

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1490
Judiciary

(Delegate Dumais)

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

This emergency 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.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) fee revenues may increase minimally in FY 2017 and future years to the extent that more people participate in IISP due to shorter periods of participation. While some individuals may be required to participate for longer periods due to the bill, the requirement is not expected to materially affect IISP participation levels. The Motor Vehicle Administration (MVA) can implement the bill's provisions with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: 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

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 Fiscal Effect: 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.

Based on historical data from the Department of State Police (DSP), from 2011 to 2016, the average number of individuals who refused to take a test per year was 6,628. Additionally, from 2011 to 2016, the average number of individuals with a test result of 0.08 to 0.14 BAC was 6,068, and the average number of individuals with a test result

of 0.15 or more was 5,457. However, it is unknown how many of these test refusals or test results, as documented by DSP, were subsequent offenses.

MVA advises that, between 2011 and 2015, MVA suspended the license for an average of 6,834 individuals for a first offense of refusing to take a test and suspended the license for an average of 1,673 individuals for a subsequent offense of refusing to take a test. Thus, according to MVA, approximately 20% of individuals who refused to take a test between 2011 and 2015 were subsequent offenders.

MVA charges participants in IISP a program fee. For fiscal 2017, 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. Therefore, to the extent more individuals choose to participate in IISP as a result of the shortened periods of participation, TTF revenues may increase in fiscal 2017, which reflects the bill's emergency effective date, and in future years. The increase cannot be reliably estimated at this time but is expected to be minimal.

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. MVA further notes that there may be a delay between the bill's effective date and when MVA is able to revise forms and make corresponding changes to its system.

Small Business Effect: Authorized service providers for IISP may see a decrease in monthly maintenance fees due to individuals participating in IISP for a shorter period of time. However, any decrease may be offset by more individuals choosing to participate in IISP and by certain individuals participating for a longer period of time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Sasika Subramaniam

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 the driver after the motor vehicle has been started. According to the National Conference of State Legislatures (NCSL), all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. The Maryland Ignition Interlock System Program (IISP) was established through regulation in 1989 and codified by Chapter 648 of 1996. The Motor Vehicle Administration (MVA) in the Maryland Department of Transportation is responsible for administering IISP.

IISP has undergone changes in the last several years which have increased the number of alcohol-impaired drivers who are either mandated or authorized to participate in IISP. Both Chapter 557 of 2011 and Chapter 631 of 2014 expanded the circumstances under which drunk drivers are required to participate in IISP. Among other provisions, Chapter 557 of 2011 established a minimum six-month participation period for specified alcohol-related driving offenses, including for alcohol restriction violations committed by drivers younger than age 21.

Chapter 631 of 2014 established mandatory participation for alcohol-related offenses involving the transport of a minor younger than age 16. According to the District Court, during fiscal 2016, a total of 241 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 228 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. Effective October 1, 2016, 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 2 provides an overview of IISP participation since enactment of Chapter 557 of 2011 and Chapter 631 of 2014. MVA advises that, between October 1, 2011, and September 30, 2016, 1,454 drivers who left IISP reentered the program at a later time.

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 younger than age 16 while impaired by alcohol 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 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 21 years 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; and ⁴Chapter 557 of 2011.

BAC: blood alcohol concentration

Source: Department of Legislative Services

Exhibit 2
Ignition Interlock System Program Participation
Fiscal 2012-2016

<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	10,274	4,901	1,153

Note: “New driver assignments” reflect the total number of drivers who entered the program over the course of the fiscal year (year-end sum of monthly entries). Drivers may not necessarily be “new” to the program (*i.e.*, first-time referrals).

Source: Maryland Department of Transportation

MVA advises that, in fiscal 2016, there were 14,816 unique drivers in IISP and 5,137 first-time referrals.

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 through 2015. For example, in 2015, the latest year for which national data is available, there were 35,092 traffic fatalities nationally and 10,265 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 513 traffic fatalities, 159, or 31%, involved a driver with a BAC of 0.08 or higher.

The proportion of traffic fatalities due to alcohol impairment, which has not changed in 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.

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 2014 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 (BAC of 0.08 or higher). According to NCSL, 24 states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia) mandate the use of ignition interlock for any drunk driving conviction. In other states where the use of ignition interlock is mandatory, it is required either for repeat offenders or for drivers with a high BAC, or both.

States are also experimenting with ways to improve participant accountability and program compliance. NCSL reports that 15 states (Florida, 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, transdermal drug patches, and incarceration. States that have adopted this approach include Alaska, Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.