

SECOND REGULAR SESSION

# HOUSE BILL NO. 1702

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor), CHAPPELLE-NADAL, NANCE, COX,  
SATER AND FISCHER (107) (Co-sponsors).

3852L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 302.309, 478.001, and 577.023, RSMo, and to enact in lieu thereof three new sections relating to DWI courts, with penalty provisions.

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

Section A. Sections 302.309, 478.001, and 577.023, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 302.309, 478.001, and 577.023, to read as follows: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 shall have jurisdiction to hear applications and make eligibility determinations granting limited driving privileges. Any application may be made in writing to the director of revenue and the person's reasons for requesting the limited driving privilege shall be made therein.

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

(a) A business, occupation, or employment;

(b) Seeking medical treatment for such operator;

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (d) Attending alcohol or drug treatment programs;  
17 (e) Seeking the required services of a certified ignition interlock device provider; or  
18 (f) Any other circumstance the court or director finds would create an undue hardship  
19 on the operator; the court or director may grant such limited driving privilege as the  
20 circumstances of the case justify if the court or director finds undue hardship would result to the  
21 individual, and while so operating a motor vehicle within the restrictions and limitations of the  
22 limited driving privilege the driver shall not be guilty of operating a motor vehicle without a  
23 valid license.

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

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

47 (5) The court order or the director's grant of the limited or restricted driving privilege  
48 shall indicate the termination date of the privilege, which shall be not later than the end of the  
49 period of suspension or revocation. A copy of any court order shall be sent by the clerk of the  
50 court to the director, and a copy shall be given to the driver which shall be carried by the driver  
51 whenever such driver operates a motor vehicle. The director of revenue upon granting a limited

52 driving privilege shall give a copy of the limited driving privilege to the applicant. The applicant  
53 shall carry a copy of the limited driving privilege while operating a motor vehicle. A conviction  
54 which results in the assessment of points pursuant to section 302.302, other than a violation of  
55 a municipal stop sign ordinance where no accident is involved, against a driver who is operating  
56 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points  
57 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the  
58 limited driving privilege, the privilege shall not be terminated. Failure of the driver to maintain  
59 proof of financial responsibility, as required by chapter 303, or to maintain proof of installation  
60 of a functioning, certified ignition interlock device, as applicable, shall terminate the privilege.  
61 The director shall notify by ordinary mail the driver whose privilege is so terminated.

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

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

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

72 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),  
73 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

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

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

86 (7) No person who possesses a commercial driver's license shall receive a limited driving  
87 privilege issued for the purpose of operating a commercial motor vehicle if such person's driving

88 privilege is suspended, revoked, canceled, denied, or disqualified. Nothing in this section shall  
89 prohibit the issuance of a limited driving privilege for the purpose of operating a noncommercial  
90 motor vehicle provided that pursuant to the provisions of this section, the applicant is not  
91 otherwise ineligible for a limited driving privilege.

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

102 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise  
103 ineligible for a limited driving privilege or convicted of involuntary manslaughter while  
104 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the  
105 manner prescribed in this subsection, allow a person who has had such person's license to operate  
106 a motor vehicle revoked where that person cannot obtain a new license for a period of five years  
107 because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of  
108 section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person  
109 has served at least two years of such disqualification or revocation. Such person shall present  
110 evidence satisfactory to the court or the director that such person has not been convicted of any  
111 offense related to alcohol, controlled substances or drugs during the preceding two years and that  
112 the person's habits and conduct show that the person no longer poses a threat to the public safety  
113 of this state. Any person who is denied a license permanently in this state because of an  
114 alcohol-related conviction subsequent to a restoration of such person's driving privileges  
115 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege  
116 pursuant to the provisions of this subdivision.

117 **(9) A court authorized under section 478.001 may issue a limited driving privilege**  
118 **to a driver who is otherwise ineligible under the provisions of this section upon successful**  
119 **completion of a section 478.001 drug or DWI court program, and who otherwise has**  
120 **completed the first forty-five days of any license suspension, revocation, or denial period,**  
121 **as applicable, and is not eligible for a license because of the provisions of subdivisions (1),**  
122 **(2), (5), or (6) of subsection 1 of section 302.060. No person who possesses a commercial**  
123 **driver's license shall receive a limited driving privilege under this subsection for the**

124 **purpose of operating a commercial motor vehicle. The section 478.001 limited driving**  
125 **privilege is to be issued subject to the requirement that the driver file proof with the**  
126 **department of revenue that any motor vehicle operated by the person is equipped with a**  
127 **functioning, certified ignition interlock device, and that the driver has on file with the**  
128 **department of revenue proof of financial responsibility as required by chapter 303 as**  
129 **required conditions of the limited driving privilege. Upon good cause shown, the court**  
130 **may additionally revoke or terminate the limited driving privilege granted herein.**

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

138 5. The director of revenue shall promulgate rules and regulations necessary to carry out  
139 the provisions of this section. Any rule or portion of a rule, as that term is defined in section  
140 536.010, RSMo, that is created under the authority delegated in this section shall become  
141 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,  
142 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
143 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
144 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently  
145 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
146 after August 28, 2001, shall be invalid and void.

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

12           **2. A DWI docket may be established by any circuit court under sections 478.001**  
13 **to 478.006 to provide an alternative for the judicial system to dispose of cases which stem**  
14 **from alcohol use.**

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

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

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

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

12           (2) A "chronic offender" is:

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

15           (b) A person who has pleaded guilty to or has been found guilty of, on two or more  
16 separate occasions, any combination of the following: involuntary manslaughter under  
17 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree  
18 under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic  
19 offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060,  
20 RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of  
21 subsection 1 of section 565.082, RSMo; or

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

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

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

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

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

45 (b) A person who has pleaded guilty to or has been found guilty of involuntary  
46 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo,  
47 assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060,  
48 RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of  
49 subsection 1 of section 565.082, RSMo; and

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

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

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

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

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

65 6. **No state, county, or municipal court shall suspend the imposition of sentence as**  
66 **to a persistent offender under this section unless the offender is actively participating in**  
67 **or successfully completed a program under section 478.001.** No state, county, or municipal  
68 court shall suspend the imposition of sentence as to a prior offender, [persistent offender,]  
69 aggravated offender, or chronic offender under this section nor sentence such person to pay a fine

70 in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding. No  
71 prior offender shall be eligible for parole or probation until he or she has served a minimum of  
72 five days imprisonment, unless as a condition of such parole or probation such person performs  
73 at least thirty days of community service under the supervision of the court in those jurisdictions  
74 which have a recognized program for community service. No persistent offender shall be  
75 eligible for parole or probation until he or she has served a minimum of [ten] **thirty** days  
76 imprisonment, unless **the offender has entered a program under section 478.001** or as a  
77 condition of such parole or probation such person performs at least sixty days of community  
78 service under the supervision of the court. No aggravated offender shall be eligible for parole  
79 or probation until he or she has served a minimum of sixty days imprisonment **or the offender**  
80 **has entered into a program under section 478.001**. No chronic offender shall be eligible for  
81 parole or probation until he or she has served a minimum of two years imprisonment **or the**  
82 **offender has entered into a program under section 478.001**. In addition to any other terms  
83 or conditions of probation, the court shall consider, as a condition of probation for any person  
84 who pleads guilty to or is found guilty of an intoxication-related traffic offense, requiring the  
85 offender to abstain from consuming or using alcohol or any products containing alcohol as  
86 demonstrated by continuous alcohol monitoring or by verifiable breath alcohol testing performed  
87 a minimum of four times per day as scheduled by the court for such duration as determined by  
88 the court, but not less than ninety days. The court may, in addition to imposing any other fine,  
89 costs, or assessments provided by law, require the offender to bear any costs associated with  
90 continuous alcohol monitoring or verifiable breath alcohol testing.

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

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

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

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

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

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

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

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

109           12. Nothing in this section shall prevent the use of presentence investigations or  
110 commitments **or sentencing reports**.

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

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

115           15. The court shall not instruct the jury as to the range of punishment or allow the jury,  
116 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of  
117 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

118           16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an  
119 intoxication-related traffic offense shall be heard and determined by the trial court out of the  
120 hearing of the jury prior to the submission of the case to the jury, and shall include but not be  
121 limited to evidence of convictions received by a search of the records of the Missouri uniform  
122 law enforcement system maintained by the Missouri state highway patrol. After hearing the  
123 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed  
124 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,  
125 probation or parole or any combination thereof in any intoxication-related traffic offense in a  
126 state, county or municipal court or any combination thereof, shall be treated as a prior plea of  
127 guilty or finding of guilt for purposes of this section.

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