

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1200

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 defendant may request to divert the criminal case to a driving while intoxicated (DWI)

diversion program described in this section by submitting a request to the prosecuting or circuit attorney and sending a copy of such request to the department of revenue within fifteen days of his or her arrest. The prosecuting or circuit attorney may divert the criminal case to this DWI diversion program by filing a motion with the court to stay the criminal proceeding, if the defendant meets the following criteria for eligibility into the DWI diversion program:

(1) The defendant has not previously pled guilty to or been convicted of an intoxicated-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 five 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;

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

(6) The defendant did not refuse to submit to any test allowed pursuant to section 577.020.

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

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 may 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 require other terms deemed necessary by the court.

5. If the court continues the criminal case to divert the defendant to this DWI diversion program, a copy of such order shall be sent to the department of revenue, and upon receipt, the department 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 may be extended for a period of up to 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 the 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 intoxicated-related offense for which the person is charged, as provided in subsection 20 of section 577.001.

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

13. A certified ignition interlock device provider shall adopt a discounted fee schedule that provides for the payment of the costs of the certified ignition interlock device by offenders with an income at or below one hundred and fifty percent of the federal poverty level. A person with an income at or below one hundred and fifty percent of the federal poverty level who provides income verification shall be responsible for ten percent of the cost of the ignition interlock device and any additional costs accrued by the person for noncompliance with program requirements are not subject to discounted rates and are the sole responsibility of the person. The certified ignition interlock provider shall verify the offender's income to determine the cost of the ignition interlock device by verifying from the offender the previous year's federal income tax return, the previous three months of weekly or monthly income statements, or a court order declaring the person with an income at or below one hundred and fifty percent of the federal poverty level.

14. Nothing in this section shall prohibit a prosecuting or circuit attorney from diverting a criminal case pursuant to section 557.014 in any criminal case involving an intoxicated-related traffic offense.