

FIRST REGULAR SESSION

HOUSE BILL NO. 273

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

0628H.03I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 557, RSMo, by adding thereto one new section relating to a driving while intoxicated diversion program.

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

Section A. Chapter 557, RSMo, is amended by adding thereto one new section, to be
2 known as section 557.520, to read as follows:

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

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.

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 may 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.

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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 and any
114 additional costs accrued by the person for noncompliance with program requirements
115 are not subject to discounted rates and are the sole responsibility of the person. The
116 certified ignition interlock provider shall verify the offender's income to determine the
117 cost of the ignition interlock device by verifying from the offender the previous year's
118 federal income tax return, the previous three months of weekly or monthly income
119 statements, or a court order declaring the person with an income at or below one
120 hundred and fifty 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.

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