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;
- impaired by drugs and/or drugs and alcohol; or
- impaired by a controlled dangerous substance (CDS).

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

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 a life-threatening injury to another person. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the

administrative sanctions for test results indicating a BAC of at least 0.08 but less than 0.15 at the time of testing. If the person refuses the test or takes a test that results in a BAC of 0.08 or more at the time of testing, the police officer must advise the person of the administrative sanctions, including participation in IISP, that must be imposed for refusal to take a test or a test result of 0.08 or more and notice and hearing procedures.

Administrative *per se* offenses pertain to a driver who is detained on suspicion of a drunk or drugged driving offense or violation of an alcohol restriction and is requested by a police officer to take a test for alcohol, a drug, or a CDS. The offenses are (1) taking a test of blood or breath with a result of at least 0.08 BAC but less than 0.15 BAC; (2) taking a test of blood or breath with a result of at least 0.15 BAC; or (3) refusing to take a test of blood or breath.

A driver is subject to a license suspension for an administrative *per se* offense. The applicable periods of suspension, based on the type of offense and whether it is a first or subsequent offense, are contained in **Exhibit 1**.

Exhibit 1
Administrative *Per Se* Offenses and Periods of License Suspension

<u>Administrative <i>Per Se</i> Offense</u>	<u>1st Offense</u>	<u>Subsequent Offense</u>	<u>1st Fatality</u>	<u>Subsequent Fatality</u>
Test Result: 0.08 to 0.14 BAC	180 days	180 days	6 months	1 year
Test Result: 0.15 BAC or Greater	180 days	270 days	1 year	Revocation
Test Refusal	270 days	2 years	270 days	2 years

Source: Department of Legislative Services

In addition to any other penalty, a court may prohibit a person from driving a motor vehicle without an ignition interlock device for up to three years, if the person is convicted or granted PBJ for a violation of driving under the influence of alcohol or under the influence of alcohol *per se*; driving while impaired by alcohol; or committing any of the specified violations while transporting a minor. However, if the minor is younger than age 16, participation in IISP is mandated for at least six months.

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

State Revenues: The Motor Vehicle Administration (MVA) charges participants in IISP a program fee. For fiscal 2020, the fee is \$47, but in future years, the fee may vary depending on the number of participants and the expenditures that, by statute, must be covered. Indigent participants are exempt from paying this fee. To the extent more individuals *choose* to participate in IISP and pay the program fee as a result of the shortened periods of participation, TTF revenues increase minimally in fiscal 2020 and in future years.

MVA also advises that TTF revenues increase by *at least* \$123,375 in fiscal 2020. This accounts for the October 1, 2019 effective date and an estimated annual increase of 3,500 interlock participants who are required to pay a fee of \$47 each due to expansion of *mandatory* IISP participation to individuals receiving a PBJ for the specified alcohol-related driving offenses. The Department of Legislative Services (DLS) concurs with this estimate.

As noted above, participation rates may be further impacted due to alterations in required participation periods specified in the bill. The bill shortens the required length of participation in IISP for the following categories of offenders: (1) those who commit a first offense of refusing to take a test (from one year to nine months); (2) those who commit a first or subsequent offense of taking a test that results in 0.08 to 0.14 BAC (from one year to six months); (3) those who commit a first or subsequent offense of taking a test that results in 0.15 BAC or greater (from one year to six months for a first offense and nine months for a subsequent offense); (4) those who commit a first fatality and refuse to take a test (from one year to nine months); and (5) those who commit a first fatality and take a test that results in 0.08 to 0.14 BAC (from one year to six months).

The bill increases the required length of participation in IISP for the following categories of offenders: (1) those who commit a subsequent offense of refusing to take a test (from one year to two years); and (2) those who commit a subsequent fatality and refuse to take a test (from one year to two years). Those who commit a subsequent fatality and take a test that results in 0.15 BAC or greater are subject to license revocation under current law – it is unclear how long these individuals are required to participate in IISP under the bill.

Recent information is not readily available to determine how many drivers who refused to take a requested or directed test were subsequent offenders or how many drivers who refused to take a test and received license suspensions from MVA were subsequent offenders. However, given that participation rates are likely to vary, as noted above, DLS estimates that TTF revenues from suspensions due to test refusals is not likely to be materially affected.

State Expenditures:

Motor Vehicle Administration

MVA advises that, in fiscal 2018, there were 16,367 new referrals to IISP. MVA further advises it needs four additional personnel to implement the bill’s provisions, due to the estimated annual increase of 3,500 interlock cases. However, MVA did not provide any additional information to document that the anticipated increase of 3,500 participants justifies the need for four additional customer service agents. While DLS concurs that additional participants are likely as a result of the bill, DLS advises that MVA can likely implement the bill with two additional employees.

Special fund expenditures increase by \$105,126 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring two customer service agents to handle the increase in IISP cases. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$94,408
Operating Expenses	<u>10,718</u>
Total FY 2020 TTF Expenditures	\$105,126

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. To the extent that MVA needs additional staff to implement the bill’s provisions, MVA may request additional positions through the annual budget process.

Finally, MVA advises that it must revise and reprint forms to reflect the bill’s changes at a one-time cost of \$26,737. However, DLS advises that these costs are likely absorbable as part of MVA’s routine functions.

Judiciary

The Judiciary advises that its case management systems will be impacted and estimates that general fund expenditures increase by \$20,760 for computer programming in fiscal 2020 only. DLS concurs with this estimate.

Small Business Effect: Authorized service providers for IISP likely see a significant increase in monthly maintenance fees due to an increased number of individuals participating in IISP after receiving a PBJ for specified alcohol-related offenses. The increase in small business revenues from additional participants may be offset, to a minimal extent, due to the shortened duration for required participation required in the bill.

However, any potential reduction in small business revenues due to the lessened participation requirements in the bill cannot be reliably estimated and is not included in this estimate.

Additional Information

Prior Introductions: HB 1490 of 2017, a bill with similar provisions, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: SB 814 (Senator Smith, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; 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 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 alcohol restriction violations committed by drivers younger than age 21.

Chapter 631 of 2014 established mandatory participation for alcohol-related offenses involving the transport of a minor younger than age 16. According to the District Court, during fiscal 2018 a total of 77 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 140 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 ¹	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 ² Driver convicted of either (1) homicide by motor vehicle or (2) life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol <i>per se</i> ; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol ²	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate
Driver convicted of transporting a minor while impaired by alcohol and the minor was younger than age 16 ³ Subsequent offender convicted of driving while under the influence of alcohol or under the influence <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 ⁴	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate
Driver younger than age 21 who violated the license alcohol restriction or committed any alcohol-related driving offense ⁴	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate

¹Participation 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.

²Chapter 512 of 2016

³Chapter 631 of 2014

⁴Chapter 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, up until fiscal 2017. MVA advises that, between October 1, 2011, and September 30, 2017, 1,843 drivers who left IISP reentered the program at a later time.

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

MVA advises that in fiscal 2018 there were 16,367 unique drivers in IISP. In fiscal 2017, the most recent year for which data is currently available, MVA advises that there were 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 2017. For example, in 2017, the latest year for which national data is available, there were 37,133 traffic fatalities nationally and 10,874 of those fatalities, or 29%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 550 traffic fatalities, 186, or 33%, 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, 29 states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia) and the District of Columbia 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 17 states (Colorado, 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, Delaware, Hawaii, Idaho, Iowa, Montana, North Dakota, South Dakota, Utah, Washington, and Wyoming.