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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 528

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Drunk Driving Offenses - Ignition Interlock System Program

This bill expands mandatory participation in the Maryland Ignition Interlock System Program (IISP) to include (1) an individual who is granted probation before judgment (PBJ) for driving while under the influence of alcohol or under the influence of alcohol *per se* and (2) an individual who is convicted of or granted PBJ for driving while impaired by alcohol. (Current law requires IISP participation for a person *convicted* of driving under the influence of alcohol or under the influence of alcohol *per se*, a person *convicted* of driving impaired by alcohol while transporting a minor younger than age 16, and a person *convicted* of driving while impaired who refused a test. These individuals face an indefinite driver's license suspension if they fail to successfully complete IISP.) However, for an individual granted PBJ, the applicable court must hold a hearing to determine whether the individual's participation in IISP is necessary for the safety of the community. If the court finds that the individual's participation is not necessary, the court must enter that finding and waive the individual's participation in IISP. The bill also makes several technical and conforming changes.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues increase by an indeterminate amount beginning in FY 2024, as discussed below. No material effect on expenditures is anticipated; the Motor Vehicle Administration (MVA) can implement the bill with existing budgeted resources. The Judiciary and the Office Administrative Hearings can absorb any impacts from the bill within existing budgeted resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

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* or while impaired by alcohol. 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.

Required Ignition Interlock System Use

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 of or granted PBJ for driving under the influence of alcohol, driving under the influence of alcohol *per se*, or driving while impaired by alcohol.

An individual must participate in IISP if:

- convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*;
- convicted of transporting a minor while impaired by alcohol, if the minor was younger than age 16;
- convicted of homicide or 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 combination of one or more drugs and alcohol; or
- convicted of driving while impaired by alcohol or while impaired by a drug, combination of drugs, or combination of one or more drugs and alcohol, if the trier of fact finds beyond a reasonable doubt that the driver refused a test.

If an individual specified above fails to participate in or successfully complete the program, MVA must suspend the individual's license until the individual successfully completes the program.

Additionally, if a licensee refused to take a test or took a test that indicated a BAC of 0.15 or more, MVA may modify a license suspension or issue a restricted license only if the individual participates in IISP for one year. These individuals face license suspension for a statutorily specified amount of time if they fail to successfully complete IISP.

Furthermore, an individual must participate in IISP as a condition of modification of a license suspension or revocation or issuance of a restricted license if the individual (1) was ordered by a criminal court to participate in IISP for a drunk driving offense; (2) was convicted of driving while impaired by alcohol and within the preceding five years had

been convicted of a drunk or drugged driving offense; or (3) was younger than age 21 when they violated an alcohol restriction or specified impaired driving prohibitions. These individuals face a mandatory one-year license suspension for failure to participate in IISP or successfully complete the program.

Generally, an individual must participate in the program for (1) six months, for the first time the individual is required to participate; (2) one year, for the second time the individual is required to participate; and (3) three years, for the third or subsequent time the individual is required to participate.

An individual who is not otherwise required to participate in IISP may participate under specified circumstances, including if the individual's license is suspended or revoked for driving while impaired by alcohol or impaired by alcohol and drugs, if the individual's license has an alcohol restriction, or if MVA modifies a license suspension or issues the individual a restricted license.

For a more detailed discussion of the implementation of IISP in Maryland, please see the **Appendix – Ignition Interlock System Programs**.

Driving Under the Influence of Alcohol or Under the Influence of Alcohol Per Se

A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* is subject to maximum penalties of (1) for a first offense, a \$1,000 fine and/or 1 year imprisonment; (2) for a second offense, a \$2,000 fine and/or 2 years imprisonment; (3) for a third offense, a \$5,000 fine and/or 5 years imprisonment; and (4) for a fourth or subsequent offense, a \$10,000 fine and/or 10 years imprisonment.

Penalties for first and second offenses increase if the offense is committed while transporting a minor. A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* while transporting a minor is subject to maximum penalties of (1) for a first offense, a \$2,000 fine and/or 2 years imprisonment; (2) for a second offense, a \$3,000 fine and/or 3 years imprisonment; (3) for a third offense, a \$5,000 fine and/or 5 years imprisonment; and (4) for a fourth or subsequent offense, a fine of \$10,000 and/or 10 years imprisonment.

Driving While Impaired by Alcohol

A person convicted of driving while impaired by alcohol is subject to maximum penalties of (1) for a first offense, a fine of \$500 and/or two months imprisonment; (2) for a second offense, a fine of \$500 and/or 1 year imprisonment; (3) for a third offense, a \$5,000 fine and/or 5 years imprisonment; and (4) for a fourth or subsequent offense, a \$10,000 fine and/or 10 years imprisonment.

Penalties for first and second offenses increase if the offense is committed while transporting a minor. A person convicted of driving while impaired by alcohol while transporting a minor is subject to maximum penalties of (1) for a first offense, a fine of \$1,000 and/or 1 year imprisonment; (2) for a second offense, a \$2,000 fine and/or 2 years imprisonment; (3) for a third offense, a \$5,000 fine and/or 5 years imprisonment; and (4) for a fourth or subsequent offense, a \$10,000 fine and/or 10 years imprisonment.

Administrative Penalties

In addition to specified maximum monetary and incarceration penalties, alcohol- and drug-related offenses are subject to points assessment by MVA, which makes the driver subject to either suspension or revocation of the driver's license. For a conviction of driving while under the influence of alcohol or under the influence of alcohol *per se* or while impaired by a controlled dangerous substance (CDS), MVA must assess 12 points against the driver's license, and the license is subject to revocation. For a conviction of driving while impaired by alcohol, a drug, combination of drugs, or combination of one or more drugs and alcohol, MVA must assess 8 points against the driver's license, and the license is subject to suspension. A driver who accumulates 8 or 12 points against his or her driver's license within a two-year period is subject to license suspension or revocation, respectively.

License Revocation and Suspension

MVA may revoke the license of an individual who is convicted of (1) driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS or (2) 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 and who was previously convicted of two or more specified drunk or drugged driving violations within a three-year period.

MVA may suspend for up to 60 days the license of an individual who is convicted of driving while impaired by alcohol or while impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol. In addition, MVA may impose a suspension for up to one year if an individual is convicted more than once within a five-year period of any combination of drunk or drugged driving offenses; however, a restricted license for the period of suspension may be issued to a person who participates in IISP.

Probation Before Judgment

When a defendant pleads guilty or *nolo contendere* or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if (1) the court finds that the best interests of the defendant and the public welfare would be served and (2) the defendant gives written consent after determination of guilt or acceptance of a *nolo contendere* plea. PBJ is not an

option for a defendant who, within the previous 10 years, was granted PBJ or was convicted for a violation of § 21-902 of the Transportation Article (driving while under the influence or driving while impaired). As noted above, a court *may* order a defendant to participate in IISP as a condition of PBJ entered for a violation of § 21-902.

State Revenues: The bill expands the circumstances under which participation in IISP is mandatory. According to figures provided by the Maryland Department of Transportation, assuming 100% participation by defendants with eligible dispositions, the bill results in approximately 6,350 additional IISP participants annually, based on the average annual number of individuals granted PBJ for driving while under the influence of alcohol or under the influence of alcohol *per se* and the average annual number of individuals convicted of or granted PBJ for driving while impaired by alcohol from 2018 to 2020 and the 2022 rate of IISP participation among a representative sample of individuals. However, because the bill requires a court to waive an individual's participation in IISP under certain circumstances, the number of additional individuals that will actually be required to participate in IISP each year cannot be reliably estimated.

To enroll in IISP, an individual must pay a \$47 participation fee and a \$20 fee to obtain a license with an interlock restriction. *For illustrative purposes only*, if the 6,350 individuals referenced above had to participate in IISP, TTF revenues would increase by up to \$319,100 in fiscal 2024 – accounting for the bill's October 1, 2023 effective date – and up to \$425,500 annually thereafter.

State Expenditures: MVA advises that, based on existing caseloads and staffing levels (and economies of scale realized due to information technology modernization), additional IISP participation generated by the bill can likely be handled by existing staff. Additionally, MVA advises that it can absorb the one-time programming changes that must be completed to the MVA Customer Connect system with existing budgeted resources. Finally, any impact on caseloads for the Judiciary or the Office of Administrative Hearings due to the bill's changes is not expected to materially affect State finances.

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. In addition, small businesses that employ commercial driver's license holders may be affected to the extent that any of their drivers must participate in IISP due to the bill's changes.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 653 and HB 557 of 2022; SB 672 and HB 749 of 2021; and SB 870 and HB 952 of 2020.

Designated Cross File: HB 451 (Delegate Atterbeary) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; 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 and 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.

Drivers may elect to participate in IISP or may be referred to the program by a court, the administration, and administrative law judges. Since 2011, IISP has undergone various changes that have increased the number of alcohol-impaired drivers who are either mandated or authorized to participate in the program.

A driver who had a BAC test result of 0.15 or more or who refused to take a test is only eligible for a modification of a license suspension if the driver participates in the program for one year.

The following drivers are required to participate in IISP and face an indefinite mandatory license suspension if they fail to participate or successfully complete the program:

- a person convicted 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 a conviction of these offenses under a specified provision or for an accumulation of points for these 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 convicted 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;
- a person convicted 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; and

- a person convicted of transporting a minor while impaired by alcohol and the minor was younger than age 16.

The following drivers are required to participate in IISP as a condition of modification of a suspension or revocation of a license or issuance of a restricted license and face a one-year mandatory license suspension if they fail to participate or successfully complete participation in the program:

- a driver ordered by a criminal court to participate in the program for a drunk driving offense;
- a driver who is convicted of driving while impaired by alcohol and within the preceding five years was convicted of a drunk or drugged driving offense; or
- a driver younger than age 21 who violated the alcohol restriction on the driver's license or violated specified impaired driving prohibitions.

Exhibit 1 summarizes the categories of offenders required to participate in IISP and their minimum participation periods.

A participant is considered to have successfully completed IISP when the service provider certifies to MVA that during 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 registered 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.

Chapters 65 and 66 of 2019 modified the definition of "ignition interlock system" to mean, among other things, that the device 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.

Exhibit 2 provides an overview of IISP participation since enactment of Chapter 557 of 2011, up through fiscal 2021. MVA advises that, between October 1, 2011, and September 30, 2021, 3,924 drivers who were removed from IISP for noncompliance reentered the program at a later time. MVA advises that in fiscal 2021 there were 15,185 unique drivers in IISP and 4,858 first-time referrals.

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 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 violated the prohibitions on driving while impaired by alcohol or while impaired by drugs or a combination of drugs and alcohol ⁵	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

BAC: blood alcohol concentration

¹ 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 for one year.

² Chapter 512 of 2016.

³ Chapter 631 of 2014.

⁴ Chapter 557 of 2011.

⁵ Chapter 557 of 2011 and Chapter 512 of 2016.

Note: A driver ordered by a criminal court to participate in the program because of a drunk driving offense is subject to the general length of participation described above (*i.e.*, six months, one year, or three years). However, a court may order the driver to participate for a longer period of time, not to exceed three years.

Source: Department of Legislative Services

Exhibit 2
Ignition Interlock System Program Participation
Fiscal 2013-2021

<u>Fiscal Year</u>	<u>Total Annual Participation</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	18,373	5,575	1,797
2019	19,411	6,521	2,078
2020	17,854	6,815	2,450
2021	15,185	5,818	2,172

Source: Maryland Department of Transportation

National Safety Trends

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 2020. In 2020, the latest year for which national data is available, there were 38,824 traffic fatalities nationally, of which 11,654 of those fatalities, or 30%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 567 traffic fatalities, 183, or 32%, involved a driver with a BAC of 0.08 or higher

Recent national data indicates that risky driving behaviors, including impaired driving, increased following the onset of the COVID-19 pandemic in March 2020. According to NHTSA, total traffic fatalities on U.S. roadways increased by 6.8% in 2020 compared to 2019, despite an 11% decrease in total vehicle miles traveled (VMT) during the same period. The overall national traffic fatality *rate*, as measured in fatalities per 100 million VMT, increased by 21% in 2020 compared to 2019; the national alcohol-impaired driving fatality rate increased by 29% during the same period. According to NHTSA’s preliminary traffic fatality estimates for 2021, the increased trend in traffic fatalities observed in 2020 continued into 2021 (although the estimated overall traffic fatality rate for 2021 reflects a marginal decrease compared to 2020), and estimated fatalities in police-reported, alcohol-involved crashes remained elevated above pre-pandemic levels.

Model Guidelines for State Ignition Interlock Programs and Maryland Task Force Recommendations

Traffic safety advocates are concerned about the proportion of traffic fatalities due to alcohol impairment, which has decreased only slightly in recent decades. 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, which still represents the most current model guidelines, 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 reduced 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, and 30 states (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, 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. Eight states (Florida, Michigan, Minnesota, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Wyoming) require the use of ignition interlock for high BAC (0.10 or higher) offenders and repeat offenders, and 5 states (Georgia, Maine, Massachusetts, Missouri, and Ohio) require only repeat offenders to use ignition interlock. In the remaining states, judges have the discretion to order installation as part of sentencing for convicted drunk drivers.

States are also experimenting with ways to improve participant accountability and program compliance. As of October 2021, NCSL reports that 21 states (Arizona, Colorado, Florida, Hawaii, Idaho, Illinois, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia, and Washington) require ignition interlock devices to contain 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. NCSL reports that as of September 2021, 14 states have 24/7 sobriety monitoring programs or pilot programs at the state or county level (Alaska, Florida, Hawaii, Idaho, Iowa, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Washington, Wisconsin, and Wyoming).