

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 608  
Judiciary

(Delegate Arora, *et al.*)

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Drunk and Drugged Driving - Minor in Vehicle

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This bill requires an individual who is convicted of transporting a minor while driving under the influence of alcohol, or under the influence *per se*, to participate in the Ignition Interlock System Program.

The bill increases the criminal penalties for subsequent convictions of transporting a minor while driving under the influence of alcohol, under the influence *per se*, or impaired by a controlled dangerous substance. For a second offense, maximum penalties increase from a fine of \$3,000 and/or three years imprisonment to a fine of \$4,000 and/or four years imprisonment. For a third or subsequent offense, the maximum penalties increase from a fine of \$4,000 and/or four years imprisonment to a fine of \$6,000 and/or six years imprisonment.

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Fiscal Summary

**State Effect:** Minimal increase in Transportation Trust Fund (TTF) revenues due to Ignition Interlock System Program fees and fees assessed for corrected driver's licenses. Minimal increase in general fund revenues and TTF expenditures due to additional administrative hearings. Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

**Small Business Effect:** Potential minimal.

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## Analysis

**Bill Summary:** If a driver convicted of the offense of transporting a minor while under the influence of alcohol or under the influence *per se* fails to participate in the Ignition Interlock System Program as required, the Motor Vehicle Administration (MVA) must suspend the individual's license indefinitely until the program is successfully completed. Such a driver must participate in the Ignition Interlock System Program for at least six months the first time the requirement is imposed. Mandatory participation periods increase if the requirement is imposed more than one time. A driver who does not initially become a participant may reapply to MVA to become a participant at a later time. If the driver is removed due to violations of the program's requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal.

A driver who is required to participate in the Ignition Interlock System Program under the bill's provisions is prohibited from driving a motor vehicle without an ignition interlock device, unless otherwise exempt. A violation is a misdemeanor and the offender is subject to maximum penalties of a \$1,000 fine and/or one year imprisonment for the first offense and, for a second or subsequent offense, maximum penalties of a \$1,000 fine and/or two years imprisonment.

**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
- impaired by a controlled dangerous substance.

A person may not violate these provisions while transporting a minor. A person convicted of driving while the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance while transporting a minor is subject to (1) for a first offense, maximum penalties of a fine of \$2,000 and/or two years imprisonment; (2) for a second offense maximum penalties of a fine of \$3,000 and/or three years imprisonment; or (3) for a third or subsequent offense, maximum penalties of a fine of \$4,000 and/or four years imprisonment.

**Mandatory Program Participation:** A driver must participate in the Ignition Interlock System Program as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;

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

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

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

*Sanctions for Program Participants:* A driver who is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a BAC of 0.15 or greater is subject to a mandatory indefinite license suspension until the driver successfully completes the Ignition Interlock System Program. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do not complete it. Periods of mandatory participation must run concurrently for a driver who is subject to participation in the program due to more than one provision of the law.

A driver who is eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15, and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, must participate in the program for one year or MVA must suspend the driver's license for the full suspension period otherwise required.

A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is timely requested, the suspension must be stayed pending the decision at the administrative hearing.

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

\$1,000 fine for a first offense and two years imprisonment and/or a \$1,000 fine for a second or subsequent offense.

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

If MVA removes a driver from the program due to violation of the program requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal. If the driver reenters the program under these circumstances, that driver must participate in the program for the entire period that was initially assigned for successful completion of the program without any credit for participation that occurred before the driver was removed from the program.

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

*Judicial Sanctions:* In addition to any other penalties for driving while (1) under the influence of alcohol; (2) under the influence of alcohol *per se*; or (3) impaired by alcohol or in addition to any other condition of probation, a court may prohibit a person who is either convicted for any of these offenses, or granted probation before judgment, from operating a motor vehicle that is not equipped with an ignition interlock device for up to three years.

**Background:** Chapter 557 of 2011 (the Drunk Driving Reduction Act) is expected to substantially increase the number of participants in the Ignition Interlock System Program. Before enactment of the law, about 8,000 drivers participated in the program annually. The law, which took effect in October 2011, is expected to add an estimated 6,100 drivers. In fiscal 2010, 3,244 people successfully completed the program and 2,997 people withdrew due to failure to complete program requirements. Participants generally are repeat offenders or offenders who refused a BAC test or had a BAC test result of 0.15 or more.

A participant must pay a fee to an ignition interlock provider for device installation and maintenance unless exempted due to financial hardship. These fees are not regulated by MVA. The participant must have the device serviced and data downloaded by the vendor every 30 days. MVA monitors participants through the data reports from the vendors. Violations, such as attempting to start or operate a vehicle with a BAC greater than 0.025, failing to submit to a retest after starting the vehicle, tampering with the interlock device, having another person blow into the device, or operating a vehicle without a device, can result in removal from the program or an extension of the person's required period of participation.

In 2010, MVA altered its regulations to address an initial test failure that may result from transient mouth alcohol from certain foods, medication, or mouthwash. The new regulations specify that, if there is a successful retest within five minutes of a failure, the failure is not counted against the driver.

*Use of Ignition Interlock in Other States:* 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 advises that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that Michigan, Pennsylvania, Virginia, and West Virginia have extended required times for ignition interlock use for certain drunk driving violations and, when offenders are required to use ignition interlock devices, recidivism is reduced by 60% to 95%.

The National Conference of State Legislatures reports that about 250,000 ignition interlock devices are in use at any one time nationwide. Electronic advances have made the devices smaller, more accurate, and less prone to tampering.

About 1.4 million drivers are arrested nationwide for alcohol impairment annually. All 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. Judges in many of the jurisdictions with ignition interlock systems have the discretion to order installation as part of sentencing for convicted drunk drivers. Fewer than half of the states with ignition interlock mandate its use. In states where the use of ignition interlock is mandatory, it is usually required either for repeat offenders, or drivers with a high BAC, and as a condition of probation, or in exchange for limited restoration of driving privileges.

In 2011, lawmakers in 30 states considered ignition interlock legislation. Alabama recently amended its ignition interlock law to require offenders with a BAC of 0.15 or greater to use the device for two years following a 90-day suspension if a child younger than 14 was in the vehicle. States are beginning to require the use of ignition interlock

devices for any standard drunk driving conviction (BAC of 0.08 or higher) – even for first offenses. In 2005, New Mexico became the first state in the country to enact legislation requiring the use of ignition interlock devices for all convicted drunk drivers, including first-time offenders. As of February 2012, 11 other states (Alaska, Arizona, Arkansas, Hawaii, Illinois, Louisiana, Nebraska, New York, Oregon, Utah, and Washington) mandate the use of ignition interlock for any drunk driving conviction.

### **State Revenues:**

*Administrative Hearings:* Minimal increase in general fund revenues to the extent that additional people request administrative hearings due to the mandatory ignition interlock participation requirement in the bill. The filing fee for an administrative hearing is \$125. Any increase in hearings can be handled by the Office of Administrative Hearings.

*Motor Vehicle Administration:* Minimal increase in TTF revenues due to additional fees required for participation in the Ignition Interlock System Program and corrected licenses. The fee to participate in the Ignition Interlock System Program is \$47. A corrected license fee of \$30 is assessed to add a license restriction before program participation and then again to remove the restriction after program participation is completed.

*Judiciary:* General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

### **State Expenditures:**

*Motor Vehicle Administration:* Minimal increase in TTF expenditures to the extent additional people request administrative hearings. MVA is required to reimburse the Office of Administrative Hearings \$100 for each hearing related to driver's license suspensions or revocations.

*Judiciary and Public Safety:* General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about

\$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Maryland Department of Transportation, National Conference of State Legislatures, Department of Legislative Services

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