

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 245

(Senator Kramer, *et al.*)

Judicial Proceedings

Judiciary

Transportation – Ignition Interlock System – Definition

This bill expands the definition of “ignition interlock system” to mean, in addition to current provisions, a device that has a camera (1) with the capability of recording still images of the person taking the test of the person’s blood alcohol level; (2) without the capability to record sound; (3) without the capability to record video; and (4) that records images only while the device is testing the blood alcohol level of the person taking the test or if the device is being tampered with.

Fiscal Summary

State Effect: The bill is not expected to materially affect governmental operations or finances, as discussed below.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: An “ignition interlock system” means a device that (1) connects a motor vehicle ignition system to a breath analyzer that measures a person’s blood alcohol level and (2) prevents a motor vehicle ignition from starting if a person’s blood alcohol level exceeds the calibrated setting on the device.

A person who commits specified alcohol-related driving offenses may be required to participate in the Maryland Ignition Interlock System Program (IISP). Participation may also be optional under certain circumstances.

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.

“Under the influence of alcohol *per se*” means having an alcohol concentration at the time of testing of at least 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

“Impaired by alcohol” means *prima facie* evidence as indicated, at the time of testing, by an alcohol concentration of at least 0.07 but less than 0.08, as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

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 (including use of additional accountability measures such as cameras), please see **Appendix – Ignition Interlock System Programs**.

State Expenditures: The Motor Vehicle Administration (MVA) advises that, in fiscal 2018, there were 16,367 unique drivers in IISP. MVA advises that ignition interlock devices that are equipped with a camera cost an additional \$10 to \$15 each per month. MVA additionally advises that installation of camera-equipped ignition interlock devices is an authorized option for participation in IISP. However, MVA advises that there is not anyone participating in IISP who utilizes a camera, although there has been at least one participant to use a camera device in the past.

Individuals participating in IISP pay the installation cost of \$75 for ignition interlock devices themselves and obtain the devices from authorized providers; therefore, there is no anticipated fiscal impact to MVA. MVA advises that any necessary computer programming changes can be absorbed within existing resources. To the extent the bill results in the need to store and review more information than anticipated, special fund expenditures for MVA may increase minimally.

Small Business Effect: Providers that operate as small businesses must ensure that all of their ignition interlock devices used in Maryland are equipped with a camera; however, their costs to do so may be offset by increased fees from participants. Providers also must supply a replacement device equipped with a camera to everyone already participating in the program when the bill takes effect, with an additional installation charge for each

participant. According to MVA's website, there are eight certified ignition interlock providers in the State.

Additional Information

Prior Introductions: HB 862 of 2018 passed in the House, but received an unfavorable report from the Senate Judicial Proceedings Committee. HB 784 of 2017 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 523, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 55 (Delegates Barron and Sydnor) - Judiciary.

Information Source(s): Department of State Police; Maryland Department of Transportation; National Highway Traffic Safety Administration; National Conference of State Legislatures; 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 29 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 87 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 2018. MVA advises that, between October 1, 2011, and September 30, 2018, 2,384 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
2018	7,151	5,575	1,797

Source: Maryland Department of Transportation

MVA advises that in fiscal 2018 there were 16,367 unique drivers in IISP and 7,151 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.