

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 273
103RD GENERAL ASSEMBLY

0628H.05C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 302.520 and 302.530, RSMo, and to enact in lieu thereof three new sections relating to driving while intoxicated.

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

Section A. Sections 302.520 and 302.530, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 302.520, 302.530, and 557.520, to read as
3 follows:

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.

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 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.

 302.530. 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.

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.

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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. 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.

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