

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILL NOS. 1695,
1742 & 1674**

95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 28, 2010, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4453S.12C

AN ACT

To repeal sections 302.309, 302.750, 478.001, 478.003, 478.009, 479.170, 542.266, 542.276, 577.010, 577.012, 577.023, 577.039, and 577.041, RSMo, and to enact in lieu thereof sixteen new sections relating to intoxication-related offenses, with penalty provisions.

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

Section A. Sections 302.309, 302.750, 478.001, 478.003, 478.009, 479.170, 542.266, 542.276, 577.010, 577.012, 577.023, 577.039, and 577.041, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 302.309, 302.750, 478.001, 478.003, 478.007, 478.009, 479.170, 542.266, 542.276, 577.005, 577.006, 577.010, 577.012, 577.023, 577.039, and 577.041, to read as follows:

302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to 302.309, the director of revenue shall return the license to the operator immediately upon the termination of the period of suspension and upon compliance with the requirements of chapter 303, RSMo.

2. Any operator whose license is revoked pursuant to these sections, upon the termination of the period of revocation, shall apply for a new license in the manner prescribed by law.

3. (1) All circuit courts [or], the director of revenue, **or a commissioner operating under section 478.007** shall have jurisdiction to hear applications and make eligibility determinations granting limited driving privileges. Any

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

11 application may be made in writing to the director of revenue and the person's
12 reasons for requesting the limited driving privilege shall be made therein.

13 (2) When any court of record having jurisdiction or the director of revenue
14 finds that an operator is required to operate a motor vehicle in connection with
15 any of the following:

16 (a) A business, occupation, or employment;

17 (b) Seeking medical treatment for such operator;

18 (c) Attending school or other institution of higher education;

19 (d) Attending alcohol or drug treatment programs;

20 (e) Seeking the required services of a certified ignition interlock device
21 provider; or

22 (f) Any other circumstance the court or director finds would create an
23 undue hardship on the operator; the court or director may grant such limited
24 driving privilege as the circumstances of the case justify if the court or director
25 finds undue hardship would result to the individual, and while so operating a
26 motor vehicle within the restrictions and limitations of the limited driving
27 privilege the driver shall not be guilty of operating a motor vehicle without a
28 valid license.

29 (3) An operator may make application to the proper court in the county
30 in which such operator resides or in the county in which is located the operator's
31 principal place of business or employment. Any application for a limited driving
32 privilege made to a circuit court shall name the director as a party defendant and
33 shall be served upon the director prior to the grant of any limited privilege, and
34 shall be accompanied by a copy of the applicant's driving record as certified by
35 the director. Any applicant for a limited driving privilege shall have on file with
36 the department of revenue proof of financial responsibility as required by chapter
37 303, RSMo. Any application by a person who transports persons or property as
38 classified in section 302.015 may be accompanied by proof of financial
39 responsibility as required by chapter 303, RSMo, but if proof of financial
40 responsibility does not accompany the application, or if the applicant does not
41 have on file with the department of revenue proof of financial responsibility, the
42 court or the director has discretion to grant the limited driving privilege to the
43 person solely for the purpose of operating a vehicle whose owner has complied
44 with chapter 303, RSMo, for that vehicle, and the limited driving privilege must
45 state such restriction. When operating such vehicle under such restriction the
46 person shall carry proof that the owner has complied with chapter 303, RSMo, for

47 that vehicle.

48 (4) No limited driving privilege shall be issued to any person otherwise
49 eligible under the provisions of paragraph (a) of subdivision (6) of this subsection
50 on a license revocation resulting from a conviction under subdivision (9) of
51 subsection 1 of section 302.302, or a license denial under paragraph (a) or (b) of
52 subdivision (8) of this subsection, until the applicant has filed proof with the
53 department of revenue that any motor vehicle operated by the person is equipped
54 with a functioning, certified ignition interlock device as a required condition of
55 limited driving privilege.

56 (5) The court order or the director's grant of the limited or restricted
57 driving privilege shall indicate the termination date of the privilege, which shall
58 be not later than the end of the period of suspension or revocation. A copy of any
59 court order shall be sent by the clerk of the court to the director, and a copy shall
60 be given to the driver which shall be carried by the driver whenever such driver
61 operates a motor vehicle. The director of revenue upon granting a limited driving
62 privilege shall give a copy of the limited driving privilege to the applicant. The
63 applicant shall carry a copy of the limited driving privilege while operating a
64 motor vehicle. A conviction which results in the assessment of points pursuant
65 to section 302.302, other than a violation of a municipal stop sign ordinance
66 where no accident is involved, against a driver who is operating a vehicle
67 pursuant to a limited driving privilege terminates the privilege, as of the date the
68 points are assessed to the person's driving record. If the date of arrest is prior
69 to the issuance of the limited driving privilege, the privilege shall not be
70 terminated. Failure of the driver to maintain proof of financial responsibility, as
71 required by chapter 303, or to maintain proof of installation of a functioning,
72 certified ignition interlock device, as applicable, shall terminate the
73 privilege. The director shall notify by ordinary mail the driver whose privilege
74 is so terminated.

75 (6) Except as provided in subdivision (8) of this subsection, no person is
76 eligible to receive a limited driving privilege who at the time of application for a
77 limited driving privilege has previously been granted such a privilege within the
78 immediately preceding five years, or whose license has been suspended or revoked
79 for the following reasons:

80 (a) A conviction of violating the provisions of section 577.010 or 577.012,
81 RSMo, or any similar provision of any federal or state law, or a municipal or
82 county law where the judge in such case was an attorney and the defendant was

83 represented by or waived the right to an attorney in writing, until the person has
84 completed the first thirty days of a suspension or revocation imposed pursuant
85 to this chapter;

86 (b) A conviction of any felony in the commission of which a motor vehicle
87 was used;

88 (c) Ineligibility for a license because of the provisions of subdivision (1),
89 (2), (4), (5), (6), (7), (8), (9), (10) or (11) of section 302.060;

90 (d) Because of operating a motor vehicle under the influence of narcotic
91 drugs, a controlled substance as defined in chapter 195, RSMo, or having left the
92 scene of an accident as provided in section 577.060, RSMo;

93 (e) Due to a revocation for the first time for failure to submit to a chemical
94 test pursuant to section 577.041, RSMo, or due to a refusal to submit to a
95 chemical test in any other state, if such person has not completed the first ninety
96 days of such revocation;

97 (f) Violation more than once of the provisions of section 577.041, RSMo,
98 or a similar implied consent law of any other state; or

99 (g) Due to a suspension pursuant to subsection 2 of section 302.525 and
100 who has not completed the first thirty days of such suspension, provided the
101 person is not otherwise ineligible for a limited driving privilege; or due to a
102 revocation pursuant to subsection 2 of section 302.525 if such person has not
103 completed such revocation.

104 (7) No person who possesses a commercial driver's license shall receive a
105 limited driving privilege issued for the purpose of operating a commercial motor
106 vehicle if such person's driving privilege is suspended, revoked, canceled, denied,
107 or disqualified. Nothing in this section shall prohibit the issuance of a limited
108 driving privilege for the purpose of operating a noncommercial motor vehicle
109 provided that pursuant to the provisions of this section, the applicant is not
110 otherwise ineligible for a limited driving privilege.

111 (8) (a) Provided that pursuant to the provisions of this section, the
112 applicant is not otherwise ineligible for a limited driving privilege, a circuit court
113 or the director may, in the manner prescribed in this subsection, allow a person
114 who has had such person's license to operate a motor vehicle revoked where that
115 person cannot obtain a new license for a period of ten years, as prescribed in
116 subdivision (9) of section 302.060, to apply for a limited driving privilege
117 pursuant to this subsection if such person has served at least three years of such
118 disqualification or revocation. Such person shall present evidence satisfactory to

119 the court or the director that such person has not been convicted of any offense
120 related to alcohol, controlled substances or drugs during the preceding three
121 years and that the person's habits and conduct show that the person no longer
122 poses a threat to the public safety of this state.

123 (b) Provided that pursuant to the provisions of this section, the applicant
124 is not otherwise ineligible for a limited driving privilege or convicted of
125 involuntary manslaughter while operating a motor vehicle in an intoxicated
126 condition, a circuit court or the director may, in the manner prescribed in this
127 subsection, allow a person who has had such person's license to operate a motor
128 vehicle revoked where that person cannot obtain a new license for a period of five
129 years because of two convictions of driving while intoxicated, as prescribed in
130 subdivision (10) of section 302.060, to apply for a limited driving privilege
131 pursuant to this subsection if such person has served at least two years of such
132 disqualification or revocation. Such person shall present evidence satisfactory to
133 the court or the director that such person has not been convicted of any offense
134 related to alcohol, controlled substances or drugs during the preceding two years
135 and that the person's habits and conduct show that the person no longer poses a
136 threat to the public safety of this state. Any person who is denied a license
137 permanently in this state because of an alcohol-related conviction subsequent to
138 a restoration of such person's driving privileges pursuant to subdivision (9) of
139 section 302.060 shall not be eligible for limited driving privilege pursuant to the
140 provisions of this subdivision.

141 **(9) A DWI docket or court established under section 478.007 may**
142 **grant a limited driving privilege to a participant in or graduate of the**
143 **program who would otherwise be ineligible for such privilege under**
144 **another provision of law. The DWI docket or court shall not grant a**
145 **limited driving privilege to a participant during his or her initial forty-**
146 **five days of participation.**

147 4. Any person who has received notice of denial of a request of limited
148 driving privilege by the director of revenue may make a request for a review of
149 the director's determination in the circuit court of the county in which the person
150 resides or the county in which is located the person's principal place of business
151 or employment within thirty days of the date of mailing of the notice of
152 denial. Such review shall be based upon the records of the department of revenue
153 and other competent evidence and shall be limited to a review of whether the
154 applicant was statutorily entitled to the limited driving privilege.

155 5. The director of revenue shall promulgate rules and regulations
156 necessary to carry out the provisions of this section. Any rule or portion of a rule,
157 as that term is defined in section 536.010, RSMo, that is created under the
158 authority delegated in this section shall become effective only if it complies with
159 and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
160 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
161 and if any of the powers vested with the general assembly pursuant to chapter
162 536, RSMo, to review, to delay the effective date or to disapprove and annul a
163 rule are subsequently held unconstitutional, then the grant of rulemaking
164 authority and any rule proposed or adopted after August 28, 2001, shall be
165 invalid and void.

302.750. 1. If a person refuses, upon the request of a law enforcement
2 officer pursuant to section 302.745, to submit to any test allowed under that
3 section, [then none shall be given and] evidence of the refusal shall be admissible
4 in any proceeding to determine whether a person was operating a commercial
5 motor vehicle while under the influence of alcohol or controlled substances. In
6 this event, the officer shall make a sworn report to the director that he requested
7 a test pursuant to section 302.745 and that the person refused to submit to such
8 testing.

9 2. A person requested to submit to a test as provided by section 302.745
10 shall be warned by the law enforcement officer requesting the test that a refusal
11 to submit to the test will result in that person being immediately placed out of
12 service for a period of twenty-four hours and being disqualified from operating a
13 commercial motor vehicle for a period of not less than one year if for a first
14 refusal to submit to the test and for life if for a second or subsequent refusal to
15 submit to the test. The director may issue rules and regulations, in accordance
16 with guidelines established by the secretary, under which a disqualification for
17 life under this section may be reduced to a period of not less than ten years.

18 3. Upon receipt of the sworn report of a law enforcement officer submitted
19 under subsection 1 of this section, the director shall disqualify the driver from
20 operating a commercial motor vehicle.

21 4. If a person has been disqualified from operating a commercial motor
22 vehicle because of his refusal to submit to a chemical test, he may request a
23 hearing before a court of record in the county in which the request was
24 made. Upon his request, the clerk of the court shall notify the prosecuting
25 attorney of the county and the prosecutor shall appear at the hearing on behalf

26 of the officer. At the hearing the judge shall determine only:

27 (1) Whether or not the law enforcement officer had reasonable grounds to
28 believe that the person was driving a commercial motor vehicle with any amount
29 of alcohol in his system;

30 (2) Whether or not the person refused to submit to the test.

31 5. If the judge determines any issues not to be in the affirmative, he shall
32 order the director to reinstate the privilege to operate a commercial motor vehicle.

33 6. Requests for review as herein provided shall go to the head of the
34 docket of the court wherein filed.

478.001. 1. Drug courts may be established by any circuit court pursuant
2 to sections 478.001 to 478.006 to provide an alternative for the judicial system to
3 dispose of cases which stem from drug use. A drug court shall combine judicial
4 supervision, drug testing and treatment of drug court participants. Except for
5 good cause found by the court, a drug court making a referral for substance abuse
6 treatment, when such program will receive state or federal funds in connection
7 with such referral, shall refer the person only to a program which is certified by
8 the department of mental health, unless no appropriate certified treatment
9 program is located within the same county as the drug court. Upon successful
10 completion of the treatment program, the charges, petition or penalty against a
11 drug court participant may be dismissed, reduced or modified. Any fees received
12 by a court from a defendant as payment for substance treatment programs shall
13 not be considered court costs, charges or fines.

14 **2. Under sections 478.001 to 478.007, a DWI docket may be**
15 **established by a circuit court, or any county with a charter form of**
16 **government and with more than six hundred thousand but fewer than**
17 **seven hundred thousand inhabitants with a county municipal court**
18 **established under section 66.010, to provide an alternative for the**
19 **judicial system to dispose of cases which stem from driving while**
20 **intoxicated. A drug court commissioner may serve as a commissioner**
21 **in a DWI court or any other treatment or problem-solving court as**
22 **designated by the drug court coordinating commission. Drug court**
23 **commissioners may serve in counties other than the county they are**
24 **appointed upon agreement by the presiding judge of that county and**
25 **assignment by the supreme court.**

478.003. In any judicial circuit of this state, a majority of the judges of the
2 circuit court may designate a judge to hear cases arising in the circuit subject to

3 the provisions of sections 478.001 to [478.006] **478.007**. In lieu thereof and
4 subject to appropriations or other funds available for such purpose, a majority of
5 the judges of the circuit court may appoint a person or persons to act as drug
6 court commissioners. Each commissioner shall be appointed for a term of four
7 years, but may be removed at any time by a majority of the judges of the circuit
8 court. The qualifications and compensation of the commissioner shall be the
9 same as that of an associate circuit judge. If the compensation of a commissioner
10 appointed pursuant to this section is provided from other than state funds, the
11 source of such fund shall pay to and reimburse the state for the actual costs of
12 the salary and benefits of the commissioner. The commissioner shall have all the
13 powers and duties of a circuit judge, except that any order, judgment or decree
14 of the commissioner shall be confirmed or rejected by an associate circuit or
15 circuit judge by order of record entered within the time the judge could set aside
16 such order, judgment or decree had the same been made by the judge. If so
17 confirmed, the order, judgment or decree shall have the same effect as if made by
18 the judge on the date of its confirmation.

**478.007. 1. Any circuit court, or any county with a charter form
2 of government and with more than six hundred thousand but fewer
3 than seven hundred thousand inhabitants with a county municipal
4 court established under section 66.010, may establish a docket or court
5 to provide an alternative for the judicial system to dispose of cases in
6 which a person has pleaded guilty to driving while intoxicated or
7 driving with excessive blood alcohol content and:**

8 (1) The person was operating a motor vehicle with at least
9 fifteen-hundredths of one percent or more by weight of alcohol in such
10 person's blood; or

11 (2) The person has previously pleaded guilty to or has been
12 found guilty of one or more intoxication-related traffic offenses as
13 defined by section 577.023; or

14 (3) The person has two or more previous alcohol-related
15 enforcement contacts as defined in section 302.525.

16 2. This docket or court shall combine judicial supervision, drug
17 testing, continuous alcohol monitoring, substance abuse traffic offender
18 program compliance, and treatment of DWI court participants. The
19 court may assess any and all necessary costs for participation in DWI
20 court against the participant. Any money received from such assessed

21 **costs by a court from a defendant shall not be considered court costs,**
22 **charges, or fines. This docket or court may operate in conjunction with**
23 **a drug court established pursuant to sections 478.001 to 478.006.**

478.009. 1. In order to coordinate the allocation of resources available to
2 drug courts **and the dockets or courts established by section 478.007**
3 throughout the state, there is hereby established a "Drug **and DWI** Courts
4 Coordinating Commission" in the judicial department. The drug **and DWI** courts
5 coordinating commission shall consist of one member selected by the director of
6 the department of corrections; one member selected by the director of the
7 department of social services; one member selected by the director of the
8 department of mental health; one member selected by the director of the
9 department of public safety; one member selected by the state courts
10 administrator; and three members selected by the supreme court. The supreme
11 court shall designate the chair of the commission. The commission shall
12 periodically meet at the call of the chair; evaluate resources available for
13 assessment and treatment of persons assigned to drug courts **and DWI courts**
14 or for operation of drug **and DWI** courts; secure grants, funds and other property
15 and services necessary or desirable to facilitate drug **and DWI** court operation;
16 and allocate such resources among the various drug **and DWI** courts operating
17 within the state.

18 2. There is hereby established in the state treasury a "Drug **and DWI**
19 Court Resources Fund", which shall be administered by the drug **and DWI** courts
20 coordinating commission. Funds available for allocation or distribution by the
21 drug **and DWI** courts coordinating commission may be deposited into the drug
22 **and DWI** court resources fund. Notwithstanding the provisions of section 33.080,
23 RSMo, to the contrary, moneys in the drug **and DWI** court resources fund shall
24 not be transferred or placed to the credit of the general revenue fund of the state
25 at the end of each biennium, but shall remain deposited to the credit of the drug
26 **and DWI** court resources fund.

479.170. 1. If, in the progress of any trial before a municipal judge, it
2 shall appear to the judge that the accused ought to be put upon trial for an
3 offense against the criminal laws of the state and not cognizable before him as
4 municipal judge, he shall immediately stop all further proceedings before him as
5 municipal judge and cause the complaint to be made before some associate circuit
6 judge within the county.

7 2. **For purposes of this section, any offense involving the**

8 **operation of a motor vehicle in an intoxicated condition as defined in**
9 **section 577.001 shall not be cognizable in municipal court, if the**
10 **defendant has been convicted, found guilty, or pled guilty to two or**
11 **more previous intoxication-related traffic offenses as defined in section**
12 **577.023, or has had two or more previous alcohol-related enforcement**
13 **contacts as defined in section 302.525.**

542.266. 1. A search warrant is a written order of a court commanding
2 the search of a person, place, or thing and the seizure, or photographing or
3 copying, of property found thereon or therein.

4 **2. Except as provided in subsection 3 of this section,** a search
5 warrant may be issued by an appellate judge or by any judge of a court having
6 original jurisdiction of criminal offenses within the territorial jurisdiction where
7 the person, place, or movable or immovable thing to be searched is located at the
8 time of the making of the application.

9 **3. In the case of a law enforcement officer or prosecutor applying**
10 **for a search warrant to further investigate an alleged intoxication-**
11 **related traffic offense as defined in section 577.023, the officer or**
12 **prosecutor may apply to a judge who does not have original**
13 **jurisdiction of criminal offenses within the territorial jurisdiction**
14 **where the person, place, or movable or immovable thing to be searched**
15 **is located at the time of making the application.**

542.276. 1. Any peace officer or prosecuting attorney may make
2 application under section 542.271 for the issuance of a search warrant.

3 2. The application shall:

4 (1) Be in writing;

5 (2) State the time and date of the making of the application;

6 (3) Identify the property, article, material, substance or person which is
7 to be searched for and seized, in sufficient detail and particularity that the officer
8 executing the warrant can readily ascertain it;

9 (4) Identify the person, place, or thing which is to be searched, in
10 sufficient detail and particularity that the officer executing the warrant can
11 readily ascertain whom or what he or she is to search;

12 (5) State facts sufficient to show probable cause for the issuance of a
13 search warrant;

14 (6) Be verified by the oath or affirmation of the applicant;

15 (7) Be filed in the proper court;

16 (8) Be signed by the prosecuting attorney of the county where the search
17 is to take place, or his or her designated assistant.

18 3. The application may be supplemented by a written affidavit verified by
19 oath or affirmation. Such affidavit shall be considered in determining whether
20 there is probable cause for the issuance of a search warrant and in filling out any
21 deficiencies in the description of the person, place, or thing to be searched or of
22 the property, article, material, substance, or person to be seized. Oral testimony
23 shall not be considered. The application may be submitted by facsimile or other
24 electronic means.

25 4. The judge shall determine whether sufficient facts have been stated to
26 justify the issuance of a search warrant. If it appears from the application and
27 any supporting affidavit that there is probable cause to believe that property,
28 article, material, substance, or person subject to seizure is on the person or at the
29 place or in the thing described, a search warrant shall immediately be
30 issued. The warrant shall be issued in the form of an original and two copies.

31 5. The application and any supporting affidavit and a copy of the warrant
32 shall be retained in the records of the court from which the warrant was issued.

33 6. The search warrant shall:

34 (1) Be in writing and in the name of the state of Missouri;

35 (2) Be directed to any peace officer in the state;

36 (3) State the time and date the warrant is issued;

37 (4) Identify the property, article, material, substance or person which is
38 to be searched for and seized, in sufficient detail and particularity that the officer
39 executing the warrant can readily ascertain it;

40 (5) Identify the person, place, or thing which is to be searched, in
41 sufficient detail and particularity that the officer executing the warrant can
42 readily ascertain whom or what he or she is to search;

43 (6) Command that the described person, place, or thing be searched and
44 that any of the described property, article, material, substance, or person found
45 thereon or therein be seized or photographed or copied and within ten days after
46 filing of the application, any photographs or copies of the items may be filed with
47 the issuing court;

48 (7) Be signed by the judge, with his or her title of office indicated.

49 7. A search warrant issued under this section may be executed only by a
50 peace officer. The warrant shall be executed by conducting the search and
51 seizure commanded. The search warrant issued under this section may be issued

52 by facsimile or other electronic means.

53 8. A search warrant shall be executed as soon as practicable and shall
54 expire if it is not executed and the return made within ten days after the date of
55 the making of the application. A search and any subsequent searches of the
56 contents of any property, article, material, or substance seized and removed from
57 the location of the execution of any search warrant during its execution may be
58 conducted at any time during or after the execution of the warrant, subject to the
59 continued existence of probable cause to search the property, article, material, or
60 substance seized and removed. A search and any subsequent searches of the
61 property, article, material, or substance seized and removed may be conducted
62 after the time for delivering the warrant, return, and receipt to the issuing judge
63 has expired. A supplemental return and receipt shall be delivered to the issuing
64 judge upon final completion of any search which concludes after the expiration
65 of time for delivering the original return and receipt.

66 9. After execution of the search warrant, the warrant with a return
67 thereon, signed by the officer making the search, shall be delivered to the judge
68 who issued the warrant. The return shall show the date and manner of
69 execution, what was seized, and the name of the possessor and of the owner,
70 when he or she is not the same person, if known. The return shall be
71 accompanied by a copy of the itemized receipt required by subsection 6 of section
72 542.291. The judge or clerk shall, upon request, deliver a copy of such receipt to
73 the person from whose possession the property was taken and to the applicant for
74 the warrant.

75 10. A search warrant shall be deemed invalid:

76 (1) If it was not issued by a judge; or

77 (2) If it was issued without a written application having been filed and
78 verified; or

79 (3) If it was issued without probable cause; or

80 (4) If it was not issued in the proper county; or

81 (5) If it does not describe the person, place, or thing to be searched or the
82 property, article, material, substance, or person to be seized with sufficient
83 certainty; or

84 (6) If it is not signed by the judge who issued it; or

85 (7) If it was not executed within the time prescribed by subsection 8 of
86 this section.

87 **11. The application or execution of a search warrant shall not be**

88 deemed invalid for the sole reason that the application or execution of
89 the warrant relies upon electronic signatures of the peace officer or
90 prosecutor seeking the warrant or judge issuing the warrant.

577.005. 1. Each law enforcement agency shall adopt a policy
2 requiring arrest information for all intoxication-related traffic offenses
3 be forwarded to the central repository as required by section 43.503
4 and shall certify adoption of such policy when applying for any grants
5 administered by the department of public safety.

6 2. Each county prosecuting attorney and municipal prosecutor
7 shall adopt a policy requiring charge information for all intoxication-
8 related traffic offenses be forwarded to the central repository as
9 required by section 43.503 and shall certify adoption of such policy
10 when applying for any grants administered by the department of public
11 safety.

12 3. Effective January 1, 2011, the highway patrol shall, based on
13 the data submitted, maintain regular accountability reports of alcohol-
14 related arrests, charges, and dispositions.

577.006. 1. Each municipal judge shall receive adequate
2 instruction on the laws related to intoxication-related traffic offenses
3 as defined in section 577.023 including jurisdictional issues related to
4 such offenses, reporting requirements to the highway patrol central
5 repository as set out in section 43.503 and required assessment for
6 offenders under the substance abuse traffic offender program
7 (SATOP). Each municipal judge shall adopt a written policy requiring
8 that municipal court personnel timely report all dispositions of all
9 charges for intoxication-related traffic offenses to the central
10 repository.

11 2. Each municipal court shall provide a copy of its written policy
12 for reporting dispositions of intoxication-related traffic offenses to the
13 office of state courts administrator and the highway patrol. To assist
14 municipal courts, the office of state courts administrator may create a
15 model policy for the reporting of dispositions of all charges for
16 intoxication-related traffic offenses.

17 3. Each municipal division of every circuit court in the state of
18 Missouri shall prepare a report every six months. The report shall
19 include, but shall not be limited to, the total number and disposition of
20 every intoxication-related traffic offense adjudicated, dismissed or

21 **pending in its municipal court division. The municipal court division**
22 **shall submit said report to the circuit court en banc. The report shall**
23 **include the six month period beginning January first and ending June**
24 **thirtieth and the six month period beginning July first and ending**
25 **December thirty-first of each year. The report shall be submitted to the**
26 **circuit court en banc no later than sixty days following the end of the**
27 **reporting period. The circuit court en banc shall make**
28 **recommendations or take any action it deems appropriate based on its**
29 **review of said reports.**

577.010. 1. A person commits the crime of "driving while intoxicated" if
2 he operates a motor vehicle while in an intoxicated or drugged condition.

3 2. Driving while intoxicated is for the first offense, a class B
4 misdemeanor. No person convicted of or pleading guilty to the offense of driving
5 while intoxicated shall be granted a suspended imposition of sentence for such
6 offense, unless such person shall be placed on probation for a minimum of two
7 years. **However, no person who operated a motor vehicle with fifteen-**
8 **hundredths of one percent or more by weight of alcohol in such**
9 **person's blood shall be granted such suspended imposition of**
10 **sentence. For such first offense, if the individual operated the motor**
11 **vehicle with fifteen-hundredths to twenty-hundredths of one percent by**
12 **weight of alcohol in such person's blood, the required term of**
13 **imprisonment shall be not less than forty-eight hours unless the**
14 **individual participates and successfully completes a program under a**
15 **DWI court or docket created under section 478.007. For such first**
16 **offense, if the individual operated the motor vehicle with greater than**
17 **twenty-hundredths of one percent by weight of alcohol in such person's**
18 **blood, the required term of imprisonment shall be not less than five**
19 **days unless the individual participates and successfully completes a**
20 **program under a DWI court or docket created under section 478.007.**

577.012. 1. A person commits the crime of "driving with excessive blood
2 alcohol content" if such person operates a motor vehicle in this state with
3 eight-hundredths of one percent or more by weight of alcohol in such person's
4 blood.

5 2. As used in this section, percent by weight of alcohol in the blood shall
6 be based upon grams of alcohol per one hundred milliliters of blood or two
7 hundred ten liters of breath and may be shown by chemical analysis of the

8 person's blood, breath, saliva or urine. For the purposes of determining the
9 alcoholic content of a person's blood under this section, the test shall be
10 conducted in accordance with the provisions of sections 577.020 to 577.041.

11 3. For the first offense, driving with excessive blood alcohol content is a
12 class B misdemeanor. **No person who operated a motor vehicle with**
13 **fifteen-hundredths of one percent or more by weight of alcohol in such**
14 **person's blood shall be granted suspended imposition of sentence. For**
15 **such first offense, if the individual operated the motor vehicle with**
16 **fifteen-hundredths to twenty-hundredths of one percent by weight of**
17 **alcohol in such person's blood, the required term of imprisonment shall**
18 **be not less than forty-eight hours unless the individual participates and**
19 **successfully completes a program under a DWI court or docket created**
20 **under section 478.007. For such first offense, if the individual operated**
21 **the motor vehicle with greater than twenty-hundredths of one percent**
22 **by weight of alcohol in such person's blood, the required term of**
23 **imprisonment shall be not less than five days unless the individual**
24 **participates and successfully completes a program under a DWI court**
25 **or docket created under section 478.007.**

577.023. 1. For purposes of this section, unless the context clearly
2 indicates otherwise:

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three or more
5 intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
10 the underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
12 assault of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

15 (a) A person who has pleaded guilty to or has been found guilty of four or
16 more intoxication-related traffic offenses; or

17 (b) A person who has pleaded guilty to or has been found guilty of, on two
18 or more separate occasions, any combination of the following: involuntary

19 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024,
20 RSMo; murder in the second degree under section 565.021, RSMo, where the
21 underlying felony is an intoxication-related traffic offense; assault in the second
22 degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault
23 of a law enforcement officer in the second degree under subdivision (4) of
24 subsection 1 of section 565.082, RSMo; or

25 (c) A person who has pleaded guilty to or has been found guilty of two or
26 more intoxication-related traffic offenses and, in addition, any of the following:
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
28 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
29 the underlying felony is an intoxication-related traffic offense; assault in the
30 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
31 assault of a law enforcement officer in the second degree under subdivision (4) of
32 subsection 1 of section 565.082, RSMo;

33 (3) "Continuous alcohol monitoring", automatically testing breath, blood,
34 or transdermal alcohol concentration levels and tampering attempts at least once
35 every hour, regardless of the location of the person who is being monitored, and
36 regularly transmitting the data. Continuous alcohol monitoring shall be
37 considered an electronic monitoring service under subsection 3 of section 217.690,
38 RSMo;

39 (4) An "intoxication-related traffic offense" is driving while intoxicated,
40 driving with excessive blood alcohol content, involuntary manslaughter pursuant
41 to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the
42 second degree under section 565.021, RSMo, where the underlying felony is an
43 intoxication-related traffic offense, assault in the second degree pursuant to
44 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
45 enforcement officer in the second degree pursuant to subdivision (4) of subsection
46 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in
47 violation of state law or a county or municipal ordinance;

48 (5) A "persistent offender" is one of the following:

49 (a) A person who has pleaded guilty to or has been found guilty of two or
50 more intoxication-related traffic offenses;

51 (b) A person who has pleaded guilty to or has been found guilty of
52 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of
53 section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
54 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in

55 the second degree pursuant to subdivision (4) of subsection 1 of section 565.082,
56 RSMo; and

57 (6) A "prior offender" is a person who has pleaded guilty to or has been
58 found guilty of one intoxication-related traffic offense, where such prior offense
59 occurred within five years of the occurrence of the intoxication-related traffic
60 offense for which the person is charged.

61 2. Any person who pleads guilty to or is found guilty of a violation of
62 section 577.010 or 577.012 who is alleged and proved to be a prior offender shall
63 be guilty of a class A misdemeanor.

64 3. Any person who pleads guilty to or is found guilty of a violation of
65 section 577.010 or 577.012 who is alleged and proved to be a persistent offender
66 shall be guilty of a class D felony.

67 4. Any person who pleads guilty to or is found guilty of a violation of
68 section 577.010 or section 577.012 who is alleged and proved to be an aggravated
69 offender shall be guilty of a class C felony.

70 5. Any person who pleads guilty to or is found guilty of a violation of
71 section 577.010 or section 577.012 who is alleged and proved to be a chronic
72 offender shall be guilty of a class B felony.

73 6. No state, county, or municipal court shall suspend the imposition of
74 sentence as to a prior offender, persistent offender, aggravated offender, or
75 chronic offender under this section nor sentence such person to pay a fine in lieu
76 of a term of imprisonment, section 557.011, RSMo, to the contrary
77 notwithstanding. No prior offender shall be eligible for parole or probation until
78 he or she has served a minimum of [five] **ten** days imprisonment, unless as a
79 condition of such parole or probation such person performs at least thirty days of
80 community service under the supervision of the court in those jurisdictions which
81 have a recognized program for community service **or the offender participates**
82 **in a program established pursuant to section 478.007**. No persistent
83 offender shall be eligible for parole or probation until he or she has served a
84 minimum of [ten] **thirty** days imprisonment, unless as a condition of such parole
85 or probation such person performs at least sixty days of community service under
86 the supervision of the court **or the offender participates in a program**
87 **established pursuant to section 478.007**. No aggravated offender shall be
88 eligible for parole or probation until he or she has served a minimum of sixty
89 days imprisonment. No chronic offender shall be eligible for parole or probation
90 until he or she has served a minimum of two years imprisonment. In addition to

91 any other terms or conditions of probation, the court shall consider, as a condition
92 of probation for any person who pleads guilty to or is found guilty of an
93 intoxication-related traffic offense, requiring the offender to abstain from
94 consuming or using alcohol or any products containing alcohol as demonstrated
95 by continuous alcohol monitoring or by verifiable breath alcohol testing performed
96 a minimum of four times per day as scheduled by the court for such duration as
97 determined by the court, but not less than ninety days. The court may, in
98 addition to imposing any other fine, costs, or assessments provided by law,
99 require the offender to bear any costs associated with continuous alcohol
100 monitoring or verifiable breath alcohol testing.

101 7. The state, county, or municipal court shall find the defendant to be a
102 prior offender, persistent offender, aggravated offender, or chronic offender if:

103 (1) The indictment or information, original or amended, or the information
104 in lieu of an indictment pleads all essential facts warranting a finding that the
105 defendant is a prior offender or persistent offender; and

106 (2) Evidence is introduced that establishes sufficient facts pleaded to
107 warrant a finding beyond a reasonable doubt the defendant is a prior offender,
108 persistent offender, aggravated offender, or chronic offender; and

109 (3) The court makes findings of fact that warrant a finding beyond a
110 reasonable doubt by the court that the defendant is a prior offender, persistent
111 offender, aggravated offender, or chronic offender.

112 8. In a jury trial, the facts shall be pleaded, established and found prior
113 to submission to the jury outside of its hearing.

114 9. In a trial without a jury or upon a plea of guilty, the court may defer
115 the proof in findings of such facts to a later time, but prior to sentencing.

116 10. The defendant shall be accorded full rights of confrontation and
117 cross-examination, with the opportunity to present evidence, at such hearings.

118 11. The defendant may waive proof of the facts alleged.

119 12. Nothing in this section shall prevent the use of presentence
120 investigations or commitments.

121 13. At the sentencing hearing both the state, county, or municipality and
122 the defendant shall be permitted to present additional information bearing on the
123 issue of sentence.

124 14. The pleas or findings of guilt shall be prior to the date of commission
125 of the present offense.

126 15. The court shall not instruct the jury as to the range of punishment or

127 allow the jury, upon a finding of guilt, to assess and declare the punishment as
128 part of its verdict in cases of prior offenders, persistent offenders, aggravated
129 offenders, or chronic offenders.

130 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
131 intoxication-related traffic offense shall be heard and determined by the trial
132 court out of the hearing of the jury prior to the submission of the case to the jury,
133 and shall include but not be limited to evidence [of convictions] received by a
134 search of the records of the Missouri uniform law enforcement system, **including**
135 **criminal history records from the central repository or records from**
136 **the driving while intoxicated tracking system (DWITS)** maintained by the
137 Missouri state highway patrol, **or the certified driving record maintained**
138 **by the Missouri department of revenue.** After hearing the evidence, the
139 court shall enter its findings thereon. A plea of guilty or a finding of guilt
140 followed by incarceration, a fine, a suspended imposition of sentence, suspended
141 execution of sentence, probation or parole or any combination thereof in any
142 intoxication-related traffic offense in a state, county or municipal court or any
143 combination thereof, shall be treated as a prior plea of guilty or finding of guilt
144 for purposes of this section.

 577.039. An arrest without a warrant by a law enforcement officer,
2 including a uniformed member of the state highway patrol, for a violation of
3 section 577.010 or 577.012 is lawful whenever the arresting officer has reasonable
4 grounds to believe that the person to be arrested has violated the section,
5 whether or not the violation occurred in the presence of the arresting officer [and
6 when such arrest without warrant is made within one and one-half hours after
7 such claimed violation occurred, unless the person to be arrested has left the
8 scene of an accident or has been removed from the scene to receive medical
9 treatment, in which case such arrest without warrant may be made more than
10 one and one-half hours after such violation occurred].

 577.041. 1. If a person under arrest, or who has been stopped pursuant
2 to subdivision (2) or (3) of subsection 1 of section 577.020, refuses upon the
3 request of the officer to submit to any test allowed pursuant to section 577.020,
4 then [none shall be given and] evidence of the refusal shall be admissible in a
5 proceeding pursuant to section 565.024, 565.060, or 565.082, RSMo, or section
6 577.010 or 577.012. The request of the officer shall include the reasons of the
7 officer for requesting the person to submit to a test and also shall inform the
8 person that evidence of refusal to take the test may be used against such person

9 and that the person's license shall be immediately revoked upon refusal to take
10 the test. If a person when requested to submit to any test allowed pursuant to
11 section 577.020 requests to speak to an attorney, the person shall be granted
12 twenty minutes in which to attempt to contact an attorney. If upon the
13 completion of the twenty-minute period the person continues to refuse to submit
14 to any test, it shall be deemed a refusal. In this event, the officer shall, on behalf
15 of the director of revenue, serve the notice of license revocation personally upon
16 the person and shall take possession of any license to operate a motor vehicle
17 issued by this state which is held by that person. The officer shall issue a
18 temporary permit, on behalf of the director of revenue, which is valid for fifteen
19 days and shall also give the person a notice of such person's right to file a
20 petition for review to contest the license revocation.

21 2. The officer shall make a certified report under penalties of perjury for
22 making a false statement to a public official. The report shall be forwarded to the
23 director of revenue and shall include the following:

24 (1) That the officer has:

25 (a) Reasonable grounds to believe that the arrested person was driving a
26 motor vehicle while in an intoxicated or drugged condition; or

27 (b) Reasonable grounds to believe that the person stopped, being under
28 the age of twenty-one years, was driving a motor vehicle with a blood alcohol
29 content of two-hundredths of one percent or more by weight; or

30 (c) Reasonable grounds to believe that the person stopped, being under the
31 age of twenty-one years, was committing a violation of the traffic laws of the
32 state, or political subdivision of the state, and such officer has reasonable grounds
33 to believe, after making such stop, that the person had a blood alcohol content of
34 two-hundredths of one percent or greater;

35 (2) That the person refused to submit to a chemical test;

36 (3) Whether the officer secured the license to operate a motor vehicle of
37 the person;

38 (4) Whether the officer issued a fifteen-day temporary permit;

39 (5) Copies of the notice of revocation, the fifteen-day temporary permit
40 and the notice of the right to file a petition for review, which notices and permit
41 may be combined in one document; and

42 (6) Any license to operate a motor vehicle which the officer has taken into
43 possession.

44 3. Upon receipt of the officer's report, the director shall revoke the license

45 of the person refusing to take the test for a period of one year; or if the person is
46 a nonresident, such person's operating permit or privilege shall be revoked for one
47 year; or if the person is a resident without a license or permit to operate a motor
48 vehicle in this state, an order shall be issued denying the person the issuance of
49 a license or permit for a period of one year.

50 4. If a person's license has been revoked because of the person's refusal
51 to submit to a chemical test, such person may petition for a hearing before a
52 circuit or associate circuit court in the county in which the arrest or stop
53 occurred. The person may request such court to issue an order staying the
54 revocation until such time as the petition for review can be heard. If the court,
55 in its discretion, grants such stay, it shall enter the order upon a form prescribed
56 by the director of revenue and shall send a copy of such order to the
57 director. Such order shall serve as proof of the privilege to operate a motor
58 vehicle in this state and the director shall maintain possession of the person's
59 license to operate a motor vehicle until termination of any revocation pursuant
60 to this section. Upon the person's request the clerk of the court shall notify the
61 prosecuting attorney of the county and the prosecutor shall appear at the hearing
62 on behalf of the director of revenue. At the hearing the court shall determine
63 only:

- 64 (1) Whether or not the person was arrested or stopped;
- 65 (2) Whether or not the officer had:
- 66 (a) Reasonable grounds to believe that the person was driving a motor
67 vehicle while in an intoxicated or drugged condition; or
- 68 (b) Reasonable grounds to believe that the person stopped, being under
69 the age of twenty-one years, was driving a motor vehicle with a blood alcohol
70 content of two-hundredths of one percent or more by weight; or
- 71 (c) Reasonable grounds to believe that the person stopped, being under the
72 age of twenty-one years, was committing a violation of the traffic laws of the
73 state, or political subdivision of the state, and such officer had reasonable
74 grounds to believe, after making such stop, that the person had a blood alcohol
75 content of two-hundredths of one percent or greater; and
- 76 (3) Whether or not the person refused to submit to the test.

77 5. If the court determines any issue not to be in the affirmative, the court
78 shall order the director to reinstate the license or permit to drive.

79 6. Requests for review as provided in this section shall go to the head of
80 the docket of the court wherein filed.

81 7. No person who has had a license to operate a motor vehicle suspended
82 or revoked pursuant to the provisions of this section shall have that license
83 reinstated until such person has participated in and successfully completed a
84 substance abuse traffic offender program defined in section 577.001, or a program
85 determined to be comparable by the department of mental health or the
86 court. Assignment recommendations, based upon the needs assessment as
87 described in subdivision [(22)] **(23)** of section 302.010, RSMo, shall be delivered
88 in writing to the person with written notice that the person is entitled to have
89 such assignment recommendations reviewed by the court if the person objects to
90 the recommendations. The person may file a motion in the associate division of
91 the circuit court of the county in which such assignment was given, on a printed
92 form provided by the state courts administrator, to have the court hear and
93 determine such motion pursuant to the provisions of chapter 517, RSMo. The
94 motion shall name the person or entity making the needs assessment as the
95 respondent and a copy of the motion shall be served upon the respondent in any
96 manner allowed by law. Upon hearing the motion, the court may modify or waive
97 any assignment recommendation that the court determines to be unwarranted
98 based upon a review of the needs assessment, the person's driving record, the
99 circumstances surrounding the offense, and the likelihood of the person
100 committing a like offense in the future, except that the court may modify but may
101 not waive the assignment to an education or rehabilitation program of a person
102 determined to be a prior or persistent offender as defined in section 577.023, or
103 of a person determined to have operated a motor vehicle with fifteen-hundredths
104 of one percent or more by weight in such person's blood. Compliance with the
105 court determination of the motion shall satisfy the provisions of this section for
106 the purpose of reinstating such person's license to operate a motor vehicle. The
107 respondent's personal appearance at any hearing conducted pursuant to this
108 subsection shall not be necessary unless directed by the court.

109 8. The fees for the substance abuse traffic offender program, or a portion
110 thereof to be determined by the division of alcohol and drug abuse of the
111 department of mental health, shall be paid by the person enrolled in the
112 program. Any person who is enrolled in the program shall pay, in addition to any
113 fee charged for the program, a supplemental fee to be determined by the
114 department of mental health for the purposes of funding the substance abuse
115 traffic offender program defined in section 302.010, RSMo, and section
116 577.001. The administrator of the program shall remit to the division of alcohol

117 and drug abuse of the department of mental health on or before the fifteenth day
118 of each month the supplemental fee for all persons enrolled in the program, less
119 two percent for administrative costs. Interest shall be charged on any unpaid
120 balance of the supplemental fees due the division of alcohol and drug abuse
121 pursuant to this section and shall accrue at a rate not to exceed the annual rates
122 established pursuant to the provisions of section 32.065, RSMo, plus three
123 percentage points. The supplemental fees and any interest received by the
124 department of mental health pursuant to this section shall be deposited in the
125 mental health earnings fund which is created in section 630.053, RSMo.

126 9. Any administrator who fails to remit to the division of alcohol and drug
127 abuse of the department of mental health the supplemental fees and interest for
128 all persons enrolled in the program pursuant to this section shall be subject to a
129 penalty equal to the amount of interest accrued on the supplemental fees due the
130 division pursuant to this section. If the supplemental fees, interest, and penalties
131 are not remitted to the division of alcohol and drug abuse of the department of
132 mental health within six months of the due date, the attorney general of the state
133 of Missouri shall initiate appropriate action of the collection of said fees and
134 interest accrued. The court shall assess attorney fees and court costs against any
135 delinquent program.

136 10. Any person who has had a license to operate a motor vehicle revoked
137 more than once for violation of the provisions of this section shall be required to
138 file proof with the director of revenue that any motor vehicle operated by the
139 person is equipped with a functioning, certified ignition interlock device as a
140 required condition of license reinstatement. Such ignition interlock device shall
141 further be required to be maintained on all motor vehicles operated by the person
142 for a period of not less than six months immediately following the date of
143 reinstatement. If the person fails to maintain such proof with the director as
144 required by this section, the license shall be rerevoked and the person shall be
145 guilty of a class A misdemeanor.

146 11. The revocation period of any person whose license and driving
147 privilege has been revoked under this section and who has filed proof of financial
148 responsibility with the department of revenue in accordance with chapter 303,
149 RSMo, and is otherwise eligible, shall be terminated by a notice from the director
150 of revenue after one year from the effective date of the revocation. Unless proof
151 of financial responsibility is filed with the department of revenue, the revocation
152 shall remain in effect for a period of two years from its effective date. If the

153 person fails to maintain proof of financial responsibility in accordance with
154 chapter 303, RSMo, the person's license and driving privilege shall be rerevoked
155 and the person shall be guilty of a class A misdemeanor.

✓

Unofficial

Bill

Copy