

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS NOS. 302 & 38
91ST GENERAL ASSEMBLY

Reported from the Committee on Criminal Law, February 8, 2001, with recommendation that the House Committee Substitute for House Bills Nos. 302 & 38 Do Pass.

TED WEDEL, Chief Clerk

0265L.03C

AN ACT

To repeal sections 302.302, 302.309, 302.505, 302.510, 302.520, 302.541, 306.112, 306.117, 577.012 and 577.037, RSMo 2000, relating to driving with excessive blood alcohol content, and to enact in lieu thereof ten new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 302.302, 302.309, 302.505, 302.510, 302.520, 302.541, 306.112, 306.117, 577.012 and 577.037, RSMo 2000, are repealed and ten new sections enacted in lieu thereof, to be known as sections 302.302, 302.309, 302.505, 302.510, 302.520, 302.541, 306.112, 306.117, 577.012 and 577.037, to read as follows:

302.302. 1. The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

- (1) Any moving violation of a state law or county or municipal or federal traffic ordinance or regulation not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303 2 points
- (except any violation of municipal stop sign ordinance where no accident is involved. 1 point)

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

- 12 (2) Speeding
- 13 In violation of a state law 3 points
- 14 In violation of a county or municipal ordinance 2 points
- 15 (3) Leaving the scene of an accident in
- 16 violation of section 577.060, RSMo 12 points
- 17 In violation of any county or municipal ordinance 6 points
- 18 (4) Careless and imprudent driving in
- 19 violation of subsection 4 of section 304.016, RSMo 4 points
- 20 In violation of a county or municipal ordinance 2 points
- 21 (5) Operating without a valid license in
- 22 violation of subdivision (1) or (2) of subsection
- 23 1 of section 302.020:
- 24 (a) For the first conviction 2 points
- 25 (b) For the second conviction 4 points
- 26 (c) For the third conviction 6 points
- 27 (6) Operating with a suspended or revoked license prior to
- 28 restoration of operating privileges 12 points
- 29 (7) Obtaining a license by misrepresentation 12 points
- 30 (8) For the first conviction of driving while
- 31 in an intoxicated condition or under the influence
- 32 of controlled substances or drugs 8 points
- 33 (9) For the second or subsequent conviction
- 34 of any of the following offenses however combined:
- 35 driving while in an intoxicated condition, driving
- 36 under the influence of controlled substances or
- 37 drugs or driving with a blood alcohol content of
- 38 [ten-hundredths] **eight-hundredths** of one percent or
- 39 more by weight 12 points
- 40 (10) For the first conviction for driving
- 41 with blood alcohol content [ten-hundredths] of
- 42 **eight hundredths of** one percent or more by weight
- 43 In violation of state law 8 points
- 44 In violation of a county or municipal ordinance
- 45 or federal law or regulation 8 points
- 46 (11) Any felony involving the use of a
- 47 motor vehicle 12 points

48 (12) Knowingly permitting unlicensed
49 operator to operate a motor vehicle 4 points

50 (13) For a conviction for failure to
51 maintain financial responsibility pursuant to
52 county or municipal ordinance or pursuant to
53 section 303.025, RSMo 4 points

54 2. The director shall, as provided in subdivision (5) of subsection 1 of this section, assess
55 an operator points for a conviction pursuant to subdivision (1) or (2) of subsection 1 of section
56 302.020, when the director issues such operator a license or permit pursuant to the provisions
57 of sections 302.010 to 302.340.

58 3. An additional two points shall be assessed when personal injury or property damage
59 results from any violation listed in subsection 1 of this section and if found to be warranted and
60 certified by the reporting court.

61 4. When any of the acts listed in subdivision (2), (3), (4) or (8) of subsection 1 of this
62 section constitutes both a violation of a state law and a violation of a county or municipal
63 ordinance, points may be assessed for either violation but not for both. Notwithstanding that an
64 offense arising out of the same occurrence could be construed to be a violation of subdivisions
65 (8), (9) and (10) of subsection 1 of this section, no person shall be tried or convicted for more
66 than one offense pursuant to subdivisions (8), (9) and (10) of subsection 1 of this section for
67 offenses arising out of the same occurrence.

68 5. The director of revenue shall put into effect a system for staying the assessment of
69 points against an operator. The system shall provide that the satisfactory completion of a
70 driver-improvement program or, in the case of violations committed while operating a
71 motorcycle, a motorcycle-rider training course approved by the director of the department of
72 public safety, by an operator, when so ordered and verified by any court having jurisdiction over
73 any law of this state or county or municipal ordinance, regulating motor vehicles, other than a
74 violation committed in a commercial motor vehicle as defined in section 302.700, shall be
75 accepted by the director in lieu of the assessment of points for a violation pursuant to subdivision
76 (1), (2), or (4) of subsection 1 of this section or pursuant to subsection 3 of this section. For the
77 purposes of this subsection, the driver-improvement program shall meet or exceed the standards
78 of the National Safety Council's eight-hour "Defensive Driving Course" or, in the case of a
79 violation which occurred during the operation of a motorcycle, the program shall meet the
80 standards established by the director of the department of public safety pursuant to sections
81 302.133 to 302.138. The completion of a driver-improvement program or a motorcycle-rider
82 training course shall not be accepted in lieu of points more than one time in any thirty-six-month
83 period and shall be completed within sixty days of the date of conviction in order to be accepted

84 in lieu of the assessment of points. Every court having jurisdiction pursuant to the provisions
85 of this subsection shall, within fifteen days after completion of the driver-improvement program
86 or motorcycle-rider training course by an operator, forward a record of the completion to the
87 director, all other provisions of the law to the contrary notwithstanding. The director shall
88 establish procedures for record keeping and the administration of this subsection.

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

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

7 3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear
8 applications and make eligibility determinations granting limited driving privileges. Any
9 application may be made in writing to the director of revenue and the person's reasons for
10 requesting the limited driving privilege shall be made therein.

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

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

14 (b) Seeking medical treatment for such operator;

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

16 (d) Attending alcohol or drug treatment programs; or

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

23 (3) An operator may make application to the proper court in the county in which such
24 operator resides or in the county in which is located the operator's principal place of business or
25 employment. Any application for a limited driving privilege made to a circuit court shall name
26 the director as a party defendant and shall be served upon the director prior to the grant of any
27 limited privilege, and shall be accompanied by a copy of the applicant's driving record as
28 certified by the director. Any applicant for a limited driving privilege shall have on file with the
29 department of revenue proof of financial responsibility as required by chapter 303, RSMo. Any
30 application by a person who transports persons or property as classified in section 302.015 may
31 be accompanied by proof of financial responsibility as required by chapter 303, RSMo, but if

32 proof of financial responsibility does not accompany the application, or if the applicant does not
33 have on file with the department of revenue proof of financial responsibility, the court or the
34 director has discretion to grant the limited driving privilege to the person solely for the purpose
35 of operating a vehicle whose owner has complied with chapter 303, RSMo, for that vehicle, and
36 the limited driving privilege must state such restriction. When operating such vehicle under such
37 restriction the person shall carry proof that the owner has complied with chapter 303, RSMo, for
38 that vehicle.

39 (4) The court order or the director's grant of the limited driving privilege shall indicate
40 the termination date of the privilege, which shall be not later than the end of the period of
41 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the
42 director, and a copy shall be given to the driver which shall be carried by the driver whenever
43 such driver operates a motor vehicle. The director of revenue upon granting a limited driving
44 privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall
45 carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
46 which results in the assessment of points pursuant to section 302.302, other than a violation of
47 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
48 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
49 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
50 limited driving privilege, the privilege shall not be terminated. The director shall notify by
51 ordinary mail the driver whose privilege is so terminated.

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

56 (a) A conviction of violating the provisions of section 577.010 or 577.012, RSMo, or any
57 similar provision of any federal or state law, or a municipal or county law where the judge in
58 such case was an attorney and the defendant was represented by or waived the right to an
59 attorney in writing, until the person has completed the first thirty days of a suspension or
60 revocation imposed pursuant to this chapter;

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

62 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
63 (6), (7), (8), (9), (10) [or], (11) **or** (12) of section 302.060;

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

67 (e) Due to a revocation for the first time for failure to submit to a chemical test pursuant

68 to section 577.041, RSMo, or due to a refusal to submit to a chemical test in any other state, if
69 such person has not completed the first ninety days of such revocation;

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

72 (g) Disqualification of a commercial driver's license pursuant to sections 302.700 to
73 302.780, however, nothing in this subsection shall prevent a person holding a commercial
74 driver's license who is suspended or revoked as a result of an action occurring while not driving
75 a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an
76 operator of a personal vehicle from applying for a limited driving privilege to operate a
77 commercial vehicle, if otherwise eligible for such limited privilege; or

78 (h) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not
79 completed the first thirty days of such suspension, provided the person is not otherwise ineligible
80 for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525
81 if such person has not completed such revocation.

82 (6) (a) Provided that pursuant to the provisions of this section, the applicant is not
83 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
84 manner prescribed in this subsection, allow a person who has had such person's license to operate
85 a motor vehicle revoked where that person cannot obtain a new license for a period of ten years,
86 as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege
87 pursuant to this subsection if such person has served at least three years of such disqualification
88 or revocation. Such person shall present evidence satisfactory to the court or the director that
89 such person has not been convicted of any offense related to alcohol, controlled substances or
90 drugs during the preceding three years and that the person's habits and conduct show that the
91 person no longer poses a threat to the public safety of this state.

92 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
93 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
94 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
95 manner prescribed in this subsection, allow a person who has had such person's license to operate
96 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
97 because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of
98 section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person
99 has served at least two years of such disqualification or revocation. Such person shall present
100 evidence satisfactory to the court or the director that such person has not been convicted of any
101 offense related to alcohol, controlled substances or drugs during the preceding two years and that
102 the person's habits and conduct show that the person no longer poses a threat to the public safety
103 of this state. Any person who is denied a license permanently in this state because of an

104 alcohol-related conviction subsequent to a restoration of such person's driving privileges
105 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege
106 pursuant to the provisions of this subdivision.

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

114 5. The director of revenue shall promulgate rules and regulations necessary to carry out
115 the provisions of this section.

302.505. 1. The department shall suspend or revoke the license of any person upon its
2 determination that the person was arrested upon probable cause to believe such person was
3 driving a motor vehicle while the alcohol concentration in the person's blood, breath, or urine
4 was [ten-hundredths] **eight-hundredths** of one percent or more by weight, based on the
5 definition of alcohol concentration in section 302.500, or where such person was less than
6 twenty-one years of age when stopped and was stopped upon probable cause to believe such
7 person was driving while intoxicated in violation of section 577.010, RSMo, or driving with
8 excessive blood alcohol content in violation of section 577.012, RSMo, or upon probable cause
9 to believe such person violated a state, county or municipal traffic offense and such person was
10 driving with a blood alcohol content of two-hundredths of one percent or more by weight.

11 2. The department shall make a determination of these facts on the basis of the report of
12 a law enforcement officer required in section 302.510, and this determination shall be final
13 unless a hearing is requested and held. If a hearing is held, the department shall review the
14 matter and make a final determination on the basis of evidence received at the hearing.

15 3. The determination of these facts by the department is independent of the determination
16 of the same or similar facts in the adjudication of any criminal charges arising out of the same
17 occurrence. The disposition of those criminal charges shall not affect any suspension or
18 revocation under this section.

302.510. 1. Except as provided in subsection 3 of this section, a law enforcement officer
2 who arrests any person for a violation of any state statute related to driving while intoxicated or
3 for a violation of a county or municipal ordinance prohibiting driving while intoxicated or a
4 county or municipal alcohol related traffic offense, and in which the alcohol concentration in the
5 person's blood, breath, or urine was [ten-hundredths] **eight-hundredths** of one percent or more
6 by weight or two-hundredths of one percent or more by weight for anyone less than twenty-one

7 years of age, shall forward to the department a verified report of all information relevant to the
8 enforcement action, including information which adequately identifies the arrested person, a
9 statement of the officer's grounds for belief that the person violated any state statute related to
10 driving while intoxicated or was less than twenty-one years of age and was driving with
11 two-hundredths of one percent or more by weight of alcohol in the person's blood, or a county
12 or municipal ordinance prohibiting driving while intoxicated or a county or municipal alcohol
13 related traffic offense, a report of the results of any chemical tests which were conducted, and
14 a copy of the citation and complaint filed with the court.

15 2. The report required by this section shall be made on forms supplied by the department
16 or in a manner specified by regulations of the department.

17 3. A county or municipal ordinance prohibiting driving while intoxicated or a county or
18 municipal alcohol related traffic offense may not be the basis for suspension or revocation of a
19 driver's license pursuant to sections 302.500 to 302.540, unless the arresting law enforcement
20 officer, other than an elected peace officer or official, has been certified by the director of the
21 department of public safety pursuant to the provisions of sections 590.100 to 590.180, RSMo.

302.520. 1. Whenever the chemical test results are available to the law enforcement
2 officer while the arrested person is still in custody, and where the results show an alcohol
3 concentration of [~~ten-hundredths~~] **eight-hundredths** of one percent or more by weight of alcohol
4 in such person's blood or where such person is less than twenty-one years of age and the results
5 show that there is two-hundredths of one percent or more of alcohol in the person's blood, the
6 officer, acting on behalf of the department, shall serve the notice of suspension or revocation
7 personally on the arrested person.

8 2. When the law enforcement officer serves the notice of suspension or revocation, the
9 officer shall take possession of any driver's license issued by this state which is held by the
10 person. When the officer takes possession of a valid driver's license issued by this state, the
11 officer, acting on behalf of the department, shall issue a temporary permit which is valid for
12 fifteen days after its date of issuance and shall also give the person arrested a notice which shall
13 inform the person of all rights and responsibilities pursuant to sections 302.500 to 302.540. The
14 notice shall be in such form so that the arrested person may sign the original as evidence of
15 receipt thereof. The notice shall also contain a detachable form permitting the arrested person
16 to request a hearing. Signing the hearing request form and mailing such request to the
17 department shall constitute a formal application for a hearing.

18 3. A copy of the completed notice of suspension or revocation form, a copy of any
19 completed temporary permit form, a copy of the notice of rights and responsibilities given to the
20 arrested person, including any request for hearing, and any driver's license taken into possession
21 pursuant to this section shall be forwarded to the department by the officer along with the report

22 required in section 302.510.

23 4. The department shall provide forms for notice of suspension or revocation, for notice
24 of rights and responsibilities, for request for a hearing and for temporary permits to law
25 enforcement agencies.

302.541. 1. In addition to other fees required by law, any person who has had a license
2 to operate a motor vehicle suspended or revoked following a determination, pursuant to section
3 302.505, or section 577.010, 577.012, 577.041 or 577.510, RSMo, or any county or municipal
4 ordinance, where the judge in such case was an attorney and the defendant was represented by
5 or waived the right to an attorney, that such person was driving while intoxicated or with a blood
6 alcohol content of [ten-hundredths] **eight-hundredths** of one percent or more by weight or,
7 where such person was at the time of the arrest less than twenty-one years of age and was driving
8 with a blood alcohol content of two-hundredths of one percent or more by weight, shall pay an
9 additional fee of twenty-five dollars prior to the reinstatement or reissuance of the license.

10 2. Any person less than twenty-one years of age whose driving privilege has been
11 suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540
12 that such person was driving a motor vehicle with two-hundredths of one percent or more blood
13 alcohol content is exempt from filing proof of financial responsibility with the department of
14 revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving
15 privileges or obtaining a restricted driving privilege as provided by section 302.525.

306.112. 1. A person commits the crime of operating a vessel with excessive blood
2 alcohol content if [he] **such person** operates a vessel on the Mississippi River, Missouri River
3 or the lakes of this state with [ten-hundredths] **eight-hundredths** of one percent or more by
4 weight of alcohol in [his] **said person's** blood.

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

8 3. Any person convicted of operating a vessel with excessive blood alcohol content is
9 guilty of a class B misdemeanor upon conviction for the first violation, guilty of a class A
10 misdemeanor upon conviction for the second violation, and guilty of a class D felony for
11 conviction for the third and subsequent violations.

306.117. 1. Upon the trial of any person for violation of any of the provisions of section
2 306.111 or 306.112 the amount of alcohol or drugs in the person's blood at the time of the act
3 alleged as shown by any chemical analysis of the person's blood, breath, or saliva is admissible
4 in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent
5 the admissibility or introduction of such evidence if otherwise admissible. Evidence of alcohol
6 in a person's blood shall be given the following effect:

7 (1) If there was five-hundredths of one percent or less by weight of alcohol in [his] **the**
8 **person's** blood, it shall be presumed that the person was not intoxicated at the time the specimen
9 was obtained;

10 (2) If there was in excess of five-hundredths of one percent but less than
11 [ten-hundredths] **eight-hundredths** of one percent by weight of alcohol in [his] **the person's**
12 blood, the fact shall not give rise to any presumption that the person was or was not intoxicated,
13 but the fact may be considered with other competent evidence in determining whether the person
14 was intoxicated;

15 (3) If there was [ten-hundredths] **eight-hundredths** of one percent or more by weight
16 of alcohol in the person's blood, this shall be prima facie evidence that the person was
17 intoxicated at the time the specimen was taken.

18 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per
19 one hundred milliliters of blood.

20 3. A chemical analysis of a person's breath, blood, or saliva, in order to give rise to the
21 presumption or to have the effect provided for in subsection 1 of this section, shall have been
22 performed as provided in sections 306.111 to 306.119 and in accordance with methods and
23 standards approved by the department of health.

24 4. The provisions of this section shall not be construed as limiting the introduction of
25 any other competent evidence bearing upon the question whether the person was intoxicated or
26 under the influence of a controlled substance, or drug, or a combination of either or both with
27 or without alcohol.

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

4 2. As used in this section, percent by weight of alcohol in the blood shall be based upon
5 grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may
6 be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes
7 of determining the alcoholic content of a person's blood under this section, the test shall be
8 conducted in accordance with the provisions of sections 577.020 to 577.041.

9 3. For the first offense, driving with excessive blood alcohol content is a class [C] **B**
10 misdemeanor.

577.037. 1. Upon the trial of any person for violation of any of the provisions of section
2 565.024, RSMo, or section 565.060, RSMo, or section 577.010 or 577.012, or upon the trial of
3 any criminal action or violations of county or municipal ordinances or in any license suspension
4 or revocation proceeding pursuant to the provisions of chapter 302, RSMo, arising out of acts
5 alleged to have been committed by any person while driving a motor vehicle while in an

6 intoxicated condition, the amount of alcohol in the person's blood at the time of the act alleged
7 as shown by any chemical analysis of the person's blood, breath, saliva or urine is admissible in
8 evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the
9 admissibility or introduction of such evidence if otherwise admissible. If there was
10 [ten-hundredths] **eight-hundredths** of one percent or more by weight of alcohol in the person's
11 blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen
12 was taken.

13 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per
14 one hundred milliliters of blood or grams of alcohol per two hundred ten liters of breath.

15 3. The foregoing provisions of this section shall not be construed as limiting the
16 introduction of any other competent evidence bearing upon the question whether the person was
17 intoxicated.

18 4. A chemical analysis of a person's breath, blood, saliva or urine, in order to give rise
19 to the presumption or to have the effect provided for in subsection 1 of this section, shall have
20 been performed as provided in sections 577.020 to 577.041 and in accordance with methods and
21 standards approved by the state department of health.

22 5. Any charge alleging a violation of section 577.010 or 577.012 or any county or
23 municipal ordinance prohibiting driving while intoxicated or driving under the influence of
24 alcohol shall be dismissed with prejudice if a chemical analysis of the defendant's breath, blood,
25 saliva, or urine performed in accordance with sections 577.020 to 577.041 and rules promulgated
26 thereunder by the state department of health demonstrate that there was less than
27 [ten-hundredths] **eight-hundredths** of one percent of alcohol in the defendant's blood unless one
28 or more of the following considerations cause the court to find a dismissal unwarranted:

29 (1) There is evidence that the chemical analysis is unreliable as evidence of the
30 defendant's intoxication at the time of the alleged violation due to the lapse of time between the
31 alleged violation and the obtaining of the specimen;

32 (2) There is evidence that the defendant was under the influence of a controlled
33 substance, or drug, or a combination of either or both with or without alcohol; or

34 (3) There is substantial evidence of intoxication from physical observations of witnesses
35 or admissions of the defendant.