

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1017
Judiciary

(Delegate Ciliberti)

**Driving Under the Influence of Alcohol - Subsequent Offenders - Mandatory
Ignition Interlock**

This bill requires a court to order an individual to participate in the State's Ignition Interlock System Program (IISP) for at least two years as a sentence, part of a sentence, or condition of probation for a third or subsequent violation of driving under the influence of alcohol or under the influence of alcohol *per se*. If an individual fails to submit satisfactory proof of IISP participation within three days after the date of sentencing, the court must order the impoundment or immobilization of any motor vehicle solely owned by the individual. The bill also prohibits the court-ordered IISP participant or another individual from engaging in specified acts related to access to or operation of a motor vehicle by the IISP participant. Violators are subject to specified criminal penalties and/or fines.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$45,500 in FY 2024 only for computer programming. Potential minimal increase in Transportation Trust Fund (TTF) revenues.

Local Effect: Minimal increase in local expenditures for impoundment or immobilization of vehicles. Local revenues increase correspondingly due to the repayment of costs incurred for the impoundment or immobilization of motor vehicles.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: In addition to any other penalty for a third or subsequent violation of driving under the influence of alcohol or under the influence of alcohol *per se*, the court must, for a period of at least two years and as a sentence, part of a sentence, or condition of probation for the violation (1) prohibit the individual from operating a motor vehicle that is not equipped with an ignition interlock system and (2) order the individual to install an ignition interlock system on the individual's vehicle.

Duties Imposed on Courts

Among other requirements, a court must (1) direct the Motor Vehicle Administration (MVA) to place an ignition interlock restriction on the individual's license; (2) require the individual, at least semiannually, to have the ignition interlock system monitored for proper use and accuracy by an approved entity; and (3) require the individual to pay the reasonable cost of leasing or buying, monitoring, and maintaining the ignition interlock system.

Ignition Interlock System Program Violations and Applicable Penalties

An individual who is ordered to participate in IISP under the bill may not solicit or have another individual start or attempt to start a motor vehicle equipped with an ignition interlock system. Additionally, an individual may not start or attempt to start a motor vehicle equipped with an ignition interlock system to provide an operable vehicle to someone ordered to participate in IISP, nor may an individual tamper with or in any way attempt to circumvent an ignition interlock system that is installed in accordance with the bill. An individual may not knowingly furnish a motor vehicle that is not equipped with a functioning ignition interlock system to someone who is prohibited from operating such a vehicle. Violation of these prohibitions subjects an individual to a fine of up to \$500 and/or imprisonment for up to two months.

Impoundment or Immobilization of Motor Vehicles

If an individual who is ordered to participate in IISP under the bill fails to submit satisfactory proof of participation within three days after sentencing, the court must order the impoundment or immobilization of any motor vehicle solely owned by the individual until the individual becomes an IISP participant (but not to exceed one year). The court must provide for the execution of the impoundment or immobilization by a police department, which may use its own personnel, equipment, and facilities, or other persons, equipment, and facilities, to immobilize or impound motor vehicles.

The registered owner of a motor vehicle impounded or immobilized in accordance with the bill is responsible for all actual costs incurred as a result of the immobilization or the

impoundment (including towing, preserving, and storing) of the motor vehicle. A court may require the registered owner of a motor vehicle that is immobilized under the bill to post a bond or other adequate security that is equal to the actual costs of immobilizing or impounding the motor vehicle, including required notices.

A police department must send an immobilization or impoundment notice with specified information to the registered owner of the motor vehicle and any secured party within seven days of executing the court order for immobilization or impoundment. In the event all actual costs of immobilizing or impounding the motor vehicle are paid, the police department must promptly return the motor vehicle to its registered owner.

The bill may not be construed to prohibit a lienholder from exercising the lienholder's rights under law, including the right to sell a motor vehicle that has been impounded or immobilized under the bill, in the event of a default of an obligation giving rise to the lien. The bill specifies additional requirements and procedures that lienholders seeking to sell an impounded or immobilized motor vehicle must comply with, including (1) giving notice to the police department of the lienholder's intention to sell the vehicle; (2) applying the proceeds of any sale first to the actual costs of immobilizing or impounding the vehicle; and (3) distributing the proceeds from the sale as provided by law.

Abandoned Vehicles

The bill does not affect requirements relating to abandoned vehicles under Title 25 of the Transportation Article.

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*. 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.

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.

Participation in Ignition Interlock System Program

In addition to any other penalty, a court may prohibit an individual from driving a motor vehicle without an ignition interlock device for up to three years, if the individual is convicted of or granted probation before judgment (PBJ) for a violation of driving under the influence of alcohol or under the influence of alcohol *per se*.

State law requires an individual to participate in IISP if convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*. In the event the individual fails to participate in or successfully complete the program, MVA must suspend the individual's license until the individual successfully completes the program.

In general, 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.

Ignition Interlock System Program

For information on IISP, including offenses subject to mandatory participation, please refer to the **Appendix – Ignition Interlock System Programs**.

A driver who participates in IISP may not solicit or have another person start or attempt to start a motor vehicle with an ignition interlock device. A person may not attempt to start or start a motor vehicle with an ignition interlock device to give an operable motor vehicle to the driver participating in IISP. A person may not tamper with or, in any way, try to circumvent an installed ignition interlock system. A person may not knowingly furnish a motor vehicle that is not equipped with a working ignition interlock device to a driver who the person knows is prohibited from operating a motor vehicle that is not equipped with an ignition interlock. A person who violates any of these provisions is subject to maximum penalties of a \$500 fine and/or two months imprisonment.

A person who participates in IISP, but drives a vehicle without an ignition interlock device, is subject to a maximum fine of \$1,000 and/or up to one year imprisonment. Subsequent offenders are subject to maximum penalties of \$1,000 and/or two years imprisonment.

Impoundment of Motor Vehicles

State law does not prescribe the impoundment of motor vehicles for alcohol-related driving offenses. However, § 16-303.1 of the Transportation Article establishes that, as a sentence, a part of a sentence, or a condition of probation, a court may order impoundment or immobilization for up to 180 days of a solely owned vehicle used in commission of the crimes of driving while a person's license or privilege to drive is suspended or revoked in the State.

Abandoned Vehicles

An "abandoned vehicle" is defined as motor vehicle, trailer, or semitrailer that:

- is inoperable and left unattended for 48 hours on public property;
- remains illegally on public property for 48 hours;
- is on private property without consent for 48 hours;
- has remained in a garage for more than 10 days after the garage keeper has given the vehicle owner notice to remove the vehicle, or beyond the time when, by contract, the vehicle was to remain in the garage;
- is left for more than 10 days in a garage by someone other than the registered owner or left by a person only authorized to have possession of the vehicle under a contract;
- has remained on public property for 48 hours and has invalid or incorrect registration plates;
- has been left unattended for 24 hours on a controlled access highway;
- has been left unattended on a highway and does not display appropriate warning devices; or
- is not reclaimed from impoundment under specific court order.

As soon as reasonably possible – but no more than seven days after it takes an abandoned vehicle into custody – a police department must send a notice by certified U.S. mail with a return receipt requested to (1) the last known registered owner of the vehicle and (2) each secured party, as shown on MVA records.

The notice must include specified information, including information about the vehicle and the location of the facility where the vehicle is held. In general, a vehicle may be reclaimed within three weeks after the date of the notice, upon payment of all towing, preservation, and storage charges resulting from taking or placing the vehicle in custody. (In Baltimore City and Montgomery County, the vehicle must be reclaimed within 11 working days after receipt of the notice and payment of any applicable charges.)

In Baltimore City and Prince George's and Montgomery counties, a police department or its agent may seek to recover costs of impoundment, storage, and sale of a vehicle, as specified in the Transportation Article. If a police department or its agent seeks to exercise this option, the required notice must include additional information specifying the consequences of failing to reclaim the vehicle within the specified time period.

State Fiscal Effect: As noted above, State law currently requires an individual to participate in IISP if convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*. In the event the individual fails to participate in or successfully complete the program, MVA must suspend the individual's license until the individual successfully completes the program. In general, a person must participate in IISP for three years for the third or subsequent time the individual is required to participate. This requirement is handled through MVA. The bill *requires* a court to order a person to participate in IISP for at least two years for a third or subsequent violation of driving while under the influence of alcohol or under the influence of alcohol *per se*. Under existing statute, a court *may* order a person to participate in IISP for up to three years if the person is convicted of or granted PBJ for driving while under the influence of alcohol or under the influence of alcohol *per se*. While court-ordered participants appear to be subject to additional compliance requirements, participants in IISP through MVA face similar prohibitions and penalties as those enumerated in the bill.

Thus, this analysis assumes that the bill (1) does not significantly increase IISP participation; (2) does not materially affect general fund revenues from fines imposed in the District Court for IISP criminal violations; and (3) does not materially affect general fund expenditures for the Department of Public Safety and Correctional Services for incarcerations in Baltimore City for IISP criminal violations.

State Revenues: TTF revenues may increase minimally beginning in fiscal 2024 to the extent additional individuals participate in IISP and pay the required \$47 participation fee as well as the \$20 fee to obtain a license with an interlock restriction.

State Expenditures: The Judiciary advises that the bill's implementation requires programming changes for the District Court's judicial information system. Accordingly, general fund expenditures for the Judiciary increase by \$45,483 in fiscal 2024 only. The Judiciary advises that, since the District Court citation reporting system is case based, it will be up to law enforcement agencies to identify and appropriately charge individuals who are facing prosecution for a third or subsequent violation of driving while under the influence of alcohol or under the influence of alcohol *per se*. Otherwise, the bill is not expected to materially affect finances or operations of the Judiciary.

MVA already has a functioning system in place to note the imposition of an ignition interlock restriction on an individual's license. To the extent there is an increase in the

number of IISP enrollees due to the bill, MVA can handle the increased workload with existing budgeted resources.

Local Fiscal Effect: The bill requires local police departments to immobilize or impound vehicles under specified circumstances, which may increase their expenditures to some extent. However, the Department of Legislative Services notes that the bill requires an individual whose vehicle has been impounded or immobilized under the bill to pay all actual costs of impoundment or immobilization, including storage costs. Assuming that most individuals who have vehicles impounded or immobilized eventually pay to retrieve their vehicles, the bill's overall impact on local police department finances is likely to be negligible.

For the reasons stated above, the bill is not expected to materially affect local incarceration expenditures for IISP criminal violations.

Small Business Effect: Registered vehicle towing and impoundment companies may benefit from increased business as a result of the bill. To the extent that the bill results in increased participation in IISP, authorized IISP providers may realize a slight increase in revenues.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1158 of 2022.

Designated Cross File: None.

Information Source(s): Charles and Garrett counties; Maryland Association of Counties; Town of Bel Air; Town of Leonardtown; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2023
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Appendix – Ignition Interlock System Programs

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

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

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

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

- a person convicted of driving or attempting to drive under the influence of alcohol or under the influence of alcohol *per se* (including a person whose license is suspended or revoked for a conviction of these offenses under a specified provision or for an accumulation of points for these violations);
- a person required to participate by court order due to a conviction for driving while impaired by alcohol or while impaired by a drug, any combination of drugs, or a combination of one or more drugs and alcohol, and the trier of fact found beyond a reasonable doubt that the person refused a requested test;
- a person convicted of homicide by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol;
- a person convicted of life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; and

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

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

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

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

A participant is considered to have successfully completed IISP when the service provider certifies to MVA that during the three consecutive months preceding the participant's date of release there was not:

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

Chapters 65 and 66 of 2019 modified the definition of "ignition interlock system" to mean, among other things, that the device has a camera (1) with the capability of recording still images of the person taking the test of the person's blood alcohol level; (2) without the capability to record sound; (3) without the capability to record video; and (4) that records images only while the device is testing the blood alcohol level of the person taking the test or if the device is being tampered with.

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

Exhibit 1
Mandatory Participation in the Ignition Interlock System Program

Category of Participant	Participation Period
Driver who committed administrative <i>per se</i> offense of refusing to take a test or took a test with a BAC result of 0.15 or more ¹	One year
Driver convicted of driving while under the influence of alcohol or under the influence of alcohol <i>per se</i> with a BAC test result of 0.08 or more ² Driver convicted of either (1) homicide by motor vehicle or (2) life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol <i>per se</i> ; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol ²	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate
Driver convicted of transporting a minor while impaired by alcohol and the minor was younger than age 16 ³ Subsequent offender convicted of driving while impaired by alcohol and, within the preceding five years, convicted of any drunk or drugged driving offense in the Transportation Article ⁴	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate
Driver younger than age 21 who violated the license alcohol restriction or violated the prohibitions on driving while impaired by alcohol or while impaired by drugs or a combination of drugs and alcohol ⁵	Six months for the first time the driver is required to participate One year for the second time the driver is required to participate Three years for the third or subsequent time the driver is required to participate

BAC: blood alcohol concentration

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

² Chapter 512 of 2016.

³ Chapter 631 of 2014.

⁴ Chapter 557 of 2011.

⁵ Chapter 557 of 2011 and Chapter 512 of 2016.

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

Source: Department of Legislative Services

Exhibit 2
Ignition Interlock System Program Participation
Fiscal 2013-2021

<u>Fiscal Year</u>	<u>Total Annual Participation</u>	<u>Successful Completions</u>	<u>Unsuccessful Participants</u>
2013	14,884	4,383	2,496
2014	15,299	4,648	2,569
2015	15,171	4,842	2,634
2016	14,816	4,901	1,153
2017	16,289	4,307	1,293
2018	18,373	5,575	1,797
2019	19,411	6,521	2,078
2020	17,854	6,815	2,450
2021	15,185	5,818	2,172

Source: Maryland Department of Transportation

National Safety Trends

According to data from the National Highway Traffic Safety Administration (NHTSA), nationally, the percentage of highway fatalities associated with alcohol impairment has hovered around 30% from 1995 through 2020. In 2020, the latest year for which national data is available, there were 38,824 traffic fatalities nationally, of which 11,654 of those fatalities, or 30%, involved a driver with a BAC of 0.08 or higher. For the same period in Maryland, out of a total of 567 traffic fatalities, 183, or 32%, involved a driver with a BAC of 0.08 or higher

Recent national data indicates that risky driving behaviors, including impaired driving, increased following the onset of the COVID-19 pandemic in March 2020. According to NHTSA, total traffic fatalities on U.S. roadways increased by 6.8% in 2020 compared to

2019, despite an 11% decrease in total vehicle miles traveled (VMT) during the same period. The overall national traffic fatality *rate*, as measured in fatalities per 100 million VMT, increased by 21% in 2020 compared to 2019; the national alcohol-impaired driving fatality rate increased by 29% during the same period. According to NHTSA's preliminary traffic fatality estimates for 2021, the increased trend in traffic fatalities observed in 2020 continued into 2021 (although the estimated overall traffic fatality rate for 2021 reflects a marginal decrease compared to 2020), and estimated fatalities in police-reported, alcohol-involved crashes remained elevated above pre-pandemic levels.

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

Traffic safety advocates are concerned about the proportion of traffic fatalities due to alcohol impairment, which has decreased only slightly in recent decades. Accordingly, NHTSA has recommended that states increase the use of ignition interlock devices to address alcohol-impaired driving. In November 2013, NHTSA released *Model Guidelines for State Ignition Interlock Programs*. The document, which still represents the most current model guidelines, contains recommendations for legislation and administrative changes to improve program administration, vendor oversight, data security and privacy, device reliability, and driver notification and licensing. According to the 2008 final report of the Maryland Task Force to Combat Driving Under the Influence of Drugs and Alcohol, the use of ignition interlock devices has been shown to lead to long-lasting changes in driver behavior and reduced recidivism. The task force advised that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that, when offenders are required to use ignition interlock devices, recidivism is reduced by at least 60% and as much as 95%.

Use of Ignition Interlock in Other States

According to NCSL, all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving, and 30 states (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia) and the District of Columbia mandate the use of ignition interlock for any drunk driving conviction. Eight states (Florida, Michigan, Minnesota, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Wyoming) require the use of ignition interlock for high BAC (0.10 or higher) offenders and repeat offenders, and 5 states (Georgia, Maine, Massachusetts, Missouri, and Ohio) require only repeat offenders to use ignition interlock. In the remaining

states, judges have the discretion to order installation as part of sentencing for convicted drunk drivers.

States are also experimenting with ways to improve participant accountability and program compliance. As of October 2021, NCSL reports that 21 states (Arizona, Colorado, Florida, Hawaii, Idaho, Illinois, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia, and Washington) require ignition interlock devices to contain a camera. The captured images are intended to ensure that the correct person is using the device to start the vehicle. Some states have also implemented “24/7 Sobriety Monitoring” programs, which combine treatment and punitive sanctions such as breath and urine testing, ankle bracelets, transdermal drug patches, and incarceration. NCSL reports that as of September 2021, 14 states have 24/7 sobriety monitoring programs or pilot programs at the state or county level (Alaska, Florida, Hawaii, Idaho, Iowa, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Washington, Wisconsin, and Wyoming).