

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 1200

102ND GENERAL ASSEMBLY

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2828S.05C

KRISTINA MARTIN, Secretary

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## AN ACT

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

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

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

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

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

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

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

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

31           (1) The defendant has not previously pled guilty to or  
32 been convicted of an intoxicated-related traffic offense in  
33 violation of sections 577.010, 577.012, 577.013, 577.014,  
34 577.015, or 577.016;

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

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

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

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

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

46           3. Upon a motion filed by the prosecuting or circuit  
47 attorney, the court may continue a diverted case involving  
48 an intoxicated-related traffic offense if the prosecuting or

49 circuit attorney deems appropriate based on the specific  
50 situation of the defendant. The case shall be diverted for  
51 a period not to exceed twenty-four months and order the  
52 defendant to comply with terms, conditions, or requirements.

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

61 5. If the court continues the criminal case to divert  
62 the defendant to this DWI diversion program, a copy of such  
63 order shall be sent to the department of revenue and, upon  
64 receipt, the department shall continue any proceeding to  
65 suspend or revoke a license pursuant to chapter 302 for a  
66 period not to exceed twenty-four months. After the  
67 defendant successfully completes the requirements of the DWI  
68 diversion program, the department shall dismiss any  
69 proceeding against the defendant.

70 6. The court shall notify the defendant that he or she  
71 is required to install a functioning, certified ignition  
72 interlock device on any vehicle that the person operates and  
73 the person is prohibited from operating a motor vehicle  
74 unless that vehicle is equipped with a functioning,  
75 certified ignition interlock device pursuant to this  
76 section. These requirements shall be in addition to any  
77 other provisions of this chapter or chapter 302 requiring  
78 installation and maintenance of an ignition interlock  
79 device. Any person required to use an ignition interlock

80 device shall comply with such requirement subject to the  
81 penalties provided by section 577.599.

82 7. The department of revenue shall inform the  
83 defendant of the requirements of this section, including the  
84 term for which the person is required to have a certified  
85 ignition interlock device installed and shall notify the  
86 person that installation of a functioning, certified  
87 ignition interlock device on a vehicle does not allow the  
88 person to drive without a valid driver's license. The  
89 department shall record the mandatory use of the device for  
90 the term required and the time when the device is required  
91 to be installed pursuant to the court order. A person who  
92 is notified by the department shall do all of the following:

93 (1) Arrange for each vehicle operated by the person to  
94 be equipped with a functioning, certified ignition interlock  
95 device by a certified ignition interlock device provider as  
96 determined by the department of transportation; and

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

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

103 (1) If the device is removed or indicates that the  
104 person has attempted to remove, bypass by a running retest,  
105 or tamper with the device;

106 (2) If the person fails three or more times to comply  
107 with any requirement for the maintenance or calibration of  
108 the ignition interlock device; or

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

110 If a person has any failed start that occurs within the last  
111 ninety days of the required period of installation of the  
112 ignition interlock device, the term may be extended for a  
113 period of up to ninety days.

114 9. After the completion of the DWI diversion program  
115 and if the defendant has complied with all the imposed terms  
116 and conditions, the court shall dismiss the criminal case  
117 against the defendant, record the dismissal, and transmit  
118 the record to the central repository upon dismissal. Any  
119 court automation system, including any pilot project, that  
120 provides public access to electronic record on the internet  
121 shall redact any personal identifying information of the  
122 defendant, including name, address, and year of birth. Such  
123 information shall be provided in a confidential filing sheet  
124 contemporaneously filed with the court or entered by the  
125 court, which shall not be subject to public inspection or  
126 availability.

127 10. In the event of non-compliance by the defendant  
128 with the terms and conditions of the DWI diversion program,  
129 the prosecuting or circuit attorney may file a motion to  
130 terminate the defendant from the diversion program and may  
131 recommend the prosecution of the underlying case. Upon the  
132 filing of such motion, after notice to the defendant, the  
133 court shall hold a hearing to determine by preponderance of  
134 the evidence whether the defendant has failed to comply with  
135 the terms and conditions of the diversion program. If the  
136 court finds that the defendant has not complied with the  
137 terms and conditions of the diversion program, the court may  
138 end the diversion program and set the case on the next  
139 available criminal docket.

140 11. Any defendant who is found guilty of any  
141 intoxicated-related traffic offense and who has previously

142 utilized the DWI diversion program pursuant to this section  
143 shall be considered a prior offender as defined in section  
144 577.001, provided that the prior offense occurred within  
145 five years of the intoxicated-related offense for which the  
146 person is charged, as provided in subsection 20 of section  
147 577.001.

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

154         13. A certified ignition interlock device provider  
155 shall adopt a discounted fee schedule that provides for the  
156 payment of the costs of the certified ignition interlock  
157 device by offenders with an income at or below one hundred  
158 and fifty percent of the federal poverty level. A person  
159 with an income at or below one hundred and fifty percent of  
160 the federal poverty level who provides income verification  
161 shall be responsible for ten percent of the cost of the  
162 ignition interlock device and any additional costs accrued  
163 by the person for noncompliance with program requirements  
164 are not subject to discounted rates and are the sole  
165 responsibility of the person. The certified ignition  
166 interlock provider shall verify the offender's income to  
167 determine the cost of the ignition interlock device by  
168 verifying from the offender the previous year's federal  
169 income tax return, the previous three months of weekly or  
170 monthly income statements, or a court order declaring the  
171 person with an income at or below one hundred and fifty  
172 percent of the federal poverty level.

173           14. Nothing in this section shall prohibit a  
174 prosecuting or circuit attorney from diverting a criminal  
175 case pursuant to section 557.014 in any criminal case  
176 involving an intoxicated-related traffic offense.

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