

SENATE BILL NO. 353

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

0093S.01I

KRISTINA MARTIN, Secretary

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.

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.

✓