

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 74
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
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 prosecuting or circuit attorney
21 may divert the criminal case, with the consent of the
22 defendant, to a driving while intoxicated (DWI) diversion
23 program by filing a motion with the court requesting the
24 court to stay the criminal proceeding, if the defendant
25 meets the following criteria for eligibility into the
26 driving while intoxicated diversion program:

27 (1) The defendant has not previously pled guilty to or
28 been convicted of an intoxicated-related traffic offense in
29 violation of sections 577.010, 577.012, 577.013, 577.014,
30 577.015, or 577.016;

31 (2) The defendant is not currently enrolled in, and
32 has not in the previous ten years completed, a diversion
33 program pursuant to this section;

34 (3) The defendant does not hold a commercial driver's
35 license;

36 (4) The offense did not occur while operating a
37 commercial vehicle; and

38 (5) The offense did not result in the injury or death
39 of another person.

40 3. Upon a motion filed by a prosecuting or circuit
41 attorney, the court may continue a diverted case involving
42 an intoxicated-related traffic offense for a period not to
43 exceed twenty-four months and order the defendant to comply
44 with terms, conditions, or requirements that the prosecuting
45 or circuit attorney deems appropriate based on the specific
46 situation of the defendant.

47 4. The DWI diversion plan shall be for a specified
48 period and be in writing. The prosecuting or circuit
49 attorney has the sole authority to develop diversionary
50 program requirements, but shall require installation of an
51 ignition interlock device for a period of not less than one

52 year, require the defendant to participate in a victim
53 impact panel sponsored by a nonprofit organization, and
54 other terms deemed necessary by the court.

55 5. If the court continues the criminal case to divert
56 the defendant to a DWI diversion program, the department of
57 revenue shall continue any proceeding to suspend or revoke a
58 license pursuant to chapter 302 for a period not to exceed
59 twenty-four months. After the defendant successfully
60 completes the requirements of the DWI diversion program, the
61 department shall dismiss any proceeding against the
62 defendant.

63 6. The court shall notify the defendant that he or she
64 is required to install a functioning, certified ignition
65 interlock device on any vehicle that the person operates and
66 the person is prohibited from operating a motor vehicle
67 unless that vehicle is equipped with a functioning,
68 certified ignition interlock device pursuant to this
69 section. These requirements shall be in addition to any
70 other provisions of this chapter or chapter 302 requiring
71 installation and maintenance of an ignition interlock
72 device. Any person required to use an ignition interlock
73 device shall comply with such requirement subject to the
74 penalties provided by section 577.599.

75 7. The department of revenue shall inform the
76 defendant of the requirements of this section, including the
77 term for which the person is required to have a certified
78 ignition interlock device installed and shall notify the
79 person that installation of a functioning, certified
80 ignition interlock device on a vehicle does not allow the
81 person to drive without a valid driver's license. The
82 department shall record the mandatory use of the device for
83 the term required and the time when the device is required

84 to be installed pursuant to the court order. A person who
85 is notified by the department shall do all of the following:

86 (1) Arrange for each vehicle operated by the person to
87 be equipped with a functioning, certified ignition interlock
88 device by a certified ignition interlock device provider as
89 determined by the department of transportation; and

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

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

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

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

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

103 If a person has any failed start that occurs within the last
104 ninety days of the required period of installation of the
105 ignition interlock device, the term shall be extended for a
106 period of ninety days.

107 9. After the completion of the DWI diversion program
108 and if the defendant has complied with all the imposed terms
109 and conditions, the court shall dismiss the criminal case
110 against the defendant, record the dismissal, and transmit
111 the record to the central repository upon dismissal. Any
112 court automation system, including any pilot project, that
113 provides public access to electronic record on the internet
114 shall redact any personal identifying information of the
115 defendant, including name, address, and year of birth. Such
116 information shall be provided in a confidential filing sheet

117 contemporaneously filed with the court or entered by the
118 court, which shall not be subject to public inspection or
119 availability.

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

133 11. Any defendant who is found guilty of any
134 intoxicated-related traffic offense and who has previously
135 utilized the DWI diversion program pursuant to this section
136 shall be considered a prior offender as defined in section
137 577.001, provided that the prior offense occurred within
138 five years of the intoxicated-related offense for which the
139 person is charged, as provided in subsection 20 of section
140 577.001.

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