

SECOND REGULAR SESSION

HOUSE BILL NO. 2163

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLAN.

5239H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 217.362, 302.309, and 559.115, RSMo, and to enact in lieu thereof three new sections relating to limited driving privileges.

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

Section A. Sections 217.362, 302.309, and 559.115, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 217.362, 302.309, and 559.115, to read as follows:

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061.

2. Prior to sentencing, any judge considering an offender for this program shall notify the department. The potential candidate for the program shall be screened by the department to determine eligibility. The department shall, by regulation, establish eligibility criteria and inform the court of such criteria. The department shall notify the court as to the offender's eligibility and the availability of space in the program. Notwithstanding any other provision of law to the contrary, except as provided for in section 558.019, if an offender is eligible and there is adequate space, the court may sentence a person to the program which shall consist of institutional drug or alcohol treatment for a period of at least twelve and no more than twenty-four months, as well as a term of incarceration. The department shall determine the nature, intensity, duration, and completion criteria of the education, treatment, and aftercare portions of any program services provided. Execution of the offender's term of incarceration shall be suspended pending completion of said program. Allocation of space in the program may be

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

17 distributed by the department in proportion to drug arrest patterns in the state. If the court is
18 advised that an offender is not eligible or that there is no space available, the court shall
19 consider other authorized dispositions.

20 3. Upon successful completion of the program, the division of probation and parole
21 shall advise the sentencing court of an offender's probationary release date thirty days prior to
22 release. If the court determines that probation is not appropriate the court may order the
23 execution of the offender's sentence.

24 4. **Upon successful completion of the program, the offender may petition the**
25 **court that sentenced the offender under this section for limited driving privileges as**
26 **provided under section 302.309.**

27 5. If it is determined by the department that the offender has not successfully
28 completed the program, or that the offender is not cooperatively participating in the program,
29 the offender shall be removed from the program and the court shall be advised. Failure of an
30 offender to complete the program shall cause the offender to serve the sentence prescribed by
31 the court and void the right to be considered for probation on this sentence.

32 ~~[5-]~~ 6. An offender's first incarceration in a department of corrections program
33 pursuant to this section prior to release on probation shall not be considered a previous prison
34 commitment for the purpose of determining a minimum prison term pursuant to the
35 provisions of section 558.019.

302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to
2 302.309, the director of revenue shall return the license to the operator immediately upon the
3 termination of the period of suspension and upon compliance with the requirements of
4 chapter 303.

5 2. Any operator whose license is revoked pursuant to ~~[these sections]~~ **sections**
6 **302.302 to 302.309**, upon the termination of the period of revocation, shall apply for a new
7 license in the manner prescribed by law.

8 3. (1) All circuit courts, the director of revenue, or a commissioner operating under
9 section 478.007 shall have jurisdiction to hear applications and make eligibility
10 determinations granting limited driving privileges, except as provided under subdivision
11 (8) of this subsection. Any application may be made in writing to the director of revenue and
12 the person's reasons for requesting the limited driving privilege shall be made therein.

13 (2) When any court of record having jurisdiction or the director of revenue finds that
14 an operator is required to operate a motor vehicle in connection with any of the following:

- 15 (a) A business, occupation, or employment;
- 16 (b) Seeking medical treatment for such operator;
- 17 (c) Attending school or other institution of higher education;
- 18 (d) Attending alcohol- or drug-treatment programs;

19 (e) Seeking the required services of a certified ignition interlock device provider; or
20 (f) Any other circumstance the court or director finds would create an undue hardship
21 on the operator,

22

23 the court or director may grant such limited driving privilege as the circumstances of the case
24 justify if the court or director finds undue hardship would result to the individual, and while
25 so operating a motor vehicle within the restrictions and limitations of the limited driving
26 privilege the driver shall not be guilty of operating a motor vehicle without a valid license.

27 (3) An operator may make application to the proper court in the county in which such
28 operator resides or in the county in which is located the operator's principal place of business
29 or employment. Any application for a limited driving privilege made to a circuit court shall
30 name the director as a party defendant and shall be served upon the director prior to the grant
31 of any limited privilege, and shall be accompanied by a copy of the applicant's driving record
32 as certified by the director. Any applicant for a limited driving privilege shall have on file
33 with the department of revenue proof of financial responsibility as required by chapter 303.
34 Any application by a person who transports persons or property as classified in section
35 302.015 may be accompanied by proof of financial responsibility as required by chapter 303,
36 but if proof of financial responsibility does not accompany the application, or if the applicant
37 does not have on file with the department of revenue proof of financial responsibility, the
38 court or the director has discretion to grant the limited driving privilege to the person solely
39 for the purpose of operating a vehicle whose owner has complied with chapter 303 for that
40 vehicle, and the limited driving privilege must state such restriction. When operating such
41 vehicle under such restriction the person shall carry proof that the owner has complied with
42 chapter 303 for that vehicle.

43 (4) No limited driving privilege shall be issued to any person otherwise eligible under
44 the provisions of subdivision (6) of this subsection if such person has a license denial under
45 paragraph (a) or (b) of subdivision (8) of this subsection or on a license revocation resulting
46 from a conviction under subdivision (9) of subsection 1 of section 302.302, or a license
47 revocation under subdivision (2) of subsection 2 of section 302.525, or section 302.574 or
48 577.041, until the applicant has filed proof with the department of revenue that any motor
49 vehicle operated by the person is equipped with a functioning, certified ignition interlock
50 device as a required condition of limited driving privilege. The ignition interlock device
51 required for obtaining a limited driving privilege under paragraph (a) or (b) of subdivision (8)
52 of this subsection shall have a photo identification technology feature, and a court may
53 require a global positioning system feature for such device.

54 (5) The court order or the director's grant of the limited or restricted driving privilege
55 shall indicate the termination date of the privilege, which shall be not later than the end of the

56 period of suspension or revocation. The court order or the director's grant of the limited or
57 restricted driving privilege shall also indicate whether a functioning, certified ignition
58 interlock device is required as a condition of operating a motor vehicle with the limited
59 driving privilege. A copy of any court order shall be sent by the clerk of the court to the
60 director, and a copy shall be given to the driver which shall be carried by the driver whenever
61 such driver operates a motor vehicle. The director of revenue upon granting a limited driving
62 privilege shall give a copy of the limited driving privilege to the applicant. The applicant
63 shall carry a copy of the limited driving privilege while operating a motor vehicle. A
64 conviction which results in the assessment of points pursuant to section 302.302, other than a
65 violation of a municipal stop sign ordinance where no accident is involved, against a driver
66 who is operating a vehicle pursuant to a limited driving privilege terminates the privilege, as
67 of the date the points are assessed to the person's driving record. If the date of arrest is prior
68 to the issuance of the limited driving privilege, the privilege shall not be terminated. Failure
69 of the driver to maintain proof of financial responsibility, as required by chapter 303, or to
70 maintain proof of installation of a functioning, certified ignition interlock device, as
71 applicable, shall terminate the privilege. The director shall notify by ordinary mail the driver
72 whose privilege is so terminated.

73 (6) Except as provided in subdivision (8) of this subsection, no person is eligible to
74 receive a limited driving privilege whose license at the time of application has been
75 suspended or revoked for the following reasons:

76 (a) A conviction of any felony in the commission of which a motor vehicle was used
77 and such conviction occurred within the five-year period prior to the date of application.
78 However, any felony conviction for leaving the scene of an accident under section 577.060
79 shall not render the applicant ineligible for a limited driving privilege under this section;

80 (b) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
81 (6), (7), (8), (9), or (10) of subsection 1 of section 302.060; or

82 (c) Due to a suspension pursuant to subdivision (8) or (10) of subsection 1 of section
83 302.302 or subsection 2 of section 302.525.

84 (7) No person who possesses a commercial driver's license shall receive a limited
85 driving privilege issued for the purpose of operating a commercial motor vehicle if such
86 person's driving privilege is suspended, revoked, cancelled, denied, or disqualified. Nothing
87 in this section shall prohibit the issuance of a limited driving privilege for the purpose of
88 operating a noncommercial motor vehicle provided that pursuant to the provisions of this
89 section, the applicant is not otherwise ineligible for a limited driving privilege.

90 (8) (a) Provided that pursuant to the provisions of this section, the applicant is not
91 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
92 manner prescribed in this subsection, allow a person who has had such person's license to

93 operate a motor vehicle revoked where that person cannot obtain a new license for a period of
94 ten years, as prescribed in subdivision (9) of subsection 1 of section 302.060, to apply for a
95 limited driving privilege pursuant to this subsection. Such person shall present evidence
96 satisfactory to the court or the director that such person's habits and conduct show that the
97 person no longer poses a threat to the public safety of this state. A circuit court shall grant a
98 limited driving privilege to any individual who otherwise is eligible to receive a limited
99 driving privilege, has filed proof of installation of a certified ignition interlock device, and has
100 had no alcohol-related enforcement contacts since the alcohol-related enforcement contact
101 that resulted in the person's license denial.

102 (b) Provided that pursuant to the provisions of this section, the applicant is not
103 otherwise ineligible for a limited driving privilege or convicted of acting with criminal
104 negligence while driving while intoxicated to cause the death of another person, a circuit
105 court or the director may, in the manner prescribed in this subsection, allow a person who has
106 had such person's license to operate a motor vehicle revoked where that person cannot obtain
107 a new license for a period of five years because of two convictions of driving while
108 intoxicated, as prescribed in subdivision (10) of subsection 1 of section 302.060, to apply for
109 a limited driving privilege pursuant to this subsection. Such person shall present evidence
110 satisfactory to the court or the director that such person's habits and conduct show that the
111 person no longer poses a threat to the public safety of this state. Any person who is denied a
112 license permanently in this state because of an alcohol-related conviction subsequent to a
113 restoration of such person's driving privileges pursuant to subdivision (9) of **subsection 1** of
114 section 302.060 shall not be eligible for limited driving privilege pursuant to the provisions of
115 this subdivision. A circuit court shall grant a limited driving privilege to any individual who
116 otherwise is eligible to receive a limited driving privilege, has filed proof of installation of a
117 certified ignition interlock device, and has had no alcohol-related enforcement contacts since
118 the alcohol-related enforcement contact that resulted in the person's license denial.

119 (9) **An adult treatment court, as defined in section 478.001, or** a DWI docket or
120 court established under section 478.007 may grant a limited driving privilege to a participant
121 in or graduate of the program who would otherwise be ineligible for such privilege under
122 another provision of law.

123 4. Any person who has received notice of denial of a request of limited driving
124 privilege by the director of revenue may make a request for a review of the director's
125 determination in the circuit court of the county in which the person resides or the county in
126 which is located the person's principal place of business or employment within thirty days of
127 the date of mailing of the notice of denial. Such review shall be based upon the records of the
128 department of revenue and other competent evidence and shall be limited to a review of
129 whether the applicant was statutorily entitled to the limited driving privilege.

130 5. The director of revenue shall promulgate rules and regulations necessary to carry
131 out the provisions of this section. Any rule or portion of a rule, as that term is defined in
132 section 536.010, that is created under the authority delegated in this section shall become
133 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
134 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
135 powers vested with the general assembly pursuant to chapter 536 to review, to delay the
136 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then
137 the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001,
138 shall be invalid and void.

 559.115. 1. Neither probation nor parole shall be granted by the circuit court between
2 the time the transcript on appeal from the offender's conviction has been filed in appellate
3 court and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection [8] 9 of this section, a circuit court only
5 upon its own motion and not that of the state or the offender shall have the power to grant
6 probation to an offender anytime up to one hundred twenty days after such offender has been
7 delivered to the department of corrections but not thereafter. The court may request
8 information and a recommendation from the department concerning the offender and such
9 offender's behavior during the period of incarceration. Except as provided in this section, the
10 court may place the offender on probation in a program created pursuant to section 217.777,
11 or may place the offender on probation with any other conditions authorized by law.

12 3. The court may recommend placement of an offender in a department of corrections
13 one hundred twenty-day program under this subsection. The department of corrections shall
14 assess each offender to determine the appropriate one hundred twenty-day program in which
15 to place the offender, which may include placement in the structured cognitive behavioral
16 intervention program or institutional treatment program. The placement of an offender in the
17 structured cognitive behavioral intervention program or institutional treatment program shall
18 be at the sole discretion of the department based on the assessment of the offender and
19 available bed space. When the court recommends and receives placement of an offender in a
20 department of corrections one hundred twenty-day program, the offender shall be released on
21 probation if the department of corrections determines that the offender has successfully
22 completed the program except as follows. Upon successful completion of a program under
23 this subsection, the division of probation and parole shall advise the sentencing court of an
24 offender's probationary release date thirty days prior to release. The court shall follow the
25 recommendation of the department unless the court determines that probation is not
26 appropriate. If the court determines that probation is not appropriate, the court may order the
27 execution of the offender's sentence only after conducting a hearing on the matter within
28 ninety to one hundred twenty days from the date the offender was delivered to the department

29 of corrections. If the department determines the offender has not successfully completed a
30 one hundred twenty-day program under this subsection, the division of probation and parole
31 shall advise the prosecuting attorney and the sentencing court of the defendant's unsuccessful
32 program exit and the defendant shall be removed from the program. The department shall
33 report on the offender's participation in the program and may provide recommendations for
34 terms and conditions of an offender's probation. The court shall then have the power to grant
35 probation or order the execution of the offender's sentence.

36 **4. Upon successful completion of a one-hundred-twenty-day institutional**
37 **treatment program under subsection 3 of this section, the offender may petition the**
38 **court for limited driving privileges as provided under section 302.309.**

39 **5.** If the court is advised that an offender is not eligible for placement in a one
40 hundred twenty-day program under subsection 3 of this section, the court shall consider other
41 authorized dispositions. If the department of corrections one hundred twenty-day program
42 under subsection 3 of this section is full, the court may place the offender in a private program
43 approved by the department of corrections or the court, the expenses of such program to be
44 paid by the offender, or in an available program offered by another organization. If the
45 offender is convicted of a class C, class D, or class E nonviolent felony, the court may order
46 probation while awaiting appointment to treatment.

47 ~~[5-]~~ **6.** Except when the offender has been found to be a predatory sexual offender
48 pursuant to section 566.125, the court shall request the department of corrections to conduct a
49 sexual offender assessment if the defendant has been found guilty of sexual abuse when
50 classified as a class B felony. Upon completion of the assessment, the department shall
51 provide to the court a report on the offender and may provide recommendations for terms and
52 conditions of an offender's probation. The assessment shall not be considered a one hundred
53 twenty-day program as provided under subsection 3 of this section. The process for granting
54 probation to an offender who has completed the assessment shall be as provided under
55 subsections 2 and ~~[6]~~ 7 of this section.

56 ~~[6-]~~ **7.** Unless the offender is being granted probation pursuant to successful
57 completion of a one hundred twenty-day program the circuit court shall notify the state in
58 writing when the court intends to grant probation to the offender pursuant to the provisions of
59 this section. The state may, in writing, request a hearing within ten days of receipt of the
60 court's notification that the court intends to grant probation. Upon the state's request for a
61 hearing, the court shall grant a hearing as soon as reasonably possible. If the state does not
62 respond to the court's notice in writing within ten days, the court may proceed upon its own
63 motion to grant probation.

64 ~~[7:]~~ **8.** An offender's first incarceration under this section prior to release on probation
65 shall not be considered a previous prison commitment for the purpose of determining a
66 minimum prison term under the provisions of section 558.019.

67 ~~[8:]~~ **9.** Notwithstanding any other provision of law, probation may not be granted
68 pursuant to this section to offenders who have been convicted of murder in the second degree
69 pursuant to section 565.021; forcible rape pursuant to section 566.030 as it existed prior to
70 August 28, 2013; rape in the first degree under section 566.030; forcible sodomy pursuant to
71 section 566.060 as it existed prior to August 28, 2013; sodomy in the first degree under
72 section 566.060; statutory rape in the first degree pursuant to section 566.032; statutory
73 sodomy in the first degree pursuant to section 566.062; child molestation in the first degree
74 pursuant to section 566.067 when classified as a class A felony; abuse of a child pursuant to
75 section 568.060 when classified as a class A felony; or an offender who has been found to be
76 a predatory sexual offender pursuant to section 566.125; any offense under section 557.045;
77 or any offense in which there exists a statutory prohibition against either probation or parole.

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