

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 254
96TH GENERAL ASSEMBLY

1491L.07C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 302.309, 302.530, 558.021, and 577.023, RSMo, and to enact in lieu thereof four new sections relating to intoxicated-related traffic offenses, with penalty provisions.

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

Section A. Sections 302.309, 302.530, 558.021, and 577.023, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 302.309, 302.530, 558.021,
3 and 577.023, to read as follows:

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.

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, the director of revenue, or a commissioner operating under
8 section 478.007 shall have jurisdiction to hear applications and make eligibility determinations
9 granting limited driving privileges. Any application may be made in writing to the director of
10 revenue and the person's reasons for requesting the limited driving privilege shall be made
11 therein.

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

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.

14 (a) [A business, occupation, or] **Driving to or from the operator's places of**
15 employment;

16 (b) [Seeking medical treatment for such operator;

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

18 [(d)] **(c)** Attending alcohol or drug treatment programs; **or**

19 [(e)] **(d)** Seeking the required services of a certified ignition interlock device provider;

20 [or

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

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

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

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

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

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

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

74 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
75 (6), (7), (8), (9), (10) or (11) of section 302.060;

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

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

82 (f) Violation more than once of the provisions of section 577.041 or a similar implied
83 consent law of any other state; or

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

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

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

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

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

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

130 5. The director of revenue shall promulgate rules and regulations necessary to carry out
131 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
132 536.010, that is created under the authority delegated in this section shall become effective only
133 if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
134 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
135 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
136 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
137 and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

302.530. 1. Any person who has received a notice of suspension or revocation may
2 make a request within fifteen days of receipt of the notice for a review of the department's
3 determination at a hearing. If the person's driver's license has not been previously surrendered,
4 it may be surrendered at the time the request for a hearing is made.

5 2. At the time the request for a hearing is made, if it appears from the record that the
6 person is the holder of a valid driver's license issued by this state, and that the driver's license has
7 been surrendered, the department shall issue a temporary permit which shall be valid until the
8 scheduled date for the hearing. The department may later issue an additional temporary permit
9 or permits in order to stay the effective date of the suspension or revocation until the final order
10 is issued following the hearing, as required by section 302.520.

11 3. The hearing may be held by telephone, or if requested by the person, such person's
12 attorney or representative, [in the county where the arrest was made] **at a regional location as**
13 **designated by the director.** The hearing shall be conducted by examiners who are licensed to
14 practice law in the state of Missouri and who are employed by the department on a part-time or
15 full-time basis as the department may determine.

16 4. The sole issue at the hearing shall be whether by a preponderance of the evidence the
17 person was driving a vehicle pursuant to the circumstances set out in section 302.505. The

18 burden of proof shall be on the state to adduce such evidence. If the department finds the
19 affirmative of this issue, the suspension or revocation order shall be sustained. If the department
20 finds the negative of the issue, the suspension or revocation order shall be rescinded.

21 5. The procedure at such hearing shall be conducted in accordance with chapter 536,
22 with sections 302.500 to 302.540. A report certified under subsection 2 of section 302.510 shall
23 be admissible in a like manner as a verified report as evidence of the facts stated therein and any
24 provision of chapter 536 to the contrary shall not apply.

25 6. The department shall promptly notify the person of its decision including the reasons
26 for that decision. Such notification shall include a notice advising the person that the
27 department's decision shall be final within fifteen days from the date such notice was mailed
28 unless the person challenges the department's decision within that time period by filing an appeal
29 in the circuit court in the county where the arrest occurred.

30 7. Unless the person, within fifteen days after being notified of the department's decision,
31 files an appeal for judicial review pursuant to section 302.535, the decision of the department
32 shall be final.

33 8. The director may adopt any rules and regulations necessary to carry out the provisions
34 of this section.

558.021. 1. The court shall find the defendant to be a prior offender, persistent offender,
2 dangerous offender, persistent sexual offender or predatory sexual offender if:

3 (1) The indictment or information, original or amended, or the information in lieu of an
4 indictment pleads all essential facts warranting a finding that the defendant is a prior offender,
5 persistent offender, dangerous offender, persistent sexual offender or predatory sexual offender;
6 and

7 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
8 beyond a reasonable doubt that the defendant is a prior offender, persistent offender, dangerous
9 offender, persistent sexual offender or predatory sexual offender; and

10 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
11 by the court that the defendant is a prior offender, persistent offender, dangerous offender,
12 persistent sexual offender or predatory sexual offender.

13 2. In a jury trial, the facts shall be pleaded, established and found prior to submission to
14 the jury outside of its hearing, except the facts required by subdivision (1) of subsection 4 of
15 section 558.016 may be established and found at a later time, but prior to sentencing, and may
16 be established by judicial notice of prior testimony before the jury; **provided that any error or**
17 **omission in pleading or proving the facts required to comply with this section may be**
18 **corrected by amending the pleadings or supplementing the record, on notice and hearing,**
19 **prior to sentencing; provided further that any error in pleading or proving the facts**

20 **required to comply with this section shall not require vacation or reversal of sentence on**
21 **appeal unless such error results in substantial prejudice to the rights of the defendant or**
22 **a miscarriage of justice, and nothing herein shall be construed to preclude a remand to**
23 **permit correction of such error after notice and hearing.**

24 3. In a trial without a jury or upon a plea of guilty, the court may defer the proof and
25 findings of such facts to a later time, but prior to sentencing. The facts required by subdivision
26 (1) of subsection 4 of section 558.016 may be established by judicial notice of prior testimony
27 or the plea of guilty.

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

30 5. The defendant may waive proof of the facts alleged.

31 6. Nothing in this section shall prevent the use of presentence investigations or
32 commitments under sections 557.026 and 557.031.

33 7. At the sentencing hearing both the state and the defendant shall be permitted to present
34 additional information bearing on the issue of sentence.

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; murder in the second degree under
8 section 565.021, where the underlying felony is an intoxication-related traffic offense; or assault
9 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
10 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
11 565.082;

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; murder in the second degree under
18 section 565.021, where the underlying felony is an intoxication-related traffic offense; assault
19 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
20 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
21 565.082; 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; murder in the
25 second degree under section 565.021, where the underlying felony is an intoxication-related
26 traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section
27 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of
28 subsection 1 of section 565.082;

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;

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, murder in the second degree under section 565.021, where the
37 underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant
38 to subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement officer in the
39 second degree pursuant to subdivision (4) of subsection 1 of section 565.082, or driving under
40 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance;

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

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

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

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

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

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

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

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

64 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
65 prior offender, persistent offender, aggravated offender, or chronic offender under this section
66 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011 to the
67 contrary notwithstanding.

68 (1) No prior offender shall be eligible for parole or probation until he or she has served
69 a minimum of ten days imprisonment:

70 (a) Unless as a condition of such parole or probation such person performs at least thirty
71 days **involving at least two hundred forty hours** of community service under the supervision
72 of the court in those jurisdictions which have a recognized program for community service; or

73 (b) The offender participates in and successfully completes a program established
74 pursuant to section 478.007 or other court-ordered treatment program, if available, **and as part**
75 **of either program, the offender performs at least thirty days of community service under**
76 **the supervision of the court.**

77 (2) No persistent offender shall be eligible for parole or probation until he or she has
78 served a minimum of thirty days imprisonment:

79 (a) Unless as a condition of such parole or probation such person performs at least sixty
80 days **involving at least four hundred eighty hours** of community service under the supervision
81 of the court; or

82 (b) The offender participates in and successfully completes a program established
83 pursuant to section 478.007 or other court-ordered treatment program, if available, **and as part**
84 **of either program, the offender performs at least sixty days of community service under**
85 **the supervision of the court.**

86 (3) No aggravated offender shall be eligible for parole or probation until he or she has
87 served a minimum of sixty days imprisonment.

88 (4) No chronic offender shall be eligible for parole or probation until he or she has
89 served a minimum of two years imprisonment. In addition to any other terms or conditions of
90 probation, the court shall consider, as a condition of probation for any person who pleads guilty
91 to or is found guilty of an intoxication-related traffic offense, requiring the offender to abstain
92 from consuming or using alcohol or any products containing alcohol as demonstrated by
93 continuous alcohol monitoring or by verifiable breath alcohol testing performed a minimum of

94 four times per day as scheduled by the court for such duration as determined by the court, but not
95 less than ninety days. The court may, in addition to imposing any other fine, costs, or
96 assessments provided by law, require the offender to bear any costs associated with continuous
97 alcohol monitoring or verifiable breath alcohol testing.

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

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

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

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

109 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
110 the jury outside of its hearing; **provided that any error or omission in pleading or proving**
111 **the facts required to comply with this section may be corrected by amending the pleadings**
112 **or supplementing the record, on notice and hearing, prior to sentencing; provided further**
113 **that any error in pleading or proving the facts required to comply with this section shall**
114 **not require vacation or reversal of sentence on appeal unless such error results in**
115 **substantial prejudice to the rights of the defendant or a miscarriage of justice, and nothing**
116 **herein shall be construed to preclude a remand to permit correction of such error after**
117 **notice and hearing.**

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

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

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

123 12. Nothing in this section shall prevent the use of presentence investigations or
124 commitments.

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

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

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

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

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