

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 557 (Delegate Atterbeary)
 Judiciary

Drunk Driving Offenses – Ignition Interlock System Program

This bill expands mandatory participation in the Maryland Interlock Ignition 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* (current law requires IISP participation for a person *convicted* of these offenses) and (2) an individual who is convicted of or granted PBJ for driving while impaired by alcohol (under current law, with respect to impaired driving, participation is mandatory only for an individual convicted of committing an offense while transporting a minor younger than age 16). The bill also makes several technical and conforming changes.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues increase by \$291,500 in FY 2023, as discussed below; future year revenues reflect annualization. TTF expenditures increase by \$59,100 in FY 2023; future year expenditures reflect annualization, inflation, and elimination of one-time costs.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$291,500	\$388,600	\$388,600	\$388,600	\$388,600
SF Expenditure	\$59,100	\$69,000	\$71,000	\$72,900	\$74,900
Net Effect	\$232,300	\$319,600	\$317,600	\$315,700	\$313,700

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

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 a violation of driving under the influence of alcohol or under the influence of alcohol *per se*; driving while impaired by alcohol; or committing any of certain specified violations while transporting a minor.

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
- ordered to participate by a court due to a conviction for 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 facts 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, the Motor Vehicle Administration (MVA) must suspend the individual's license until the individual successfully completes the program.

In addition, an individual must participate in IISP as a condition of modification of a license suspension or revocation or issuance of a restricted license (1) if convicted of driving while impaired by alcohol, including an offense committed while transporting a minor, if the individual has been convicted of any specified alcohol- or drug-related driving offense within the preceding five years or (2) if the individual is younger than age 21, for a violation of an alcohol-related driving offense.

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 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.

State Revenues: The bill expands the circumstances under which participation in IISP is mandatory. According to figures provided by the Maryland Department of Transportation (MDOT), the bill results in approximately 5,800 additional 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 in 2017 to 2019 and the 2019 rate of IISP participation among these individuals. To enroll in the program, an individual must pay a \$47 participation fee and a \$20 fee to obtain a license with an interlock restriction. Accordingly, TTF revenues increase by an estimated \$291,450 in fiscal 2023 and approximately \$388,600 annually thereafter, which accounts for the bill's October 1, 2022 effective date.

State Expenditures: As discussed above, an additional 5,800 interlock cases annually are anticipated as a result of the bill. MVA advises that, based on existing caseloads and staffing levels, as well as new economies of scale realized as a result of MVA information technology modernization, one employee is needed to process every 4,500 participants. Therefore, one additional regular, full-time customer service agent is needed to manage the increase in IISP cases under the bill. While the estimated increase in interlock cases exceeds the average caseload of a full-time customer service agent by approximately 1,300, MVA advises that these additional cases can be absorbed by existing staff.

Accordingly, TTF expenditures increase by \$59,116 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one customer service agent to handle the increase in IISP cases. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$51,773
Operating Expenses	<u>7,343</u>
Total FY 2023 State Expenditures	\$59,116

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

Otherwise, one-time programming changes to the MVA Customer Connect system can be handled with existing budgeted resources. In addition, any impact on caseloads for the Judiciary or the Office of Administrative Hearings as a result of 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.

Additional Information

Prior Introductions: HB 749 of 2021 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 672, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 952 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 870, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Similar legislation was introduced in the 2019 session.

Designated Cross File: SB 653 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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rh/aad

Analysis by: Elizabeth J. Allison

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 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.

IISP has undergone changes in the last several years that have increased the number of alcohol-impaired drivers who are either mandated or authorized to participate in IISP. **Exhibit 1** summarizes the categories of offenders required to participate in IISP and their minimum participation periods. Among other provisions, Chapter 557 of 2011 established a minimum six-month participation period for specified alcohol-related driving offenses, including alcohol restriction violations committed by drivers younger than age 21. Chapter 631 of 2014 established mandatory participation for alcohol-related offenses involving the transport of a minor younger than age 16. 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 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 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
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 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

BAC: blood alcohol concentration

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 for one year.

²Chapter 512 of 2016.

³Chapter 631 of 2014.

⁴Chapter 557 of 2011.

Source: Department of Legislative Services

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.

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 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 2019. In 2019, the latest year for which national data is available, there were 36,096 traffic fatalities nationally, and 10,142 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 521 traffic fatalities, 167, or 32%, involved a driver with a BAC of 0.08 or higher, an increase from 24% in 2018.

According to NHTSA, recent national data indicates a trend toward increased risky driving behaviors, including impaired driving, during the COVID-19 pandemic. NHTSA's October 2021 report on national preliminary traffic fatality estimates notes that an increased trend in traffic fatalities observed in 2020 continued into the first half of 2021. According to the report, overall traffic fatalities increased by an estimated 18.4% during the first half of 2021 as compared to the same period in 2020. An earlier study released by NHTSA in October 2020 examined alcohol and other drug prevalence among seriously and fatally injured road users using data collected from trauma centers and medical examiner offices in five metropolitan areas from September 2019 to July 2020. According to that study, drug prevalence among seriously and fatally injured road users increased during the COVID-19 public health emergency compared to the preceding months.

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 five 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, Illinois, Idaho, 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 14 states currently 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).