

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 87
103RD GENERAL ASSEMBLY

0544H.02P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 302.304, 302.440, 302.520, 302.525, 302.530, 302.574, and 577.010, RSMo, and to enact in lieu thereof eight new sections relating to driving while intoxicated, with penalty provisions.

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

Section A. Sections 302.304, 302.440, 302.520, 302.525, 302.530, 302.574, and 577.010, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 302.304, 302.440, 302.520, 302.525, 302.530, 302.574, 557.520, and 577.010, to read as follows:

302.304. 1. The director shall notify by ordinary mail any operator of the point value charged against the operator's record when the record shows four or more points have been accumulated in a twelve-month period.

2. In an action to suspend or revoke a license or driving privilege under this section points shall be accumulated on the date of conviction. No case file of any conviction for a driving violation for which points may be assessed pursuant to section 302.302 may be closed until such time as a copy of the record of such conviction is forwarded to the department of revenue.

3. The director shall suspend the license and driving privileges of any person whose driving record shows the driver has accumulated eight points in eighteen months.

4. The license and driving privilege of any person whose license and driving privilege have been suspended under the provisions of sections 302.010 to 302.540 except those persons whose license and driving privilege have been suspended under the provisions of subdivision (8) of subsection 1 of section 302.302 or has accumulated sufficient points

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.

15 together with a conviction under subdivision (10) of subsection 1 of section 302.302 and who
16 has filed proof of financial responsibility with the department of revenue, in accordance with
17 chapter 303, and is otherwise eligible, shall be reinstated as follows:

18 (1) In the case of an initial suspension, thirty days after the effective date of the
19 suspension;

20 (2) In the case of a second suspension, sixty days after the effective date of the
21 suspension;

22 (3) In the case of the third and subsequent suspensions, ninety days after the effective
23 date of the suspension.

24

25 Unless proof of financial responsibility is filed with the department of revenue, a suspension
26 shall continue in effect for two years from its effective date.

27 5. The period of suspension of the driver's license and driving privilege of any person
28 under the provisions of subdivision (8) of subsection 1 of section 302.302 or who has
29 accumulated sufficient points together with a conviction under subdivision (10) of subsection
30 1 of section 302.302 shall be thirty days, followed by a sixty-day period of restricted driving
31 privilege as defined in section 302.010. Upon completion of such period of restricted driving
32 privilege, upon compliance with other requirements of law and upon filing of proof of
33 financial responsibility with the department of revenue, in accordance with chapter 303, the
34 license and driving privilege shall be reinstated. If a person, otherwise subject to the
35 provisions of this subsection, files proof of installation with the department of revenue that
36 any vehicle operated by such person is equipped with a functioning, certified ignition
37 interlock device, there shall be no period of suspension. However, in lieu of a suspension the
38 person shall instead complete a ninety-day period of restricted driving privilege. If the person
39 fails to maintain such proof of the device with the director of revenue as required, the
40 restricted driving privilege shall be terminated. Upon completion of such ninety-day period
41 of restricted driving privilege, upon compliance with other requirements of law, and upon
42 filing of proof of financial responsibility with the department of revenue, in accordance with
43 chapter 303, the license and driving privilege shall be reinstated. However, if the monthly
44 monitoring reports during such ninety-day period indicate that the ignition interlock device
45 has registered a confirmed blood alcohol concentration level above the alcohol setpoint
46 established by the department of transportation or such reports indicate that the ignition
47 interlock device has been tampered with or circumvented, then the license and driving
48 privilege of such person shall not be reinstated until the person completes an additional thirty-
49 day period of restricted driving privilege.

50 6. If the person fails to maintain proof of financial responsibility in accordance with
51 chapter 303, or, if applicable, if the person fails to maintain proof that any vehicle operated is

52 equipped with a functioning, certified ignition interlock device installed pursuant to
53 subsection 5 of this section, the person's driving privilege and license shall be resuspended.

54 7. The director shall revoke the license and driving privilege of any person when the
55 person's driving record shows such person has accumulated twelve points in twelve months or
56 eighteen points in twenty-four months or twenty-four points in thirty-six months. The
57 revocation period of any person whose license and driving privilege have been revoked under
58 the provisions of sections 302.010 to 302.540 and who has filed proof of financial
59 responsibility with the department of revenue in accordance with chapter 303 and is otherwise
60 eligible, shall be terminated by a notice from the director of revenue after one year from the
61 effective date of the revocation. Unless proof of financial responsibility is filed with the
62 department of revenue, except as provided in subsection 2 of section 302.541, the revocation
63 shall remain in effect for a period of two years from its effective date. If the person fails to
64 maintain proof of financial responsibility in accordance with chapter 303, the person's license
65 and driving privilege shall be rerevoked. Any person whose license and driving privilege
66 have been revoked under the provisions of sections 302.010 to 302.540 shall, upon receipt of
67 the notice of termination of the revocation from the director, pass the complete driver
68 examination and apply for a new license before again operating a motor vehicle upon the
69 highways of this state.

70 8. If, prior to conviction for an offense that would require suspension or revocation of
71 a person's license under the provisions of this section, the person's total points accumulated
72 are reduced, pursuant to the provisions of section 302.306, below the number of points
73 required for suspension or revocation pursuant to the provisions of this section, then the
74 person's license shall not be suspended or revoked until the necessary points are again
75 obtained and accumulated.

76 9. If any person shall neglect or refuse to surrender the person's license, as provided
77 herein, the director shall direct the state highway patrol or any peace or police officer to
78 secure possession thereof and return it to the director.

79 10. Upon the issuance of a reinstatement or termination notice after a suspension or
80 revocation of any person's license and driving privilege under the provisions of sections
81 302.010 to 302.540, the accumulated point value shall be reduced to four points, except that
82 the points of any person serving as a member of the Armed Forces of the United States
83 outside the limits of the United States during a period of suspension or revocation shall be
84 reduced to zero upon the date of the reinstatement or termination of notice. It shall be the
85 responsibility of such member of the Armed Forces to submit copies of official orders to the
86 director of revenue to substantiate such overseas service. Any other provision of sections
87 302.010 to 302.540 to the contrary notwithstanding, the effective date of the four points

88 remaining on the record upon reinstatement or termination shall be the date of the
89 reinstatement or termination notice.

90 11. No credit toward reduction of points shall be given during periods of suspension
91 or revocation or any period of driving under a limited driving privilege granted by a court or
92 the director of revenue.

93 12. Any person or nonresident whose license or privilege to operate a motor vehicle
94 in this state has been suspended or revoked under this or any other law shall, before having
95 the license or privilege to operate a motor vehicle reinstated, pay to the director a
96 reinstatement fee of twenty dollars which shall be in addition to all other fees provided by
97 law.

98 13. Notwithstanding any other provision of law to the contrary, if after two years from
99 the effective date of any suspension or revocation issued under this chapter, except any
100 suspension or revocation issued under section 302.410, 302.462, or 302.574, the person or
101 nonresident has not paid the reinstatement fee of twenty dollars, the director shall reinstate
102 such license or privilege to operate a motor vehicle in this state. Any person who has had his
103 or her license suspended or revoked under section 302.410, 302.462, or 302.574, shall be
104 required to pay the reinstatement fee.

105 14. No person who has had a license to operate a motor vehicle suspended or revoked
106 as a result of an assessment of points for a violation under subdivision (8), (9) or (10) of
107 subsection 1 of section 302.302 shall have that license reinstated until such person has
108 participated in and successfully completed a substance abuse traffic offender program defined
109 in section 302.010, or a program determined to be comparable by the department of mental
110 health. Assignment recommendations, based upon the needs assessment as described in
111 subdivision (24) of section 302.010, shall be delivered in writing to the person with written
112 notice that the person is entitled to have such assignment recommendations reviewed by the
113 court if the person objects to the recommendations. The person may file a motion in the
114 associate division of the circuit court of the county in which such assignment was given, on a
115 printed form provided by the state courts administrator, to have the court hear and determine
116 such motion pursuant to the provisions of chapter 517. The motion shall name the person or
117 entity making the needs assessment as the respondent and a copy of the motion shall be
118 served upon the respondent in any manner allowed by law. Upon hearing the motion, the
119 court may modify or waive any assignment recommendation that the court determines to be
120 unwarranted based upon a review of the needs assessment, the person's driving record, the
121 circumstances surrounding the offense, and the likelihood of the person committing a like
122 offense in the future, except that the court may modify but may not waive the assignment to
123 an education or rehabilitation program of a person determined to be a prior or persistent
124 offender as defined in section 577.001 or of a person determined to have operated a motor

125 vehicle with fifteen-hundredths of one percent or more by weight in such person's blood.
126 Compliance with the court determination of the motion shall satisfy the provisions of this
127 section for the purpose of reinstating such person's license to operate a motor vehicle. The
128 respondent's personal appearance at any hearing conducted pursuant to this subsection shall
129 not be necessary unless directed by the court.

130 15. The fees for the program authorized in subsection 14 of this section, or a portion
131 thereof to be determined by the department of mental health, shall be paid by the person
132 enrolled in the program. Any person who is enrolled in the program shall pay, in addition to
133 any fee charged for the program, a supplemental fee in an amount to be determined by the
134 department of mental health for the purposes of funding the substance abuse traffic offender
135 program defined in section 302.010 or a program determined to be comparable by the
136 department of mental health. The administrator of the program shall remit to the division of
137 alcohol and drug abuse of the department of mental health on or before the fifteenth day of
138 each month the supplemental fee for all persons enrolled in the program, less two percent for
139 administrative costs. Interest shall be charged on any unpaid balance of the supplemental fees
140 due the division of alcohol and drug abuse pursuant to this section and shall accrue at a rate
141 not to exceed the annual rate established pursuant to the provisions of section 32.065, plus
142 three percentage points. The supplemental fees and any interest received by the department
143 of mental health pursuant to this section shall be deposited in the mental health earnings fund
144 which is created in section 630.053.

145 16. Any administrator who fails to remit to the division of alcohol and drug abuse of
146 the department of mental health the supplemental fees and interest for all persons enrolled in
147 the program pursuant to this section shall be subject to a penalty equal to the amount of
148 interest accrued on the supplemental fees due the division pursuant to this section. If the
149 supplemental fees, interest, and penalties are not remitted to the division of alcohol and drug
150 abuse of the department of mental health within six months of the due date, the attorney
151 general of the state of Missouri shall initiate appropriate action of the collection of said fees
152 and interest accrued. The court shall assess attorney fees and court costs against any
153 delinquent program.

154 17. Any person who has had a license to operate a motor vehicle suspended or
155 revoked as a result of:

156 (1) An assessment of points for a conviction for an intoxication-related traffic
157 offense, as defined under section 577.001, **in which the person's blood alcohol content was**
158 **found to be at least eight-hundredths of one percent but less than fifteen-hundredths of**
159 **one percent by weight of alcohol in such person's blood** and who has a prior alcohol-
160 related enforcement contact as defined under section 302.525[~~7~~]; **or**

161 **(2) An assessment of points for a conviction for an intoxication-related traffic**
162 **offense, as defined under section 577.001, in which the person's blood alcohol content**
163 **was found to be fifteen-hundredths of one percent or more by weight of alcohol in such**
164 **person's blood**

165
166 shall be required to file proof with the director of revenue that any motor vehicle operated by
167 the person is equipped with a functioning, certified ignition interlock device as a required
168 condition of reinstatement of the license. The ignition interlock device shall further be
169 required to be maintained on all motor vehicles operated by the person for a period of not less
170 than six months immediately following the date of reinstatement. If the monthly monitoring
171 reports show that the ignition interlock device has registered any confirmed blood alcohol
172 concentration readings above the alcohol setpoint established by the department of
173 transportation or that the person has tampered with or circumvented the ignition interlock
174 device within the last three months of the six-month period of required installation of the
175 ignition interlock device, then the period for which the person must maintain the ignition
176 interlock device following the date of reinstatement shall be extended until the person has
177 completed three consecutive months with no violations as described in this section. If the
178 person fails to maintain such proof with the director, the license shall be resuspended or
179 revoked and the person shall be guilty of a class A misdemeanor.

302.440. In addition to any other provisions of law, a court may require that any
2 person who is found guilty of a first intoxication-related traffic offense, as defined in section
3 577.001, and a court shall require that any person who is found guilty of a second or
4 subsequent intoxication-related traffic offense, as defined in section 577.001, **or any person**
5 **who is found guilty of an intoxication-related traffic offense, as defined under section**
6 **577.001, in which the person's blood alcohol content was found to be fifteen-hundredths**
7 **of one percent or more by weight of alcohol in such person's blood** shall not operate any
8 motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock
9 device **that the person must use** for a period of not less than six months from the date of
10 reinstatement of the person's driver's license. In addition, any court authorized to grant a
11 limited driving privilege under section 302.309 to any person who is found guilty of a second
12 or subsequent intoxication-related traffic offense **or to any person who is found guilty of an**
13 **intoxication-related traffic offense, as defined under section 577.001, in which the**
14 **person's blood alcohol content was found to be fifteen-hundredths of one percent or**
15 **more by weight of alcohol in such person's blood** shall require the use of an ignition
16 interlock device on all vehicles operated by the person as a required condition of the limited
17 driving privilege, except as provided in section 302.441. These requirements shall be in
18 addition to any other provisions of this chapter or chapter 577 requiring installation and

19 maintenance of an ignition interlock device. Any person required to use an ignition interlock
20 device shall comply with such requirement subject to the penalties provided by section
21 577.599.

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

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

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

23 4. The department shall provide forms for notice of suspension or revocation, for
24 notice of rights and responsibilities, for request for a hearing and for temporary permits to law
25 enforcement agencies.

302.525. 1. The license suspension or revocation shall become effective fifteen days
2 after the subject person has received the notice of suspension or revocation as provided in
3 section 302.520, or is deemed to have received the notice of suspension or revocation by mail
4 as provided in section 302.515. If a request for a hearing is received by or postmarked to the
5 department within that fifteen-day period, the effective date of the suspension or revocation
6 shall be stayed until a final order is issued following the hearing; provided, that any delay in
7 the hearing which is caused or requested by the subject person or counsel representing that
8 person without good cause shown shall not result in a stay of the suspension or revocation
9 during the period of delay.

10 2. The period of license suspension or revocation under this section shall be as
11 follows:

12 (1) If the person's driving record shows no prior alcohol-related enforcement contacts
13 during the immediately preceding five years, the period of suspension shall be thirty days
14 after the effective date of suspension, followed by a sixty-day period of restricted driving
15 privilege as defined in section 302.010 and issued by the director of revenue. The restricted
16 driving privilege shall not be issued until he or she has filed proof of financial responsibility
17 with the department of revenue, in accordance with chapter 303, and is otherwise eligible.
18 The restricted driving privilege shall indicate ~~[whether]~~ **that** a functioning, certified ignition
19 interlock device is required as a condition of operating a motor vehicle. A copy of the
20 restricted driving privilege shall be given to the person and such person shall carry a copy of
21 the restricted driving privilege while operating a motor vehicle. In no case shall restricted
22 driving privileges be issued pursuant to this section or section 302.535 until the person has
23 completed the first thirty days of a suspension under this section. If a person otherwise
24 subject to the provisions of this subdivision files proof of installation with the department of
25 revenue that any vehicle that he or she operates is equipped with a functioning, certified
26 ignition interlock device, there shall be no period of suspension. However, in lieu of a
27 suspension the person shall instead complete a ninety-day period of restricted driving
28 privilege. Upon completion of such ninety-day period of restricted driving privilege,
29 compliance with other requirements of law, and filing of proof of financial responsibility with
30 the department of revenue, in accordance with chapter 303, the license and driving privilege
31 shall be reinstated. However, if the monthly monitoring reports during such ninety-day
32 period indicate that the ignition interlock device has registered a confirmed blood alcohol
33 concentration level above the alcohol setpoint established by the department of transportation
34 or such reports indicate that the ignition interlock device has been tampered with or
35 circumvented, then the license and driving privilege of such person shall not be reinstated
36 until the person completes an additional thirty-day period of restricted driving privilege. If
37 the person fails to maintain such proof of the device with the director of revenue as required,
38 the restricted driving privilege shall be terminated;

39 (2) The period of revocation shall be one year if the person's driving record shows
40 one or more prior alcohol-related enforcement contacts during the immediately preceding five
41 years;

42 (3) In no case shall restricted driving privileges be issued under this section to any
43 person whose driving record shows one or more prior alcohol-related enforcement contacts **or**
44 **to any person whose driving record shows a conviction of an intoxication-related traffic**
45 **offense, as defined under section 577.001, in which the person's blood alcohol content**
46 **was found to be fifteen-hundredths of one percent or more by weight of alcohol in such**

47 **person's blood** until the person has filed proof with the department of revenue that any motor
48 vehicle operated by the person is equipped with a functioning, certified ignition interlock
49 device as a required condition of the restricted driving privilege. If the person fails to
50 maintain such proof the restricted driving privilege shall be terminated.

51 3. For purposes of this section, "alcohol-related enforcement contacts" shall include
52 any suspension or revocation under sections 302.500 to 302.540, any suspension or
53 revocation entered in this or any other state for a refusal to submit to chemical testing under
54 an implied consent law, and any conviction in this or any other state for a violation which
55 involves driving while intoxicated, driving while under the influence of drugs or alcohol, or
56 driving a vehicle while having an unlawful alcohol concentration.

57 4. Where a license is suspended or revoked under this section and the person is also
58 convicted on charges arising out of the same occurrence for a violation of section 577.010 or
59 577.012 or for a violation of any county or municipal ordinance prohibiting driving while
60 intoxicated or alcohol-related traffic offense, both the suspension or revocation under this
61 section and any other suspension or revocation arising from such convictions shall be
62 imposed, but the period of suspension or revocation under sections 302.500 to 302.540 shall
63 be credited against any other suspension or revocation arising from such convictions, and the
64 total period of suspension or revocation shall not exceed the longer of the two suspension or
65 revocation periods.

66 5. Any person who has had a license to operate a motor vehicle revoked under this
67 section or suspended under this section with one or more prior alcohol-related enforcement
68 contacts **or a conviction for an intoxication-related traffic offense, as defined under**
69 **section 577.001, in which the person's blood alcohol content was found to be fifteen-**
70 **hundredths of one percent or more by weight of alcohol in such person's blood** showing
71 on their driver record shall be required to file proof with the director of revenue that any
72 motor vehicle operated by that person is equipped with a functioning, certified ignition
73 interlock device as a required condition of reinstatement. The ignition interlock device shall
74 further be required to be maintained on all motor vehicles operated by the person for a period
75 of not less than six months immediately following the date of reinstatement. If the monthly
76 monitoring reports show that the ignition interlock device has registered any confirmed blood
77 alcohol concentration readings above the alcohol setpoint established by the department of
78 transportation or that the person has tampered with or circumvented the ignition interlock
79 device within the last three months of the six-month period of required installation of the
80 ignition interlock device, then the period for which the person must maintain the ignition
81 interlock device following the date of reinstatement shall be extended until the person has
82 completed three consecutive months with no violations as described in this section. If the
83 person fails to maintain such proof with the director, the license shall be suspended or

84 revoked, until proof as required by this section is filed with the director, and the person shall
85 be guilty of a class A misdemeanor.

302.530. 1. Any person who has received a notice of suspension or revocation may
2 make a request within fifteen days of receipt of the notice for a review of the department's
3 determination at a hearing. ~~[If the person's driver's license has not been previously~~
4 ~~surrendered, it may be 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
6 person is the holder of a valid driver's license issued by this state, ~~[and that the driver's license~~
7 ~~has been surrendered,]~~ the department shall issue a temporary permit which shall be valid
8 until the scheduled date for the hearing. The department may later issue an additional
9 temporary permit or permits in order to stay the effective date of the suspension or revocation
10 until the final order is issued 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
13 shall be conducted by examiners who are licensed to practice law in the state of Missouri and
14 who are employed by the department on a part-time or full-time basis as the department may
15 determine.

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

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

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

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

34 8. The director may adopt any rules and regulations necessary to carry out the
35 provisions of this section.

302.574. 1. If a person who was operating a vehicle refuses upon the request of the officer to submit to any chemical test under section 577.041, the officer shall, on behalf of the director of revenue, serve the notice of license revocation personally upon the person and shall take possession of any license to operate a vehicle issued by this state which is held by that person. The officer shall issue a temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall also give the person notice of his or her right to file a petition for review to contest the license revocation.

2. Such officer shall make a certified report under penalties of perjury for making a false statement to a public official. The report shall be forwarded to the director of revenue and shall include the following:

(1) That the officer has:

(a) Reasonable grounds to believe that the arrested person was driving a motor vehicle while in an intoxicated condition; or

(b) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or

(c) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer has reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

(2) That the person refused to submit to a chemical test;

(3) Whether the officer secured the license to operate a motor vehicle of the person;

(4) Whether the officer issued a fifteen-day temporary permit;

(5) Copies of the notice of revocation, the fifteen-day temporary permit, and the notice of the right to file a petition for review. The notices and permit may be combined in one document; and

(6) Any license, which the officer has taken into possession, to operate a motor vehicle.

3. Upon receipt of the officer's report, the director shall revoke the license of the person refusing to take the test for a period of one year; or if the person is a nonresident, such person's operating permit or privilege shall be revoked for one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, an order shall be issued denying the person the issuance of a license or permit for a period of one year.

4. If a person's license has been revoked because of the person's refusal to submit to a chemical test, such person may petition for a hearing before a circuit division or associate division of the court in the county in which the arrest or stop occurred. Pursuant to local court rule promulgated pursuant to Section 15 of Article V of the Missouri Constitution, the case

38 may also be assigned to a traffic judge pursuant to section 479.500. The person may request
39 such court to issue an order staying the revocation until such time as the petition for review
40 can be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a
41 form prescribed by the director of revenue and shall send a copy of such order to the director.
42 Such order shall serve as proof of the privilege to operate a motor vehicle in this state and the
43 director shall maintain possession of the person's license to operate a motor vehicle until
44 termination of any revocation under this section. Upon the person's request, the clerk of the
45 court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the
46 hearing on behalf of the director of revenue. At the hearing, the court shall determine only:

47 (1) Whether the person was arrested or stopped;

48 (2) Whether the officer had:

49 (a) Reasonable grounds to believe that the person was driving a motor vehicle while
50 in an intoxicated or drugged condition; or

51 (b) Reasonable grounds to believe that the person stopped, being under the age of
52 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-
53 hundredths of one percent or more by weight; or

54 (c) Reasonable grounds to believe that the person stopped, being under the age of
55 twenty-one years, was committing a violation of the traffic laws of the state, or political
56 subdivision of the state, and such officer had reasonable grounds to believe, after making such
57 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;
58 and

59 (3) Whether the person refused to submit to the test.

60 5. If the court determines any issue not to be in the affirmative, the court shall order
61 the director to reinstate the license or permit to drive.

62 6. Requests for review as provided in this section shall go to the head of the docket of
63 the court wherein filed.

64 7. No person who has had a license to operate a motor vehicle suspended or revoked
65 under the provisions of this section shall have that license reinstated until such person has
66 participated in and successfully completed a substance abuse traffic offender program defined
67 in section 302.010, or a program determined to be comparable by the department of mental
68 health. Assignment recommendations, based upon the needs assessment as described in
69 subdivision (24) of section 302.010, shall be delivered in writing to the person with written
70 notice that the person is entitled to have such assignment recommendations reviewed by the
71 court if the person objects to the recommendations. The person may file a motion in the
72 associate division of the circuit court of the county in which such assignment was given, on a
73 printed form provided by the state courts administrator, to have the court hear and determine
74 such motion under the provisions of chapter 517. The motion shall name the person or entity

75 making the needs assessment as the respondent and a copy of the motion shall be served upon
76 the respondent in any manner allowed by law. Upon hearing the motion, the court may
77 modify or waive any assignment recommendation that the court determines to be unwarranted
78 based upon a review of the needs assessment, the person's driving record, the circumstances
79 surrounding the offense, and the likelihood of the person committing a similar offense in the
80 future, except that the court may modify but shall not waive the assignment to an education or
81 rehabilitation program of a person determined to be a prior or persistent offender as defined in
82 section 577.001, or of a person determined to have operated a motor vehicle with a blood
83 alcohol content of fifteen-hundredths of one percent or more by weight. Compliance with the
84 court determination of the motion shall satisfy the provisions of this section for the purpose of
85 reinstating such person's license to operate a motor vehicle. The respondent's personal
86 appearance at any hearing conducted under this subsection shall not be necessary unless
87 directed by the court.

88 8. The fees for the substance abuse traffic offender program, or a portion thereof, to
89 be determined by the division of behavioral health of the department of mental health, shall
90 be paid by the person enrolled in the program. Any person who is enrolled in the program
91 shall pay, in addition to any fee charged for the program, a supplemental fee to be determined
92 by the department of mental health for the purposes of funding the substance abuse traffic
93 offender program defined in section 302.010. The administrator of the program shall remit to
94 the division of behavioral health of the department of mental health on or before the fifteenth
95 day of each month the supplemental fee for all persons enrolled in the program, less two
96 percent for administrative costs. Interest shall be charged on any unpaid balance of the
97 supplemental fees due to the division of behavioral health under this section, and shall accrue
98 at a rate not to exceed the annual rates established under the provisions of section 32.065, plus
99 three percentage points. The supplemental fees and any interest received by the department
100 of mental health under this section shall be deposited in the mental health earnings fund,
101 which is created in section 630.053.

102 9. Any administrator who fails to remit to the division of behavioral health of the
103 department of mental health the supplemental fees and interest for all persons enrolled in the
104 program under this section shall be subject to a penalty equal to the amount of interest
105 accrued on the supplemental fees due to the division under this section. If the supplemental
106 fees, interest, and penalties are not remitted to the division of behavioral health of the
107 department of mental health within six months of the due date, the attorney general of the
108 state of Missouri shall initiate appropriate action for the collection of said fees and accrued
109 interest. The court shall assess attorneys' fees and court costs against any delinquent program.

110 10. Any person who has had a license to operate a motor vehicle revoked under this
111 section and who has a prior alcohol-related enforcement contact, as defined in section

112 302.525, or who has been convicted of an intoxication-related traffic offense, as defined
113 under section 577.001, in which the person's blood alcohol content was found to be
114 fifteen-hundredths of one percent or more by weight of alcohol in such person's blood
115 shall be required to file proof with the director of revenue that any motor vehicle operated by
116 the person is equipped with a functioning, certified ignition interlock device as a required
117 condition of license reinstatement. Such ignition interlock device shall further be required to
118 be maintained on all motor vehicles operated by the person for a period of not less than six
119 months immediately following the date of reinstatement. If the monthly monitoring reports
120 show that the ignition interlock device has registered any confirmed blood alcohol
121 concentration readings above the alcohol setpoint established by the department of
122 transportation or that the person has tampered with or circumvented the ignition interlock
123 device within the last three months of the six-month period of required installation of the
124 ignition interlock device, then the period for which the person shall maintain the ignition
125 interlock device following the date of reinstatement shall be extended until the person has
126 completed three consecutive months with no violations as described in this section. If the
127 person fails to maintain such proof with the director as required by this section, the license
128 shall be rerevoked until proof as required by this section is filed with the director, and the
129 person shall be guilty of a class A misdemeanor.

130 11. The revocation period of any person whose license and driving privilege has been
131 revoked under this section and who has filed proof of financial responsibility with the
132 department of revenue in accordance with chapter 303 and is otherwise eligible shall be
133 terminated by a notice from the director of revenue after one year from the effective date of
134 the revocation. Unless proof of financial responsibility is filed with the department of
135 revenue, the revocation shall remain in effect for a period of two years from its effective date.
136 If the person fails to maintain proof of financial responsibility in accordance with chapter 303,
137 the person's license and driving privilege shall be rerevoked.

138 12. A person commits the offense of failure to maintain proof with the Missouri
139 department of revenue if, when required to do so, he or she fails to file proof with the director
140 of revenue that any vehicle operated by the person is equipped with a functioning, certified
141 ignition interlock device or fails to file proof of financial responsibility with the department of
142 revenue in accordance with chapter 303. The offense of failure to maintain proof with the
143 Missouri department of revenue is a class A misdemeanor.

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

- 2 (1) "Failed start", any attempt to start a vehicle with a breath alcohol
3 concentration exceeding twenty-five thousandths of one percent by weight of alcohol in
4 a person's breath, unless a subsequent retest performed within ten minutes registers a

5 **breath alcohol concentration not exceeding twenty-five thousandths of one percent by**
6 **weight of alcohol in such person's breath;**

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

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

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

22 **(1) The defendant has not previously pled guilty to or been convicted of an**
23 **intoxication-related traffic offense in violation of section 577.010, 577.012, 577.013,**
24 **577.014, 577.015, or 577.016;**

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

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

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

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

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

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

37 **4. The DWI diversion plan shall be for a specified period and be in writing. The**
38 **prosecuting or circuit attorney has the sole authority to develop diversionary program**
39 **requirements, but shall require installation of an ignition interlock device for a period of**
40 **not less than one year, require the defendant to participate in a victim impact panel**

41 sponsored by a nonprofit organization, and require other terms deemed necessary by
42 the court.

43 5. If the court continues the criminal case to divert the defendant to this DWI
44 diversion program, a copy of such order shall be sent to the department of revenue and,
45 upon receipt, the department shall continue any proceeding to suspend or revoke a
46 license pursuant to chapter 302 for a period not to exceed twenty-four months. After
47 the defendant successfully completes the requirements of the DWI diversion program,
48 the department shall dismiss any proceeding against the defendant.

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

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

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

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

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

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

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

76 (3) If the device registers a failed start.
77

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

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

90 10. In the event of noncompliance by the defendant with the terms and
91 conditions of the DWI diversion program, the prosecuting or circuit attorney may file a
92 motion to terminate the defendant from the diversion program and may recommend the
93 prosecution of the underlying case. Upon the filing of such motion, after notice to the
94 defendant, the court shall hold a hearing to determine by preponderance of the evidence
95 whether the defendant has failed to comply with the terms and conditions of the
96 diversion program. If the court finds that the defendant has not complied with the
97 terms and conditions of the diversion program, the court may end the diversion
98 program and set the case on the next available criminal docket.

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

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

108 13. A certified ignition interlock device provider shall adopt a discounted fee
109 schedule that provides for the payment of the costs of the certified ignition interlock
110 device by offenders with an income at or below one hundred and fifty percent of the
111 federal poverty level. A person with an income at or below one hundred and fifty
112 percent of the federal poverty level who provides income verification shall be
113 responsible for ten percent of the cost of the ignition interlock device. Any additional
114 costs accrued by the person for noncompliance with program requirements are not

115 subject to discounted rates and are the sole responsibility of the person. The certified
116 ignition interlock provider shall verify the offender's income to determine the cost of the
117 ignition interlock device by verifying from the offender the previous year's federal
118 income tax return, the previous three months of weekly or monthly income statements,
119 or a court order declaring the person with an income at or below one hundred and fifty
120 percent of the federal poverty level.

121 **14. Nothing in this section shall prohibit a prosecuting or circuit attorney from**
122 **diverting a criminal case pursuant to section 557.014 in any criminal case involving an**
123 **intoxication-related traffic offense.**

577.010. 1. A person commits the offense of driving while intoxicated if he or she
2 operates a vehicle while in an intoxicated condition.

3 2. The offense of driving while intoxicated is:

4 (1) A class B misdemeanor;

5 (2) A class A misdemeanor if:

6 (a) The defendant is a prior offender; or

7 (b) A person less than seventeen years of age is present in the vehicle;

8 (3) A class E felony if:

9 ~~(a) the defendant is a persistent offender; [or~~

10 ~~(b) While driving while intoxicated, the defendant acts with criminal negligence to~~
11 ~~cause physical injury to another person;]~~

12 (4) A class D felony if:

13 (a) The defendant is an aggravated offender; **or**

14 (b) While driving while intoxicated, the defendant acts with criminal negligence to
15 cause physical injury to ~~[a law enforcement officer or emergency personnel]~~ **another person;**
16 ~~[or~~

17 ~~(c) While driving while intoxicated, the defendant acts with criminal negligence to~~
18 ~~cause serious physical injury to another person;]~~

19 (5) A class C felony if:

20 (a) The defendant is a chronic offender; **or**

21 (b) While driving while intoxicated, the defendant acts with criminal negligence to
22 cause serious physical injury to ~~[a law enforcement officer or emergency personnel]~~ **another**
23 **person; [or**

24 ~~(c) While driving while intoxicated, the defendant acts with criminal negligence to~~
25 ~~cause the death of another person;]~~

26 (6) A class B felony if:

27 (a) The defendant is a habitual offender; **or**

28 (b) While driving while intoxicated, the defendant acts with criminal negligence to
29 cause the death of ~~[a law enforcement officer or emergency personnel]~~ **another person;**

30 ~~[(c) While driving while intoxicated, the defendant acts with criminal negligence to~~
31 ~~cause the death of any person not a passenger in the vehicle operated by the defendant,~~
32 ~~including the death of an individual that results from the defendant's vehicle leaving a~~
33 ~~highway, as defined in section 301.010, or the highway's right of way;~~

34 ~~(d) While driving while intoxicated, the defendant acts with criminal negligence to~~
35 ~~cause the death of two or more persons; or~~

36 ~~(e) While driving while intoxicated, the defendant acts with criminal negligence to~~
37 ~~cause the death of any person while he or she has a blood alcohol content of at least eighteen-~~
38 ~~hundredths of one percent by weight of alcohol in such person's blood;]~~

39 (7) A class A felony if:

40 (a) **While driving while intoxicated, the defendant acts with criminal negligence**
41 **to cause the death of two or more persons;**

42 (b) **While driving while intoxicated, the defendant acts with criminal negligence**
43 **to cause the death of any person while the defendant has a blood alcohol content of at**
44 **least fifteen-hundredths of one percent by weight of alcohol; or**

45 (c) The defendant has previously been found guilty of an offense under ~~[paragraphs]~~
46 **paragraph (a) ~~to (e)~~ or (b)** of subdivision (6) of this subsection and is found guilty of a
47 subsequent violation of ~~[such paragraphs]~~ **this section.**

48 3. Notwithstanding the provisions of subsection 2 of this section, a person found
49 guilty of the offense of driving while intoxicated as a first offense shall not be granted a
50 suspended imposition of sentence:

51 (1) Unless such person shall be placed on probation for a minimum of two years; or

52 (2) In a circuit where a DWI court or docket created under section 478.007 or other
53 court-ordered treatment program is available, and where the offense was committed with
54 fifteen-hundredths of one percent or more by weight of alcohol in such person's blood, unless
55 the individual participates and successfully completes a program under such DWI court or
56 docket or other court-ordered treatment program.

57 4. If a person is found guilty of a second or subsequent offense of driving while
58 intoxicated, the court may order the person to submit to a period of continuous alcohol
59 monitoring or verifiable breath alcohol testing performed a minimum of four times per day as
60 a condition of probation.

61 5. If a person is not granted a suspended imposition of sentence for the reasons
62 described in subsection 3 of this section:

63 (1) If the individual operated the vehicle with fifteen-hundredths to twenty-
64 hundredths of one percent by weight of alcohol in such person's blood, the required term of
65 imprisonment shall be not less than forty-eight hours;

66 (2) If the individual operated the vehicle with greater than twenty-hundredths of one
67 percent by weight of alcohol in such person's blood, the required term of imprisonment shall
68 be not less than five days.

69 6. A person found guilty of the offense of driving while intoxicated:

70 (1) As a prior offender, persistent offender, aggravated offender, chronic offender, or
71 habitual offender shall not be granted a suspended imposition of sentence or be sentenced to
72 pay a fine in lieu of a term of imprisonment, section 557.011 to the contrary notwithstanding;

73 (2) As a prior offender shall not be granted parole or probation until he or she has
74 served a minimum of ten days imprisonment:

75 (a) Unless as a condition of such parole or probation such person performs at least
76 thirty days of community service under the supervision of the court in those jurisdictions
77 which have a recognized program for community service; or

78 (b) The offender participates in and successfully completes a program established
79 under section 478.007 or other court-ordered treatment program, if available, and as part of
80 either program, the offender performs at least thirty days of community service under the
81 supervision of the court;

82 (3) As a persistent offender shall not be eligible for parole or probation until he or she
83 has served a minimum of thirty days imprisonment:

84 (a) Unless as a condition of such parole or probation such person performs at least
85 sixty days of community service under the supervision of the court in those jurisdictions
86 which have a recognized program for community service; or

87 (b) The offender participates in and successfully completes a program established
88 under section 478.007 or other court-ordered treatment program, if available, and as part of
89 either program, the offender performs at least sixty days of community service under the
90 supervision of the court;

91 (4) As an aggravated offender shall not be eligible for parole or probation until he or
92 she has served a minimum of sixty days imprisonment; **and**

93 (5) As a chronic or habitual offender shall not be eligible for parole or probation until
94 he or she has served a minimum of two years imprisonment~~[-and]~~.

95 ~~[(6)]~~ 7. Any probation or parole granted under ~~[this]~~ subsection **6 of this section** may
96 include a period of continuous alcohol monitoring or verifiable breath alcohol testing
97 performed a minimum of four times per day.

98 **8. Notwithstanding any other provision of law, an offender found guilty under**
99 **paragraph (b) of subdivision (6) of subsection 2 of this section shall not be eligible for**
100 **parole or probation until he or she has served a minimum of five years' imprisonment.**

101 **9. Notwithstanding any other provision of law, an offender found guilty under**
102 **subdivision (7) of subsection 2 of this section shall not be eligible for parole or probation**
103 **until he or she has served a minimum of ten years' imprisonment.**

✓