

FIRST REGULAR SESSION

HOUSE BILL NO. 346

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

0679H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 557.014, RSMo, and to enact in lieu thereof three new sections relating to diversion for driving under the influence of alcohol.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 557.014, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 302.457, 557.014, and 557.015, to read as follows:

- 302.457. 1. As used in this section, the following terms mean:**
- (1) "Bypass", either:**
 - (a) Failure to take any random retest; or**
 - (b) Failure to pass a random retest with a breath alcohol concentration not exceeding two-hundredths of one percent by weight of alcohol in the person's blood;**
 - (2) "Failed start", any attempt to start a vehicle with a breath alcohol concentration exceeding three-hundredths of one percent by weight of alcohol in the person's blood unless a subsequent test performed within ten minutes registers a breath alcohol concentration not exceeding two-hundredths of one percent by weight of alcohol in the person's blood;**
 - (3) "Operates", operating a vehicle regardless of whether such vehicle is owned by the person subject to this section;**
 - (4) "Owned", solely owned or owned in conjunction with another person or legal entity;**
 - (5) "Prosecuting attorney", the prosecuting attorney for each county of the state or the circuit attorney for a city not within a county;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(6) "Random retest", a breath test performed by the driver upon a certified**
18 **ignition interlock device at random intervals after the initial engine startup breath test**
19 **and while the vehicle's motor is running;**

20 **(7) "Vehicle" or "motor vehicle", any self-propelled vehicle not operated**
21 **exclusively upon tracks except motorized bicycles, as defined in section 307.180 and**
22 **electric bicycles, as defined in section 301.010. "Vehicle" or "motor vehicle" does not**
23 **include a motorcycle until the state certifies that an ignition interlock device may be**
24 **installed on a motorcycle. A person subject to an ignition interlock device restriction**
25 **shall not operate a motorcycle for the duration of the ignition interlock device**
26 **restriction period.**

27 **2. In addition to any other requirement imposed by law and notwithstanding the**
28 **provisions of section 302.440, the prosecuting attorney shall notify a person enrolling in**
29 **a diversion program under section 557.015 that the person is required to install a**
30 **functioning, certified ignition interlock device on any vehicle that the person operates**
31 **and is prohibited from operating a motor vehicle unless that vehicle is equipped with a**
32 **functioning, certified ignition interlock device in accordance with this section.**

33 **3. Upon receipt of the prosecuting attorney's notice that a person is enrolled in**
34 **the diversion program under section 557.015, the department of revenue shall inform**
35 **the person of the requirements of this section, including the period for which the person**
36 **is required to have a certified ignition interlock device installed. The records of the**
37 **department shall reflect the mandatory use of the device for the period required and the**
38 **date when the device is required to be installed.**

39 **4. The department of revenue shall advise the person that installation of a**
40 **functioning, certified ignition interlock device on a vehicle does not allow the person to**
41 **drive without a valid driver's license.**

42 **5. A person who receives a notification under this section from the department of**
43 **revenue shall do all of the following:**

44 **(1) Arrange for each vehicle operated by the person to be equipped with a**
45 **functioning, certified ignition interlock device by a certified ignition interlock device**
46 **provider;**

47 **(2) Provide to the department proof of installation by submitting a verification**
48 **of installation; and**

49 **(3) Pay a fee, determined by the department, that is sufficient to cover the costs**
50 **of administration of this section.**

51 **6. In addition to any other restrictions the department of revenue places on the**
52 **driver's license record, the department shall place a restriction on the driver's license**

53 **record of the person that states the driver is restricted to driving only vehicles equipped**
54 **with a functioning, certified ignition interlock device for the applicable period.**

55 **7. A person who receives notification under this section from the department of**
56 **revenue shall arrange for each vehicle with a functioning, certified ignition interlock**
57 **device to be serviced by the installer at least once every sixty days for the installer to**
58 **recalibrate and monitor the operation of the device.**

59 **8. The installer of the certified ignition interlock device shall notify the**
60 **department of revenue if the:**

61 **(1) Device is removed or indicates that a person has attempted to remove,**
62 **bypass, or tamper with the device;**

63 **(2) Person fails three or more times to comply with the requirement that the**
64 **installer service the ignition interlock device once every sixty days as provided under**
65 **subsection 7 of this section; or**

66 **(3) Device registers a failed start.**

67 **9. The department of revenue shall monitor the installation and maintenance of**
68 **the ignition interlock device installed under this section.**

69 **10. If a person has any failed start within the last sixty days of the mandatory**
70 **period for which the ignition interlock device is required to be installed, the period shall**
71 **be extended for a period of ninety days.**

72 **11. The requirements of this section are in addition to any other requirements**
73 **provided by law.**

557.014. 1. As used in this section, the following terms shall mean:

2 (1) "Accusatory instrument", a warrant of arrest, information, or indictment;

3 (2) "Accused", an individual accused of a criminal offense, but not yet charged with a
4 criminal offense;

5 (3) "Defendant", any person charged with a criminal offense;

6 (4) "Deferred prosecution", the suspension of a criminal case for a specified period
7 upon the request of both the prosecuting attorney and the accused or the defendant;

8 (5) "Diversionary screening", the discretionary power of the prosecuting attorney to
9 suspend all formal prosecutorial proceedings against a person who has become involved in
10 the criminal justice system as an accused or defendant;

11 (6) "Prosecuting attorney", includes the prosecuting attorney or circuit attorney for
12 each county of the state and the City of St. Louis;

13 (7) "Prosecution diversion", the imposition of conditions of behavior and conduct by
14 the prosecuting attorney upon an accused or defendant for a specified period of time as an
15 alternative to proceeding to adjudication on a complaint, information, or indictment.

16 2. Each prosecuting attorney in the state of Missouri shall have the authority to, upon
17 agreement with an accused or a defendant, divert a criminal case to a prosecution diversion
18 program for a period of six months to two years, thus allowing for any statute of limitations to
19 be tolled for that time alone. The period of diversion may be extended by the prosecuting
20 attorney as a disciplinary measure or to allow sufficient time for completion of any portion of
21 the prosecution diversion including restitution; provided, however, that no extension of such
22 diversion shall be for a period of more than two years.

23 3. The prosecuting attorney may divert cases, under this program, out of the criminal
24 justice system where the prosecuting attorney determines that the advantages of utilizing
25 prosecution diversion outweigh the advantages of immediate court activity.

26 4. Prior to or upon the issuance of an accusatory instrument, with consent of the
27 accused or defendant, other than for an offense enumerated in this section, the prosecuting
28 attorney may forego continued prosecution upon the parties' agreement to a prosecution
29 diversion plan. The prosecution diversion plan shall be for a specified period and be in
30 writing. The prosecuting attorney has the sole authority to develop diversionary program
31 requirements, but minimum requirements are as follows:

32 (1) The alleged crime is nonviolent, nonsexual, and does not involve a child victim or
33 possession of an unlawful weapon;

34 (2) The accused or defendant must submit to all program requirements;

35 (3) Any newly discovered criminal behavior while in a prosecution diversion
36 program will immediately forfeit his or her right to continued participation in said program at
37 the sole discretion of the prosecuting attorney;

38 (4) The alleged crime does not also constitute a violation of a current condition of
39 probation or parole;

40 (5) The alleged crime is not a traffic offense in which the accused or defendant was a
41 holder of a commercial driver license or was operating a commercial motor vehicle at the
42 time of the offense; and

43 (6) Any other criteria established by the prosecuting attorney.

44 5. During any period of prosecution diversion, the prosecuting attorney may impose
45 conditions upon the behavior and conduct of the accused or defendant that assures the safety
46 and well-being of the community as well as that of the accused or defendant. The conditions
47 imposed by the prosecuting attorney shall include, but are not limited to, requiring the
48 accused or defendant to remain free of any criminal behavior during the entire period of
49 prosecution diversion.

50 6. The responsibility and authority to screen or divert specific cases, or to refuse to
51 screen or divert specific cases, shall rest within the sole judgment and discretion of the
52 prosecuting attorney as part of their official duties as prosecuting attorney. The decision of

53 the prosecuting attorney regarding diversion shall not be subject to appeal nor be raised as a
54 defense in any prosecution of a criminal case involving the accused or defendant.

55 7. Any person participating in the program:

56 (1) Shall have the right to insist on criminal prosecution for the offense for which he
57 or she is accused at any time; and

58 (2) May have counsel of the person's choosing present during all phases of the
59 prosecution diversion proceedings, but counsel is not required and no right to appointment of
60 counsel is hereby created.

61 8. In conducting the program, the prosecuting attorney may require at any point the
62 reinitiation of criminal proceedings when, in his or her judgment, such is warranted.

63 9. Any county, city, person, organization, or agency, or employee or agent thereof,
64 involved with the supervision of activities, programs, or community service that are a part of
65 a prosecution diversion program, shall be immune from any suit by the person performing the
66 work under the deferred prosecution agreement, or any person deriving a cause of action from
67 such person, except for an intentional tort or gross negligence. Persons performing work or
68 community service pursuant to a deferred prosecution agreement as described shall not be
69 deemed to be engaged in employment within the meaning of the provisions of chapter 288. A
70 person performing work or community service pursuant to a deferred prosecution agreement
71 shall not be deemed an employee within the meaning of the provisions of chapter 287.

72 10. Any person supervising or employing an accused or defendant under the program
73 shall report to the prosecuting attorney any violation of the terms of the prosecution diversion
74 program.

75 11. After completion of the program and any conditions imposed upon the accused or
76 defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled to a
77 dismissal or alternative disposition of charges against them. Such disposition may, in the
78 discretion of the prosecuting attorney, be without prejudice to the state of Missouri for the
79 reinstatement of criminal proceedings, within the statute of limitations, upon any subsequent
80 criminal activity on the part of the accused. Any other provision of law notwithstanding, such
81 individual shall be required to pay any associated costs prior to dismissal of pending charges.

82 **12. If the criminal case diverted involves driving under the influence of alcohol,**
83 **this section shall not apply, and the provisions under section 557.015 shall apply.**

557.015. 1. A prosecuting attorney may divert a criminal case involving driving
2 **under the influence of alcohol if all of the following criteria are met:**

3 (1) **The defendant has not previously been convicted of any violation of driving a**
4 **motor vehicle with eight-hundredths of one percent or more by weight of alcohol in the**
5 **defendant's blood;**

6 (2) The defendant is not currently enrolled in, and has not in the previous ten
7 years completed, a diversion program under this section or section 557.014;

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

9 (4) The offense did not occur while operating a commercial vehicle.

10 2. Diversion under this section may continue for a period not to exceed twenty-
11 four months, and the defendant may be ordered to comply with terms, conditions, or
12 programs that are appropriate based on the defendant's specific situation.

13 3. The terms of diversion granted under this section shall include, without
14 limitation, the installation of an ignition interlock device, as provided under section
15 302.457, for a period of no less than twelve months, and other terms deemed necessary
16 by the prosecuting attorney.

17 4. If the defendant has complied with the imposed terms and conditions at the
18 end of the period of diversion, the action against the defendant shall be dismissed, the
19 dismissal shall be recorded, and the record shall be transmitted to the department of
20 revenue.

21 5. If it appears that the defendant is not complying with the terms and conditions
22 of diversion, after notice to the defendant, a hearing shall be held to determine whether
23 the criminal proceedings will be reinstated. If it is found that the defendant has not
24 complied with the terms and conditions of diversion, diversion may end and the
25 criminal proceedings may resume.

26 6. A defendant who is convicted of any violation of driving a vehicle with eight-
27 hundredths of one percent or more by weight of alcohol in the defendant's blood and
28 who has previously utilized diversion under this section shall be considered a second-
29 time driving under the influence offender under the criminal code.

30 7. As used in this section, "prosecuting attorney" means the prosecuting
31 attorney for each county of the state or the circuit attorney for a city not within a
32 county.

✓