

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 595
Judiciary

(Delegate Dumais)

Judicial Proceedings

Evidence - Violation of Ignition Interlock System Requirement

This bill establishes that a report by an approved service provider to the Department of Public Safety and Correctional Services (DPSCS), Division of Parole and Probation, of the results of monitoring the use of an ignition interlock system is admissible in a criminal proceeding, as specified. The report is admissible to prove a violation of a requirement imposed by a court that a defendant must use an ignition interlock system as a sentence, part of a sentence, or condition of probation for a violation of driving under the influence of alcohol, under the influence of alcohol *per se*, while impaired by alcohol, or while impaired by drugs or drugs and alcohol.

Fiscal Summary

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

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: “Approved service provider” has the same meaning as under the Transportation Article.

“Ignition interlock system” means a device that connects a motor vehicle ignition system to a breath analyzer that measures a driver’s blood alcohol level and that prevents a motor

vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

If the State decides to offer a report from an approved service provider without the testimony of a representative of the approved service provider, the State must notify the defendant or the defendant's attorney in writing of the State's intention and deliver a copy of the report at least 30 days before the court proceeding.

If the defendant wants the representative of the approved service provider to be present and to testify, the defendant must notify the court and the State in writing at least 20 days before the date of the proceeding. If the defendant provides such notice, the report is inadmissible without the testimony of the representative of the approved service provider. The defendant's failure to provide such notice constitutes a waiver of the defendant's right to the presence and testimony of the representative of the approved service provider.

Current Law/Background: Under the Transportation Article, "approved service provider" means a person who is certified by (1) the Motor Vehicle Administration to service, install, monitor, calibrate, and provide information on ignition interlock systems and (2) a manufacturer to be qualified to service, install, monitor, calibrate, and provide information on ignition interlock systems.

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

A person may not drive or attempt to drive any vehicle while under the influence of alcohol or under the influence of alcohol *per se* or while impaired by alcohol and/or drugs.

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

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

The test results to determine the drug content of a person's blood are admissible as evidence in a prosecution under specified vehicle or vessel operation statutes, and only if other admissible evidence is introduced that creates an inference that the person was so far impaired by a drug, drugs, or drugs and alcohol, that the person could not drive a vehicle safely.

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 the **Appendix – Ignition Interlock System Programs**.

Maryland Rule 4-347 authorizes a court to conduct a revocation of probation hearing in an informal manner and, in the interest of justice, to decline to require strict application of the rules of evidence in Title 5, except those relating to the competency of witnesses. The rule also states that the defendant must be given the opportunity to present witnesses and to cross-examine the witnesses testifying against the defendant.

In 2004, the Court of Special Appeals vacated a defendant's revocation of probation in a case in which the transcripts of two witnesses' testimony at the defendant's criminal trial (in which he was acquitted) were admitted in evidence at the defendant's probation revocation hearing over the defendant's objection to the denial of his confrontation right. *Thompson v. State*, 156 Md. App. 238 (2004).

State Expenditures: The bill establishes that a report from an IISP authorized service provider is admissible in a criminal proceeding to prove a violation of a condition of a defendant's sentence or probation. The Division of Parole and Probation has historically noted that, under Maryland Rule 4-347, a court is authorized to conduct a hearing for probation revocation in an informal manner. Accordingly, under its authority to depart from strict application of the rules of evidence (Title 5 of the Maryland Rules), it may already be able to admit a report from an IISP authorized service provider as evidence in a probation revocation hearing. Regardless, any increase in probation violation cases that results from the bill is not expected to materially impact the Judiciary or DPSCS.

Additional Information

Prior Introductions: HB 757 of 2017, a similar bill, passed the House but received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 5, 2018
mag/kdm Third Reader - March 12, 2018
Revised - Amendment(s) - March 12, 2018

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Appendix – Ignition Interlock System Programs

An ignition interlock device connects a motor vehicle's ignition system to a breath analyzer that measures a driver's blood alcohol concentration (BAC). The device prevents the car from starting if the driver's BAC exceeds a certain level. The device also periodically retests the driver after the motor vehicle has been started. According to the National Conference of State Legislatures (NCSL), all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. The Maryland Ignition Interlock System Program (IISP) was established through regulation in 1989 and codified by Chapter 648 of 1996. The Motor Vehicle Administration (MVA) in the Maryland Department of Transportation is responsible for administering IISP.

IISP has undergone changes in the last several years which have increased the number of alcohol-impaired drivers who are either mandated or authorized to participate in IISP. Both Chapter 557 of 2011 and Chapter 631 of 2014 expanded the circumstances under which drunk drivers are required to participate in IISP. Among other provisions, Chapter 557 of 2011 established a minimum six-month participation period for specified alcohol-related driving offenses, including 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 2017, a total of 127 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 172 citations were issued to drivers for transporting a minor while impaired by alcohol. It is unknown how many of these drivers were transporting minors younger than age 16 at the time they were cited.

Chapter 512 of 2016, titled the "Drunk Driving Reduction Act of 2016" (also known as "Noah's Law"), further expanded the circumstances for mandatory participation in IISP. The law requires offenders convicted of the following crimes to participate:

- a person convicted the first time of driving or attempting to drive under the influence of alcohol or under the influence of alcohol *per se* (including a person whose license is suspended or revoked for accumulation of points for those violations);
- a person required to participate by court order due to a conviction for driving while impaired by alcohol or while impaired by a drug, any combination of drugs, or a

combination of one or more drugs and alcohol, and the trier of fact found beyond a reasonable doubt that the person refused a requested test;

- a person whose license has been revoked for a conviction of homicide by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; and
- a person whose license has been revoked for a conviction of life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol.

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

Chapter 512 of 2016 also set forth the required elements for successful participation in IISP. A certification from the service provider must state that in the three consecutive months preceding the participant's date of release there was not:

- an attempt to start a vehicle with a BAC of 0.04 or higher, unless a subsequent test performed within 10 minutes registers a BAC lower than 0.04;
- a failure to take or pass a random test with a BAC of 0.025 or lower, unless a subsequent test performed within 10 minutes registered a BAC lower than 0.025; or
- a failure of the participant to appear at the approved service provider for required maintenance, repair, calibration, monitoring, inspection, or device replacement.

Exhibit 1
Mandatory Participation in the Ignition Interlock System Program

| Category of Participant | Participation Period |
|--|---|
| Driver who committed administrative <i>per se</i> offense of refusing to take a test or took a test with a BAC result of 0.15 or more ¹ | One year |
| Driver convicted of driving while under the influence of alcohol or under the influence of alcohol <i>per se</i> with a BAC test result of 0.08 or more ² Driver convicted of either (1) homicide by motor vehicle or (2) life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol <i>per se</i> ; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol ² | Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate |
| Driver convicted of transporting a minor 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 the preceding five years, convicted of any drunk or drugged driving offense in the Transportation Article ⁴ | Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate |
| Driver younger than age 21 who violated the license alcohol restriction or committed any alcohol-related driving offense ⁴ | Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate |

¹Participation is considered “mandatory” because a driver who commits these offenses is only eligible for a modification of a license suspension if the driver participates in IISP for one year.

²Chapter 512 of 2016

³Chapter 631 of 2014

⁴Chapter 557 of 2011

BAC: blood alcohol concentration

Source: Department of Legislative Services

Exhibit 2 provides an overview of IISP participation since enactment of Chapter 557 of 2011 and Chapter 631 of 2014. MVA advises that, between October 1, 2011, and September 30, 2017, 1,843 drivers who left IISP reentered the program at a later time.

Exhibit 2
Ignition Interlock System Program Participation
Fiscal 2013-2017

| <u>Fiscal Year</u> | <u>New Driver Assignments</u> | <u>Successful Completions</u> | <u>Unsuccessful Participants</u> |
|--------------------|-------------------------------|-------------------------------|----------------------------------|
| 2013 | 14,884 | 4,383 | 2,496 |
| 2014 | 15,299 | 4,648 | 2,569 |
| 2015 | 15,171 | 4,842 | 2,634 |
| 2016 | 14,816 | 4,901 | 1,153 |
| 2017 | 16,289 | 4,307 | 1,293 |

Source: Maryland Department of Transportation

MVA advises that, in fiscal 2017, there were 16,263 unique drivers in IISP and 6,579 first-time referrals.

National Outlook and Safety Improvement Efforts

According to data from the National Highway Traffic Safety Administration (NHTSA), nationally the percentage of highway fatalities associated with alcohol impairment has hovered around 30% from 1995 through 2016. For example, in 2016, the latest year for which national data is available, there were 37,461 traffic fatalities nationally and 10,497 of those fatalities, or 28%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 505 traffic fatalities, 130, or 26%, involved a driver with a BAC of 0.08 or higher.

The proportion of traffic fatalities due to alcohol impairment, which has decreased only slightly in over 20 years, concerns traffic safety advocates. Accordingly, NHTSA has recommended that states increase the use of ignition interlock devices to address alcohol-impaired driving. In November 2013, NHTSA released *Model Guidelines for State Ignition Interlock Programs*. The document contains recommendations for legislation and administrative changes to improve program administration, vendor oversight, data security and privacy, device reliability, and driver notification and licensing.

According to the 2008 final report of the Maryland Task Force to Combat Driving Under the Influence of Drugs and Alcohol, the use of ignition interlock devices has been shown to lead to long-lasting changes in driver behavior and the reduction of recidivism. The task force advised that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that, when offenders are required to use ignition interlock devices, recidivism is reduced by at least 60% and as much as 95%.

Use of Ignition Interlock in Other States

According to NCSL, all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. Judges in many of the jurisdictions with ignition interlock systems have the discretion to order installation as part of sentencing for convicted drunk drivers (BAC of 0.08 or higher). According to NCSL, 25 states (Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, 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 16 states (Florida, Hawaii, Illinois, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia and Washington) have begun requiring some drunk driving offenders to install a type of ignition interlock device that contains a camera. The captured images are intended to ensure that the correct person is using the device to start the vehicle. Some states have also implemented “24/7 Sobriety Monitoring” programs, which combine treatment and punitive sanctions such as breath and urine testing, ankle bracelets, transdermal drug patches, and incarceration. States that have adopted this approach include Alaska, Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.