

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 74

102ND GENERAL ASSEMBLY

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0645S.04C

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 prosecuting or circuit attorney  
21 may divert the criminal case to a driving while intoxicated  
22 (DWI) diversion program by filing a motion with the court  
23 requesting the court to stay the criminal proceeding, if the  
24 defendant meets the following criteria for eligibility into  
25 the driving while intoxicated diversion program:

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

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

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

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

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

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

46           4. The DWI diversion plan shall be for a specified  
47 period and be in writing. The prosecuting or circuit  
48 attorney has the sole authority to develop diversionary

49 program requirements, but shall require installation of an  
50 ignition interlock device for a period of not less than one  
51 year, require the defendant to participate in a victim  
52 impact panel sponsored by a nonprofit organization, and  
53 other terms deemed necessary by the court.

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

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

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

81 department shall record the mandatory use of the device for  
82 the term required and the time when the device is required  
83 to be installed pursuant to the court order. A person who  
84 is notified by the department shall do all of the following:

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

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

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

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

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

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

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

106 9. After the completion of the DWI diversion program  
107 and if the defendant has complied with all the imposed terms  
108 and conditions, the court shall dismiss the criminal case  
109 against the defendant, record the dismissal, and transmit  
110 the record to the central repository upon dismissal. Any  
111 court automation system, including any pilot project, that

112 provides public access to electronic record on the internet  
113 shall redact any personal identifying information of the  
114 defendant, including name, address, and year of birth. Such  
115 information shall be provided in a confidential filing sheet  
116 contemporaneously filed with the court or entered by the  
117 court, which shall not be subject to public inspection or  
118 availability.

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

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

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