

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 one new section, to be known as section 557.520, to read as follows:

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

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

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

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

2. In any criminal case involving an intoxicated-related traffic offense, the prosecuting or circuit attorney may divert the criminal case to a driving while intoxicated

(DWI) diversion program by filing a motion with the court requesting the court to stay the criminal proceeding, if the defendant meets the following criteria for eligibility into the driving while intoxicated diversion program:

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

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

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

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

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

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

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

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

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

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

(1) Arrange for each vehicle operated by the person to be equipped with a functioning, certified ignition interlock

device by a certified ignition interlock device provider as determined by the department of transportation; and

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

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

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

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

(3) If the device registers a failed start.

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

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

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

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