

# SENATE BILL NO. 1200

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

2828S.02I

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

27           (1) The defendant has not previously pled guilty to or  
28 been convicted of an intoxicated-related traffic offense in  
29 violation of sections 577.010, 577.012, 577.013, 577.014,  
30 577.015, or 577.016;

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

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

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

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

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

47           4. The DWI diversion plan shall be for a specified  
48 period and be in writing. The prosecuting or circuit  
49 attorney has the sole authority to develop diversionary  
50 program requirements, but may require installation of an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

133 11. Any defendant who is found guilty of any  
134 intoxicated-related traffic offense and who has previously  
135 utilized the DWI diversion program pursuant to this section  
136 shall be considered a prior offender as defined in section  
137 577.001, provided that the prior offense occurred within  
138 five years of the intoxicated-related offense for which the  
139 person is charged, as provided in subsection 20 of section  
140 577.001.

141 12. For the limited purpose of determining whether a  
142 defendant is a chronic, habitual, persistent, or prior  
143 offender under section 577.001, a criminal case diverted to  
144 a DWI diversion program and successfully completed by a

145 defendant shall be counted as one intoxication-related  
146 traffic offense.

147       13. A certified ignition interlock device provider  
148 shall adopt a discounted fee schedule that provides for the  
149 payment of the costs of the certified ignition interlock  
150 device by offenders with an income at or below one hundred  
151 and fifty percent of the federal poverty level. A person  
152 with an income at or below one hundred and fifty percent of  
153 the federal poverty level who provides income verification  
154 shall be responsible for ten percent of the cost of the  
155 ignition interlock device and any additional costs accrued  
156 by the person for noncompliance with program requirements.  
157 The certified ignition interlock provider shall verify the  
158 offender's income to determine the cost of the ignition  
159 interlock device by verifying from the offender the previous  
160 year's federal income tax return, the previous three months  
161 of weekly or monthly income statements, or a court order  
162 declaring the person with an income at or below one hundred  
163 and fifty percent of the federal poverty level.

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

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