

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Bill No. 186, Page 6, Section 544.453, Line 13, by  
2 inserting after all of said section and line the following:

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4 "557.520. 1. For purposes of this section, the following terms shall mean:

5 (1) "Failed start", any attempt to start the vehicle with a breath alcohol concentration  
6 exceeding twenty-five thousandths of one percent by weight of alcohol in such person's breath,  
7 unless a subsequent retest performed within ten minutes registers a breath alcohol concentration not  
8 exceeding twenty-five thousandths of one percent by weight of alcohol in such person's breath;

9 (2) "Running retest", failure to take a breath test performed by the driver upon a certified  
10 ignition interlock device at random intervals after the initial engine startup breath test and while the  
11 vehicle's motor is running or failure to take a breath retest with a breath alcohol concentration not  
12 exceeding twenty-five thousandths of one percent by weight of alcohol in such person's breath;

13 (3) "Vehicle", any mechanical device on wheels, designed primarily for use, or used, on  
14 highways.

15 2. In any criminal case involving an intoxicated-related traffic offense, the prosecuting or  
16 circuit attorney may divert the criminal case, with the consent of the defendant, to a driving while  
17 intoxicated (DWI) diversion program by filing a motion with the court requesting the court to stay  
18 the criminal proceeding, if the defendant meets the following criteria for eligibility into the driving  
19 while intoxicated diversion program:

20 (1) The defendant has not previously pled guilty to or been convicted of an intoxicated-  
21 related traffic offense in violation of section 577.010, 577.012, 577.013, 577.014, 577.015, or  
22 577.016;

23 (2) The defendant is not currently enrolled in, and has not in the previous ten years  
24 completed, a diversion program pursuant to this section;

25 (3) The defendant does not hold a commercial driver's license;

26 (4) The offense did not occur while operating a commercial vehicle; and

27 (5) The offense did not result in the injury or death of another person.

28 3. Upon a motion filed by a prosecuting or circuit attorney, the court may continue a  
29 diverted case involving an intoxicated-related traffic offense for a period not to exceed twenty-four

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 months and order the defendant to comply with terms, conditions, or requirements that the  
2 prosecuting or circuit attorney deems appropriate based on the specific situation of the defendant.

3 4. The DWI diversion plan shall be for a specified period and be in writing. The  
4 prosecuting or circuit attorney has the sole authority to develop diversionary program requirements,  
5 but shall require installation of an ignition interlock device for a period of not less than one year,  
6 require the defendant to participate in a victim impact panel sponsored by a nonprofit organization,  
7 and other terms deemed necessary by the court.

8 5. If the court continues the criminal case to divert the defendant to a DWI diversion  
9 program, the department of revenue shall continue any proceeding to suspend or revoke a license  
10 pursuant to chapter 302 for a period not to exceed twenty-four months. After the defendant  
11 successfully completes the requirements of the DWI diversion program, the department shall  
12 dismiss any proceeding against the defendant.

13 6. The court shall notify the defendant that he or she is required to install a functioning,  
14 certified ignition interlock device on any vehicle that the person operates and the person is  
15 prohibited from operating a motor vehicle unless that vehicle is equipped with a functioning,  
16 certified ignition interlock device pursuant to this section. These requirements shall be in addition  
17 to any other provisions of this chapter or chapter 302 requiring installation and maintenance of an  
18 ignition interlock device. Any person required to use an ignition interlock device shall comply with  
19 such requirement subject to the penalties provided by section 577.599.

20 7. The department of revenue shall inform the defendant of the requirements of this section,  
21 including the term for which the person is required to have a certified ignition interlock device  
22 installed and shall notify the person that installation of a functioning, certified ignition interlock  
23 device on a vehicle does not allow the person to drive without a valid driver's license. The  
24 department shall record the mandatory use of the device for the term required and the time when the  
25 device is required to be installed pursuant to the court order. A person who is notified by the  
26 department shall do all of the following:

27 (1) Arrange for each vehicle operated by the person to be equipped with a functioning,  
28 certified ignition interlock device by a certified ignition interlock device provider as determined by  
29 the department of transportation; and

30 (2) Arrange for each vehicle with a functioning, certified ignition interlock device to be  
31 served by the installer at least once every thirty days for the installer to recalibrate and monitor the  
32 operation of the device.

33 8. The certified ignition interlock device provider shall notify the department:

34 (1) If the device is removed or indicates that the person has attempted to remove, bypass by  
35 a running retest, or tamper with the device;

36 (2) If the person fails three or more times to comply with any requirement for the  
37 maintenance or calibration of the ignition interlock device; or

38 (3) If the device registers a failed start.

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2 If a person has any failed start that occurs within the last ninety days of the required period of  
3 installation of the ignition interlock device, the term shall be extended for a period of ninety days.

4 9. After the completion of the DWI diversion program and if the defendant has complied  
5 with all the imposed terms and conditions, the court shall dismiss the criminal case against the  
6 defendant, record the dismissal, and transmit the record to the central repository upon dismissal.  
7 Any court automation system, including any pilot project, that provides public access to electronic  
8 record on the internet shall redact any personal identifying information of the defendant, including  
9 name, address, and year of birth. Such information shall be provided in a confidential filing sheet  
10 contemporaneously filed with the court or entered by the court, which shall not be subject to public  
11 inspection or availability.

12 10. In the event of noncompliance by the defendant with the terms and conditions of the  
13 DWI diversion program, the prosecuting or circuit attorney may file a motion to terminate the  
14 defendant from the diversion program and may recommend the prosecution of the underlying case.  
15 Upon the filing of such motion, after notice to the defendant, the court shall hold a hearing to  
16 determine by preponderance of the evidence whether the defendant has failed to comply with the  
17 terms and conditions of the diversion program. If the court finds that the defendant has not  
18 complied with the terms and conditions of the diversion program, the court may end the diversion  
19 program and set the case on the next available criminal docket.

20 11. Any defendant who is found guilty of any intoxicated-related traffic offense and who has  
21 previously utilized the DWI diversion program pursuant to this section shall be considered a prior  
22 offender as defined in section 577.001, provided that the prior offense occurred within five years of  
23 the intoxicated-related offense for which the person is charged, as provided in subsection 20 of  
24 section 577.001.

25 12. For the limited purpose of determining whether a defendant is a chronic, habitual,  
26 persistent, or prior offender under section 577.001, a criminal case diverted to a DWI diversion  
27 program shall be counted as one intoxication-related traffic offense."; and  
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29 Further amend said bill by amending the title, enacting clause, and intersectional references  
30 accordingly.