

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

Offered By

1 AMEND House Committee Substitute for House Bill No. 87, Page 7, Section 302.440, Line 21, by  
2 inserting after said section and line the following:  
3

4 "302.520. 1. Whenever the chemical test results are available to the law enforcement officer  
5 while the arrested person is still in custody, and where the results show an alcohol concentration of  
6 eight-hundredths of one percent or more by weight of alcohol in such person's blood or where such  
7 person is less than twenty-one years of age and the results show that there is two-hundredths of one  
8 percent or more of alcohol in the person's blood, the officer, acting on behalf of the department,  
9 shall serve the notice of suspension or revocation personally on the arrested person.

10 2. When the law enforcement officer serves the notice of suspension or revocation, [the  
11 officer shall take possession of any driver's license issued by this state which is held by the person.  
12 ~~When the officer takes possession of a valid driver's license issued by this state,~~] the officer, acting  
13 on behalf of the department, shall issue a temporary permit which is valid for fifteen days after its  
14 date of issuance and shall also give the person arrested a notice which shall inform the person of all  
15 rights and responsibilities pursuant to sections 302.500 to 302.540. The notice shall be in such form  
16 so that the arrested person may sign the original as evidence of receipt thereof. The notice shall also  
17 contain a detachable form permitting the arrested person to request a hearing. Signing the hearing  
18 request form and mailing such request to the department shall constitute a formal application for a  
19 hearing.

20 3. A copy of the completed notice of suspension or revocation form, a copy of any  
21 completed temporary permit form, a copy of the notice of rights and responsibilities given to the  
22 arrested person, including any request for hearing, and any driver's license taken into possession  
23 pursuant to this section shall be forwarded to the department by the officer along with the report  
24 required in section 302.510.

25 4. The department shall provide forms for notice of suspension or revocation, for notice of  
26 rights and responsibilities, for request for a hearing and for temporary permits to law enforcement  
27 agencies."; and  
28

29 Further amend said bill, Page 9, Section 302.525, Line 85, by inserting after said section and line the  
30 following:

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

1       "302.530. 1. Any person who has received a notice of suspension or revocation may make a  
2 request within fifteen days of receipt of the notice for a review of the department's determination at  
3 a hearing. ~~[If the person's driver's license has not been previously surrendered, it may be~~  
4 ~~surrendered at the time the request for a hearing is made.]~~

5       2. At the time the request for a hearing is made, if it appears from the record that the person  
6 is the holder of a valid driver's license issued by this state, ~~[and that the driver's license has been~~  
7 ~~surrendered,]~~ the department shall issue a temporary permit which shall be valid until the scheduled  
8 date for the hearing. The department may later issue an additional temporary permit or permits in  
9 order to stay the effective date of the suspension or revocation until the final order is issued  
10 following the hearing, as required by section 302.520.

11       3. The hearing may be held by telephone, or if requested by the person, such person's  
12 attorney or representative, at a regional location as designated by the director. The hearing shall be  
13 conducted by examiners who are licensed to practice law in the state of Missouri and who are  
14 employed by the department on a part-time or full-time basis as the department may determine.

15       4. The sole issue at the hearing shall be whether by a preponderance of the evidence the  
16 person was driving a vehicle pursuant to the circumstances set out in section 302.505. The burden  
17 of proof shall be on the state to adduce such evidence. If the department finds the affirmative of this  
18 issue, the suspension or revocation order shall be sustained. If the department finds the negative of  
19 the issue, the suspension or revocation order shall be rescinded.

20       5. The procedure at such hearing shall be conducted in accordance with chapter 536, with  
21 sections 302.500 to 302.540. A report certified under subsection 2 of section 302.510 shall be  
22 admissible in a like manner as a verified report as evidence of the facts stated therein and any  
23 provision of chapter 536 to the contrary shall not apply.

24       6. The department shall promptly notify the person of its decision including the reasons for  
25 that decision. Such notification shall include a notice advising the person that the department's  
26 decision shall be final within fifteen days from the date such notice was mailed unless the person  
27 challenges the department's decision within that time period by filing an appeal in the circuit court  
28 in the county where the arrest occurred.

29       7. Unless the person, within fifteen days after being notified of the department's decision,  
30 files an appeal for judicial review pursuant to section 302.535, the decision of the department shall  
31 be final.

32       8. The director may adopt any rules and regulations necessary to carry out the provisions of  
33 this section."; and

34  
35 Further amend said bill, Page 13, Section 302.574, Line 143, by inserting after said section and line  
36 the following:

37  
38       "557.520. 1. For purposes of this section, the following terms shall mean:

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

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

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

11       2. In any criminal case involving an intoxication-related traffic offense, the defendant may  
12 request to divert the criminal case to a driving while intoxicated (DWI) diversion program described  
13 in this section by submitting a request to the prosecuting or circuit attorney and sending a copy of  
14 such request to the department of revenue within fifteen days of his or her arrest. The prosecuting  
15 or circuit attorney may divert the criminal case to this DWI diversion program by filing a motion  
16 with the court to stay the criminal proceeding, if the defendant meets the following criteria for  
17 eligibility for entry into the DWI diversion program:

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

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

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

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

25       (5) The offense did not result in the injury or death of another person; and

26       (6) The defendant did not refuse to submit to any test allowed pursuant to section 577.020.

27       3. Upon a motion filed by the prosecuting or circuit attorney, the court may continue a  
28 diverted case involving an intoxication-related traffic offense if the prosecuting or circuit attorney  
29 deems appropriate based on the specific situation of the defendant. The case shall be diverted for a  
30 period not to exceed twenty-four months and order the defendant to comply with terms, conditions,  
31 or requirements.

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

37       5. If the court continues the criminal case to divert the defendant to this DWI diversion  
38 program, a copy of such order shall be sent to the department of revenue and, upon receipt, the  
39 department shall continue any proceeding to suspend or revoke a license pursuant to chapter 302 for

1 a period not to exceed twenty-four months. After the defendant successfully completes the  
2 requirements of the DWI diversion program, the department shall dismiss any proceeding against  
3 the defendant.

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

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

18 (1) Arrange for each vehicle operated by the defendant to be equipped with a functioning,  
19 certified ignition interlock device by a certified ignition interlock device provider as determined by  
20 the department of transportation; and

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

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

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

27 (2) If the defendant fails three or more times to comply with any requirement for the  
28 maintenance or calibration of the ignition interlock device; or

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

30  
31 If a defendant has any failed start that occurs within the last ninety days of the required period of  
32 installation of the ignition interlock device, the term may be extended for a period of up to ninety  
33 days.

34 9. After the completion of the DWI diversion program and if the defendant has complied  
35 with all the imposed terms and conditions, the court shall dismiss the criminal case against the  
36 defendant, record the dismissal, and transmit the record to the central repository upon dismissal.  
37 Any court automation system, including any pilot project, that provides public access to electronic  
38 record on the internet shall redact any personal identifying information of the defendant, including  
39 name, address, and year of birth. Such information shall be provided in a confidential filing sheet

1 contemporaneously filed with the court or entered by the court, which shall not be subject to public  
2 inspection or availability.

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

11 11. Any defendant who is found guilty of any intoxication-related traffic offense and who  
12 has previously utilized the DWI diversion program pursuant to this section shall be considered a  
13 prior offender as defined in section 577.001, provided that the prior offense occurred within five  
14 years of the intoxication-related offense for which the person is charged, as provided in subsection  
15 20 of section 577.001.

16 12. For the limited purpose of determining whether a defendant is a chronic, habitual,  
17 persistent, or prior offender under section 577.001, a criminal case diverted to a DWI diversion  
18 program and successfully completed by a defendant shall be counted as one intoxication-related  
19 traffic offense.

20 13. A certified ignition interlock device provider shall adopt a discounted fee schedule that  
21 provides for the payment of the costs of the certified ignition interlock device by offenders with an  
22 income at or below one hundred and fifty percent of the federal poverty level. A person with an  
23 income at or below one hundred and fifty percent of the federal poverty level who provides income  
24 verification shall be responsible for ten percent of the cost of the ignition interlock device. Any  
25 additional costs accrued by the person for noncompliance with program requirements are not subject  
26 to discounted rates and are the sole responsibility of the person. The certified ignition interlock  
27 provider shall verify the offender's income to determine the cost of the ignition interlock device by  
28 verifying from the offender the previous year's federal income tax return, the previous three months  
29 of weekly or monthly income statements, or a court order declaring the person with an income at or  
30 below one hundred and fifty percent of the federal poverty level.

31 14. Nothing in this section shall prohibit a prosecuting or circuit attorney from diverting a  
32 criminal case pursuant to section 557.014 in any criminal case involving an intoxication-related  
33 traffic offense."; and

34  
35 Further amend said bill by amending the title, enacting clause, and intersectional references  
36 accordingly.