

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1342

(Delegate Kramer, *et al.*)

Judiciary

Judicial Proceedings

Drunk Driving Reduction Act of 2016 (Noah's Law)

This bill expands the circumstances under which participation in the Ignition Interlock System Program (IISP) is required. The bill allows a driver who fails a test with a blood alcohol concentration (BAC) of 0.08 or more to enter IISP for one year, if the driver does not request an administrative hearing to dispute the charge. A participant in the program is allowed to drive without being subject to specified restrictions to encourage participation in IISP. The periods of required license suspension are increased for most administrative *per se* offenses. The bill makes conforming changes to other provisions of law, including notice requirements.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) fee revenues increase by \$307,800 in FY 2017. General fund revenues increase, assuming an increase in the caseload of the Office of Administrative Hearings (OAH), but OAH can handle additional cases with existing resources. TTF expenditures increase by at least \$538,600 in FY 2017 due to IISP expansion. The Department of State Police (DSP) can handle enforcement with existing resources. Out-years reflect annualization and assume no changes in caseload or fees.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
SF Revenue	\$307,800	\$410,400	\$410,400	\$410,400	\$410,400
SF Expenditure	\$538,600	\$415,800	\$432,700	\$450,200	\$468,600
Net Effect	(\$230,700)	(\$5,400)	(\$22,200)	(\$39,800)	(\$58,100)

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

Local Effect: Enforcement can be handled with existing resources. No effect on revenues.

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

Analysis

Bill Summary:

Mandatory Ignition Interlock Program Participation – Indefinite Suspension: The bill *newly* requires the following persons to participate in IISP:

- a person convicted – for 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 an accumulation of points for those violations);
- a person required to be a participant by a court order due to having been convicted of 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 finds, beyond a reasonable doubt, that the person refused a requested test;
- a person whose license has been revoked for a conviction of homicide by a motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, any 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, any combination of drugs, or a combination of one or more drugs and alcohol.

Generally, a driver subject to mandatory IISP participation under these provisions must participate in IISP for six months the first time participation is required, one year the second time participation is required, and three years the third or any subsequent time participation is required. The Motor Vehicle Administration (MVA) is required to indefinitely suspend the driver's license of a person subject to mandatory participation who either fails to participate in IISP or does not complete the program until the person successfully completes it. A person who participates in the program as a result of a mandatory suspension or revocation, as specified, receives credit toward the length of participation in the program for any other mandatory participation obligations arising out of the same

incident. MVA must issue a restricted license to an individual who is required to participate in IISP under these provisions (as well as those who are already required to participate in the program) and who is otherwise eligible.

For those convicted of driving while impaired by alcohol and/or drugs who refused a requested test (as noted above), the court must require the person to participate in IISP for one year. That penalty is in addition to any other criminal penalty for a violation of 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; it is also concurrent with any other participation in IISP ordered by MVA.

Optional IISP Participation: The bill authorizes MVA to modify a license suspension of and issue a restricted license to a person (1) who, instead of requesting a hearing, requests participation in IISP; (2) whose license is not currently suspended, revoked, canceled, or refused; (3) who is issued an order of suspension after a test result with an alcohol concentration of at least 0.08 but less than 0.15 or who refused to take a test; (4) who surrenders the driver's license within the same time limits set for requesting a hearing; and (5) who elects in writing to participate in IISP for one year. The bill also expands eligibility for IISP by authorizing a person to qualify for such modification of a license suspension and issuance of a restricted license even if the person was charged with a moving violation that involved death or serious physical injury to another that arose out of the same circumstances as the test refusal or failing test result.

Driver Who Does Not Elect IISP: The bill alters the circumstances under which a person who fails a test with a result of 0.08 BAC, but less than 0.15 BAC, and who does *not* elect to participate in IISP, may still qualify for a modified suspension or a restricted license. This person is, instead, subject to a license suspension for one year; MVA has limited authority to modify the suspension or issue a restricted license to such a driver. MVA may only take these actions if it finds that the person (1) must drive a motor vehicle for employment; (2) must drive to attend an alcohol prevention or treatment program; (3) has no other alternative available to get to and from employment and the person's ability to earn a living would be severely impaired as a result; (4) must obtain health care (for himself/herself or an immediate family member); or (5) must drive to attend school, as specified. The bill repeals additional conditions that prohibit a driver from qualifying for a modification or a restricted license – specifically, if the person had a suspended license during the previous five years or was convicted of an alcohol- and/or drug-related driving offense under § 21-902 of the Transportation Article during the previous five years.

The bill also expands required participation for a driver who takes a mandatory one-year license suspension rather than participate in IISP. Within 90 days of expiration of the one-year period of suspension, such a driver must carry a license with an ignition interlock device restriction and is required to maintain, for at least six months, or longer if otherwise

required, an ignition interlock system on each motor vehicle owned by the person. A person who violates this requirement is subject to the additional criminal penalties that are established under existing law. The bill does not alter the authority of MVA to modify the ignition interlock device requirement if the driver can successfully demonstrate financial hardship, as specified.

Increased Penalties for Alcohol Concentrations and Breath Test Refusal: **Exhibit 1** compares existing administrative *per se* penalties to those administrative *per se* penalties proposed by the bill.

Exhibit 1
Comparison of Current Administrative *Per Se* Penalties to
Increased Administrative *Per Se* Penalties Under the Bill

<u>Offense</u>	<u>BAC at</u> <u>or Above 0.08</u>		<u>BAC at</u> <u>or Above 0.15</u>		<u>Test Refusal</u>	
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>
First	45 days	90 days	90 days	180 days	120 days	270 days
Second	90 days	180 days	180 days	270 days	1 year	same
Third or Subsequent	90 days	180 days	180 days	270 days	1 year	2 years
Accident resulting in death; First	6 months	same	1 year	same	120 days	270 days
Accident resulting in death; Second	1 year	same	revocation	same	1 year	1 year
Accident resulting in death; Third or Subsequent	1 year	same	revocation	same	1 year	2 years

Source: Department of Legislative Services

BAC = Blood Alcohol Concentration

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*;
- impaired by alcohol;
- so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol, that the person cannot drive safely; or
- impaired by a controlled dangerous substance (CDS).

Driving under the influence of alcohol *per se* means driving with a BAC of 0.08 or higher. BAC is measured, at the time of testing, as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

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

Penalties increase if this 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 two years imprisonment; (2) for a second offense, a \$3,000 fine and/or three years imprisonment; and (3) for a third or subsequent offense, a \$4,000 fine and/or four years imprisonment.

Homicide by Motor Vehicle or Vessel Under the Influence: A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

Homicide by Motor Vehicle or Vessel While Impaired: A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) so far impaired by a drug, any combination of drugs, or any combination of drugs and alcohol that the person cannot drive, operate, or control a motor vehicle or vessel safely; or (3) impaired by a CDS that the person is not entitled to use by State law.

Life-threatening Injury by Motor Vehicle or Vessel Under the Influence: A person may not cause life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

Life-threatening Injury by Motor Vehicle or Vessel While Impaired: A person may not cause life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) so far impaired by a drug, any combination of drugs, or any combination of drugs and alcohol that the person cannot drive, operate, or control a motor vehicle or vessel safely; or (3) impaired by a CDS that the person is not entitled to use by State law.

For convictions of all homicide by motor vehicle and life-threatening injury by motor vehicle offenses, MVA must assess 12 points against the driver's license, and the license

is subject to revocation. A conviction of driving under the influence of alcohol or driving while impaired by a CDS also requires assessment of 12 points against the license by MVA, and the license is subject to revocation. A conviction for driving while impaired by alcohol or impaired by a drug, any combination of drugs, or any combination of drugs and alcohol requires assessment of 8 points against the driver's license by MVA, 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.

Administrative Penalties: Chapter 247 of 2015 increased the administrative penalties for alcohol- and/or drug-related driving offenses. Individuals involved in a motor vehicle accident that results in the death of another person, and who have an alcohol concentration of 0.08 or more at the time of testing, are subject to (1) for a first offense, license suspension for six months or (2) for a second or subsequent offense, license suspension for one year. Individuals with an alcohol concentration of 0.15 or more at the time of testing are subject to (1) for a first offense, license suspension for one year or (2) for a second or subsequent offense, license revocation. If a driver refuses a test of blood or breath, MVA must suspend the driver's license for 120 days for a first offense and one year for a second or subsequent offense.

License Suspensions and Revocations: MVA is required to revoke the license of any person who has been convicted of homicide by motor vehicle while under the influence of alcohol; impaired by alcohol; impaired by a drug, any combination of drugs, or a combination of one or more drugs and alcohol; or impaired by a CDS.

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 drunk or drugged driving violations within a three-year period.

MVA may impose a suspension for up to one year if a person 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.

However, MVA is required to impose a one-year suspension on an individual who is convicted of the following offenses: (1) driving under the influence of alcohol or under the influence of alcohol *per se* more than once within a five-year period; or (2) driving under the influence of alcohol or under the influence of alcohol *per se* and driving while impaired by a CDS within a five-year period. A restricted license may be issued for the one-year period if the individual participates in IISP. The restricted license may only allow

a person to drive to and from work, school, a drug or alcohol treatment program, or an ignition interlock system service facility.

Driver Who Does Not Elect IISP: A person who undergoes license suspension for one year and does not elect to participate in IISP, as specified, is still subject to the requirement to maintain an ignition interlock system. Within 90 days of the expiration of the one-year period of suspension, MVA must notify the person that he or she must maintain, for at least three months and up to one year, an ignition interlock device on each motor vehicle he or she owns. That person's driver's license must also contain a restriction that prohibits operation of a motor vehicle unless it contains an ignition interlock device. A person who violates this requirement is subject to additional criminal penalties, as specified. A person may request that MVA modify the ignition interlock requirement to the extent that the person can successfully demonstrate the requirement imposes a financial hardship on the person, the person's family, or a co-owner of the vehicle.

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

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

(Current law uses the terms "restricted license" and "restrictive license" interchangeably.)

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

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

Optional IISP Participation: Pursuant to regulations finalized in March 2016, a person who is detained on suspicion of committing an alcohol- and/or drug-related driving offense and either refuses a requested test or has a test result of 0.08 BAC and higher may elect to participate in IISP instead of requesting an administrative hearing to dispute the charge. Before promulgation of the regulations, a driver who took a test needed a result of 0.15 BAC or higher to request the option to go into IISP instead of requesting an administrative hearing at the time of detention by an officer. However, a person who wants to elect participation after being detained must meet the following conditions:

- the driver's license must not be currently suspended, revoked, refused, or canceled;
- the person must not have been charged with a moving violation arising out of the same circumstances as an administrative offense that involves death or serious physical injury to another;
- the person must surrender all Maryland driver's licenses, including any temporary license, or certify that no Maryland driver's license is in the person's possession;
- the person must elect in writing to participate in IISP for one year;
- the person must pay the required MVA program fee; and
- the person must obtain a corrected driver's license with an ignition interlock device restriction.

IISP participation may also be requested by a person under the following circumstances:

- the person's license is suspended or revoked after conviction for driving (1) under the influence of alcohol or under the influence of alcohol *per se*; (2) while impaired by alcohol; or (3) while impaired by a drug and or a combination of drugs and/or alcohol;
- the person's license is suspended or revoked for (1) an accumulation of 12 points after conviction for driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS; or (2) an accumulation of 8 points after conviction for driving while impaired by alcohol or driving while impaired by a drug and/or a combination of drugs and/or alcohol;
- the person's license has an alcohol restriction imposed by MVA; or

- MVA otherwise modifies a suspension or issues a restrictive license as authorized after the person is detained on suspicion of committing an alcohol- and/or drug-related driving offense.

Sanctions for Program Participants: A driver who is convicted of the following offenses is subject to a mandatory indefinite license suspension until the driver successfully completes IISP: (1) driving under the influence of alcohol or under the influence of alcohol *per se* and having a BAC of 0.15 or higher; or (2) driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol and transporting a minor younger than age 16. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do not complete it. Periods of mandatory participation must run concurrently for a driver who is subject to participation in the program due to more than one provision of the law.

A driver who is eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15, and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, has to participate in the program for one year. If the driver does not participate, MVA must suspend the driver's license for the full suspension period otherwise required. A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is timely requested, the suspension must be stayed pending the decision at the administrative hearing.

Any driver who is mandated to participate in the program, or who requests ignition interlock program entry and is not otherwise exempt, must not drive a motor vehicle without an ignition interlock device in violation of an ignition interlock system restriction on the participant's driver's license. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine for a first offense and two years imprisonment and/or a \$1,000 fine for a second or subsequent offense.

Reconsideration of Refusal or Program Reentry: If a driver who is eligible or required to participate in IISP does not initially become a participant, that driver may apply to MVA to become a participant at a later time. MVA may reconsider any suspension or revocation of the driver's license arising out of the same circumstances and allow the driver to participate in the program.

If MVA removes a driver from the program due to violation of the program requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal. If the driver reenters the program under these circumstances, that driver must participate in the program for the entire period that was initially assigned for successful

completion of the program without any credit for participation that occurred before the driver was removed from the program.

Mandatory Warnings: MVA is required to warn a driver, in a notice of proposed suspension or revocation, about the required participation in IISP if the driver is convicted of a subsequent alcohol-related driving offense. MVA must also warn all drivers younger than age 21 at the issuance of their licenses about the required participation in the program for any violation of the driver's alcohol restriction on the license or the commission of any alcohol-related driving offense, as specified. However, a driver may not raise the absence of a warning or the failure to receive a warning as a basis for limiting the authority of MVA to require participation in IISP.

Judicial Sanctions: In addition to any other penalties for driving under the influence of alcohol or under the influence of alcohol *per se*, or in addition to any other condition of probation, a court may prohibit a person who is either convicted of any of these offenses, or granted probation before judgment, from operating a motor vehicle that is not equipped with an ignition interlock device for up to three years.

Blood Alcohol Testing and Refusal: A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. 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 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 a drug, a combination of drugs, or a combination of one or more drugs and alcohol; or
- impaired by a CDS.

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 that must be imposed for refusal to take a test and notice and hearing procedures. An offender's license or driving privilege must be suspended by MVA for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license

suspension is permitted for a refusal unless the driver participates in IISP for at least one year.

A police officer is also required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. An enhanced criminal penalty applies if the person is convicted of an alcohol- and/or drug-related driving offense and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a requested test. Specifically, a maximum penalty of imprisonment for two months and/or a fine of \$500 may be imposed *in addition* to the penalty for the underlying alcohol- and/or drug-related driving offense. However, a court may not impose this additional penalty unless the State's Attorney served notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty or the notice was served at least 15 days before trial in a circuit court trial or 5 days before trial in the District Court, whichever is earlier.

Modification of Suspension and Issuance of Restricted Licenses: MVA possesses broad latitude to modify a suspension or revocation based on the assessment of points. MVA may modify a suspension and issue a restrictive license that limits the purposes for which the person may drive, *e.g.*, for work or education purposes. For a driver with a test result of 0.08 BAC but less than 0.15 BAC, and who has no license suspensions for an administrative *per se* offense during the past five years as well as no convictions for an alcohol- and/or drug-related driving offense during the past five-years, MVA may modify the suspension to allow the driver to drive a vehicle in the course of employment, to attend an alcohol program, to or from employment (if there is no alternative means), and to obtain health treatment or attend school.

Exhibit 2 shows the citations filed in the District Court for driving under the influence of alcohol, under the influence of alcohol *per se*, and while impaired by alcohol for fiscal 2015.

Exhibit 2
Driving Under the Influence/Driving While Impaired
Citations in the District Court – Fiscal 2015

<u>Offense</u>	<u>Citations</u> <u>Filed</u>	<u>Guilty</u> <u>Dispositions</u>
Total Driving Under/Impaired*	56,061	5,561
Driving Under the Influence of Alcohol	21,248	2,659
Driving Under the Influence of Alcohol <i>Per Se</i>	13,033	N/A
Driving Under the Influence/Transport Minor	175	N/A
Driving While Impaired by Alcohol	21,375	2,902
Driving While Impaired by Alcohol/Transport Minor	233	N/A

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

Source: District Court of Maryland

Background: Drivers who refuse to submit to alcohol testing or who register a BAC of 0.08 or higher may request participation in IISP if they waive the right to an administrative hearing, under regulations promulgated by the Maryland Department of Transportation, as noted above. However, 25 states make participation in an ignition interlock program mandatory for drivers with a blood alcohol level of 0.08 or greater. According to Mothers Against Drunk Driving (MADD), an advocacy group supporting stricter drunk driving laws, 26 states also require ignition interlock for first-time test refusals. Further, according to MADD, a recent study of data from 11 ignition interlock manufacturers has shown that ignition interlock devices have stopped nearly 1.8 million cases of drunken driving nationwide since 1999. The U.S. Centers for Disease Control and Prevention reports that ignition interlock devices have been shown to reduce repeat alcohol-related driving offenses by 70%.

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

State Fiscal Effect: The impact of the bill depends on the new population subject to participation in IISP. The Department of Legislative Services (DLS) advises that 6,126 new drivers will likely participate in IISP annually as a result of the bill’s provisions, as discussed below. The estimate is drawn from the average annual number of guilty dispositions, test results, and test refusals over the five-year period from fiscal 2011 through 2015 based on data provided by the District Court (guilty dispositions) and DSP (test results and refusals).

Assessing Who May Be Affected by the Bill: Based on the average annual number of guilty dispositions from District Court data from fiscal 2011 through 2015 and the average annual number of test results and refusals from DSP over the same five-year period, the following populations may be subject to the bill:

- 6,228 – drivers with test results ranging from 0.08 BAC to 0.1499 BAC;
- 991 – guilty dispositions for drivers convicted of driving while impaired by alcohol who refused a requested test;
- 65 – guilty dispositions for drivers convicted of driving while impaired by a drug and/or a combination of drugs and/or drugs and alcohol who refused a requested test; and
- 24 – guilty dispositions for drivers convicted of homicide by motor vehicle or vessel while under the influence of alcohol or while impaired, as specified, and drivers convicted of life-threatening injury by motor vehicle or vessel while under the influence of alcohol or while impaired, as specified.

However, the total population of 7,308 drivers shown above includes individuals who *may already be covered under existing law*, such as individuals who are repeat offenders; individuals younger than age 21 who violate an alcohol restriction; or any individuals convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired and transporting a child younger than age 16.

Accounting for Other Factors within that Population: The data used for this estimate is based on citations, not individual cases; moreover it does not exclude individuals who may have already been ordered by a court to participate as well as those individuals who have taken advantage of an option to participate.

To account for the over-inclusiveness of the data on which the estimate is based, DLS assumes that 4,385 (or 60% of the 7,308 potential population covered by the bill) of the individuals are drivers who are not now participating in IISP under current law and practices.

Additions Due to Test Refusal and High BAC: The DLS estimate adds another 1,741 drivers who either refuse a test or have a test result of at least 0.15 BAC to the group of drivers not now participating in IISP but who would be incentivized to participate under the bill. Although these drivers *could* be covered under existing law, due to the increased administrative penalties that are intended to steer drivers to IISP, a small portion of those who refuse a test or have a test result of at least 0.15 BAC will newly decide to participate in IISP.

Based on the average number of refusals documented by DSP from 2011 through 2015, as noted above, DLS advises that 6,621 drivers annually refuse a requested test of blood or breath. MVA has historically advised that 80% of these drivers (or 5,297 drivers) that refuse a requested test also refuse to participate in IISP.

DLS advises that, based on the same data from DSP, 3,409 drivers annually who are detained and take a requested test have a result of 0.15 BAC or higher. For purposes of this estimate, DLS assumes that 20% of those who refuse a test and refuse IISP participation and those with high test results will change their behavior and decide to participate due to the bill's more stringent penalties.

MVA's Estimate May Be High: MVA advises that, as of January 2016, there were 10,628 IISP participants and that the monthly average has been 11,050 participants for the past three calendar years. Based on the bill as introduced, MVA projected that the bill's provisions result in 16,675 new drivers entering IISP annually. DLS advises, however, that this estimate may be overstated, given the number of drivers that are *already* required to participate in IISP and recently adopted regulations that allow more drivers to request participation. MVA was also not able to provide sufficient information to demonstrate that those drivers who are already covered under current law and practices had been excluded from the agency's projection. **MVA did not submit a new estimate based on the bill as amended in enough time for inclusion in this fiscal analysis.**

State Revenues: TTF revenues increase by \$307,832 in fiscal 2017 (accounting for the bill's October 1, 2016 effective date) and by \$410,442 annually thereafter due to additional fees required for participation in IISP and corrected license fees. DLS advises that 6,126 new drivers will participate in IISP annually as a result of the bill's provisions. The fee to participate in IISP is \$47. A corrected license fee of \$20 is assessed to add a license restriction at the time of program participation. While participants are also required to pay \$20 for a corrected license after successfully completing IISP, this estimate has not accounted for those revenues, primarily because they accrue in out-years and the periods of participation (due to more stringent requirements) for successful program completion make the timing more difficult to predict.

General fund revenues increase to the extent that additional people request administrative hearings due to increased administrative suspensions and the requirement to participate in IISP. The filing fee for an administrative hearing is \$150.

State Expenditures: TTF expenditures for MVA increase by \$538,565 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring five and one-half customer agents to facilitate 6,126 new program participants annually, process documents, and monitor IISP results as well as administrative support staff to perform administrative duties. MVA advises that one IISP agent can manage a

caseload of 1,100 program participants. Implementation of the bill includes the cost of contractual services for programming to modify web applications and other service systems. This estimate includes salaries, fringe benefits, one-time start-up costs, one-time computer programming and form update costs, and ongoing operating expenses.

Positions	6.5
Salaries and Fringe Benefits	\$306,030
New Equipment	30,541
Computer Programming and Forms	199,059
Ongoing Operating Expenses	<u>2,935</u>
FY 2017 Expenditures	\$538,565

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

To the extent that the number of additional drivers who participate exceeds the DLS estimate, MVA may need more staffing than accounted for above. For every 1,100 new drivers that participate in IISP annually, MVA needs one customer agent at a cost of \$51,516 in fiscal 2017 and an annualized cost of \$64,460 in fiscal 2018.

TTF expenditures for MVA increase further to the extent that additional people request administrative hearings. MVA is required to reimburse OAH for all hearings related to driver's license suspensions or revocations, and the cost averages out to about \$160 for each hearing. OAH advises that caseloads from MVA have declined by 25% in recent years and that any increase in hearings as a result of the bill can be handled within existing resources.

Small Business Effect: Providers that operate as small businesses may see significant revenue increases due to additional demand for IISP devices and monitoring. There are five certified ignition interlock providers in the State, according to MVA. MVA advises that an additional provider will likely be approved in the coming months and that the State currently has more ignition interlock vendors per capita in comparison to most other states.

Additional Information

Prior Introductions: None.

Cross File: SB 945 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of Administrative Hearings, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Mothers Against Drunk Driving, Associated Press, U.S. Centers for Disease Control and Prevention, National Highway Traffic Safety Administration, National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2016
md/kdm Revised - Updated Information - March 9, 2016
Revised - House Third Reader/Clarification/Updated
Information - April 6, 2016

Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Ignition Interlock System Programs

An ignition interlock device connects a motor vehicle's ignition system to a breath analyzer that measures a driver's blood alcohol concentration (BAC). The device prevents the car from starting if the driver's BAC exceeds a certain level. The device also periodically retests drivers after they have started a motor vehicle. According to the National Conference of State Legislatures (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. MVA in the Maryland Department of Transportation is responsible for administering IISP.

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

Chapter 631 of 2014 further expanded the types of alcohol-impaired drivers required to participate in IISP. A driver must participate in IISP or face suspension of his or her driver's license if convicted of transporting a minor younger than age 16 while driving (1) under the influence of alcohol *per se*; (2) under the influence of alcohol; or (3) while impaired by alcohol. According to the District Court, during fiscal 2015, a total of 175 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 233 citations were issued to drivers for transporting a minor while impaired by alcohol. It is unknown how many of these drivers were transporting minors younger than age 16 at the time they were cited.

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

Exhibit 1
Ignition Interlock System Program Participation
Fiscal 2012-2015

<u>Fiscal Year</u>	<u>New Driver Assignments</u>	<u>Successful Completions</u>	<u>Unsuccessful Participants</u>
2012 (3/4 year)	8,751	2,982	1,530
2013	10,015	4,383	2,496
2014	10,443	4,648	2,569
2015	10,484	4,842	2,634
2016 (1/2 year)	5,007	2,509	1,376

Source: Maryland Department of Transportation

MVA advises that, since October 2011, 1,482 drivers who left IISP reentered the program at a later time.

National Outlook and Safety Improvement Efforts: According to data from the National Highway Traffic Safety Administration (NHTSA), the percentage of highway fatalities associated with alcohol impairment has hovered around 30% from 1995 to 2014. In 2014, the latest year for which national data is available, there were 32,675 traffic fatalities nationally and 9,967 of those fatalities, or 31%, involved a driver with BAC of 0.08 or higher. For the same period in Maryland, out of a total of 442 traffic fatalities, 130, or 29%, involved a driver with BAC of 0.08 or higher.

Of concern to traffic safety advocates is that, while the number of fatal traffic accidents has trended downward, especially over the last 10 years, the proportion of traffic fatalities due to alcohol impairment has continued to hover around 30%. NHTSA has recommended that states increase the use of ignition interlock devices. In November 2013, NHTSA released *Model Guidelines for State Ignition Interlock Programs*. The document contains recommendations for legislation and administrative changes to improve program administration, vendor oversight, data security and privacy, device reliability, and driver notification and licensing.

In an effort to communicate more effectively the consequences of alcohol-impaired driving and reduce the number of drunk drivers on Maryland highways, the Maryland Highway Safety Office released a mobile application in November 2013 called “ENDUI.” It is available for Android or Apple cellphones and tablets at no cost. It allows users to (1) report suspected drunk drivers; (2) call 9-1-1 in an emergency; (3) call a designated

driver or find taxis or other public transportation; and (4) access educational information about the impact of impairment on driving skills.

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. Fewer than one-half of the states with ignition interlock mandate its use. In states where the use of ignition interlock is mandatory, it is usually required either for repeat offenders or for drivers with a high BAC and either as a condition of probation or in exchange for limited restoration of driving privileges.

As the use of these devices has become more widespread, some states have required the use of ignition interlock devices for any standard drunk driving conviction (BAC of 0.08 or higher) – for first offenses. In 2005, New Mexico became the first state in the country to enact legislation requiring the use of ignition interlock devices for all convicted drunk drivers, including first-time offenders. NCSL also reports that, as of January 2016, 22 other states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Kansas, Louisiana, Mississippi, Nebraska, New Hampshire, New Mexico, New York, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia) mandate the use of ignition interlock for any drunk driving conviction.

States are also experimenting with ways to improve participant accountability and program compliance. NCSL reports that 14 states (Hawaii, Illinois, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Tennessee, Texas, Vermont, and Washington) have begun requiring some drunk driving offenders to install a type of ignition interlock device that contains a camera. The captured images are intended to ensure that the correct person is using the device to start the vehicle. Some states have also implemented “24/7 Sobriety Monitoring” programs, which combine treatment and punitive sanctions such as breath and urine testing, ankle bracelets, drug patches, and incarceration. States that have adopted this approach include Alaska, Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.