

FIRST REGULAR SESSION

HOUSE BILL NO. 253

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COX (Sponsor), KELLEY (126), COLONA, FUHR, NANCE,
GATSCHENBERGER AND KELLY (24) (Co-sponsors).

0590L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 302.020, 302.321, 303.025, and 311.325, RSMo, and to enact in lieu thereof five new sections relating to criminal justice, with penalty provisions.

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

Section A. Sections 302.020, 302.321, 303.025, and 311.325, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 56.089, 302.020, 302.321,
3 303.025, and 311.325, to read as follows:

56.089. 1. As used in this section the following terms shall mean:

- 2 (1) "Accusatory instrument", a warrant of arrest, complaint, information, or
3 indictment;
4 (2) "Accused", an individual accused of a crime, but not yet charged with a crime;
5 (3) "Defendant", any person charged with a criminal offense;
6 (4) "Deferred prosecution", the suspension of a criminal case for a specified period
7 upon the request of both the prosecuting attorney and the accused or the defendant;
8 (5) "Diversionary screening", the discretionary power of the prosecuting attorney
9 to suspend all formal prosecutorial proceedings against a person who has become involved
10 in the criminal justice system as an accused or defendant;
11 (6) "Prosecuting attorney", includes the prosecuting attorney or circuit attorney
12 for each county of the state and the City of St. Louis, or the attorney general;
13 (7) "Prosecution diversion", the imposition of conditions of behavior and conduct
14 by the prosecuting attorney upon an accused or defendant for a specified period of time
15 as an alternative to proceeding to adjudication on a complaint, information, or indictment.

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 **2. Each prosecuting attorney in the state of Missouri shall have the authority to,**
17 **upon agreement with an accused or a defendant, divert a criminal case to a prosecution**
18 **diversion program for a period of six months to two years, thus allowing for any statute**
19 **of limitations to be tolled for that time alone. The period of diversion may be extended by**
20 **the prosecuting attorney as a disciplinary measure or to allow sufficient time for**
21 **completion of any portion of the prosecution diversion including restitution; provided,**
22 **however, that no extension of such diversion shall be for a period of more than two years.**

23 **3. The prosecuting attorney may divert cases, under this system, out of the criminal**
24 **justice system where the prosecuting attorney determines that the advantages of utilizing**
25 **prosecution diversion outweigh the advantages of immediate court activity.**

26 **4. Prior to or upon the issuance of an accusatory instrument, with consent of the**
27 **accused or defendant, the prosecuting attorney may forego continued prosecution upon the**
28 **parties agreement to a prosecution diversion plan. The prosecution diversion plan shall**
29 **be for a specified period and be in writing. The prosecuting attorney has the sole authority**
30 **to develop diversionary program requirements.**

31 **5. During any period of prosecution diversion, the prosecuting attorney may impose**
32 **conditions upon the behavior and conduct of the accused or defendant that assures the**
33 **safety and well-being of the community as well as that of the accused or defendant. The**
34 **conditions imposed by the prosecuting attorney may include, but are not limited to, the**
35 **following:**

36 **(1) Requiring the accused or defendant to remain free of any criminal behavior**
37 **during the entire period of prosecution diversion;**

38 **(2) Payment of restitution to any victim of the related offense;**

39 **(3) Requiring the accused to pay an administrative handling cost of not more than**
40 **one hundred twenty dollars for each misdemeanor case diverted under this section and not**
41 **more than two hundred fifty dollars for each felony case diverted under this section, which**
42 **the prosecuting attorney may waive or defer in whole or in part. Notwithstanding the**
43 **provisions of sections 50.525 to 50.745, the costs provided for in this subdivision shall be**
44 **deposited by the county treasurer into a separate interest-bearing fund to be expended by**
45 **the prosecuting attorney. This fund shall be known as the "Administrative Handling Cost**
46 **Fund", and it shall be the same fund for deposits under this section and under section**
47 **570.120. The funds shall be expended, upon warrants issued by the prosecuting attorney**
48 **directing the treasurer to issue checks thereon, only for purposes related to that authorized**
49 **by subsection 6 of this section. Notwithstanding the provisions of any other law, in**
50 **addition to the administrative handling cost, the prosecuting attorney may collect an**
51 **additional cost of five dollars per case for deposit to the Missouri office of prosecution**

52 services fund established in subsection 2 of section 56.765. All moneys collected under this
53 section which are payable to the Missouri office of prosecution services fund shall be
54 transmitted at least monthly by the county treasurer to the director of revenue who shall
55 deposit the amount collected to the credit of the Missouri office of prosecution services
56 fund under the procedure established under subsection 2 of section 56.765.

57 **6. The moneys deposited in the fund may be used by the prosecuting attorney for**
58 **office supplies, postage, books, training, office equipment, capital outlay, expenses of trial**
59 **and witness preparation, additional employees for the staff of the prosecuting attorney,**
60 **employees' salaries, and for other lawful expenses incurred by the prosecuting attorney in**
61 **the operation of that office.**

62 **7. This fund may be audited by the state auditor's office or the appropriate**
63 **auditing agency.**

64 **8. If the moneys collected and deposited into this fund are not totally expended**
65 **annually, then the unexpended balance shall remain in the fund and the balance shall be**
66 **kept in the fund to accumulate from year to year.**

67 **9. The responsibility and authority to screen or divert specific cases, or to refuse**
68 **to screen or divert specific cases, shall rest within the sole judgment and discretion of the**
69 **prosecuting attorney as part of their official duties as prosecuting attorney. The decision**
70 **of the prosecuting attorney regarding diversion shall not be subject to appeal nor be raised**
71 **as a defense in any prosecution of a criminal case involving the accused or defendant.**

72 **10. Any person participating in the program shall have the right to insist on**
73 **criminal prosecution for the offense for which they are accused at any time.**

74 **11. In conducting the program, the prosecuting attorney may require at any point**
75 **the reinitiation of criminal proceedings when, in his or her judgment, such is warranted.**

76 **12. Any county, city, person, organization or agency, or employee or agent thereof,**
77 **involved with the supervision of activities, programs, or community service that are a part**
78 **of a prosecution diversion program, shall be immune from any suit by the person**
79 **performing the work under the deferred prosecution agreement, or any person deriving**
80 **a cause of action from such person, except for an intentional tort or gross negligence.**
81 **Persons performing work or community service pursuant to a deferred prosecution**
82 **agreement as described shall not be deemed to be engaged in employment within the**
83 **meaning of the provisions of chapter 288. A person performing work or community**
84 **service pursuant to a deferred prosecution agreement shall not be deemed an employee**
85 **within the meaning of the provisions of chapter 287.**

86 **13. Any person supervising or employing an accused or defendant under the**
87 **program shall report to the prosecuting attorney any violation of the terms of the**
88 **prosecution diversion program.**

89 **14. After completion of the program and any conditions imposed upon the accused**
90 **or defendant, to the satisfaction of the prosecuting attorney, the accused shall be entitled**
91 **to not have the diverted case filed or the defendant shall be entitled to a dismissal of the**
92 **diverted charges. Any other provision of law notwithstanding, such individual may be**
93 **required to pay any associated costs prior to dismissal of pending charges.**

 302.020. 1. Unless otherwise provided for by law, it shall be unlawful for any person,
2 except those expressly exempted by section 302.080, to:

3 (1) Operate any vehicle upon any highway in this state unless the person has a valid
4 license;

5 (2) Operate a motorcycle or motortricycle upon any highway of this state unless such
6 person has a valid license that shows the person has successfully passed an examination for the
7 operation of a motorcycle or motortricycle as prescribed by the director. The director may
8 indicate such upon a valid license issued to such person, or shall issue a license restricting the
9 applicant to the operation of a motorcycle or motortricycle if the actual demonstration, required
10 by section 302.173, is conducted on such vehicle;

11 (3) Authorize or knowingly permit a motorcycle or motortricycle owned by such person
12 or under such person's control to be driven upon any highway by any person whose license does
13 not indicate that the person has passed the examination for the operation of a motorcycle or
14 motortricycle or has been issued an instruction permit therefor;

15 (4) Operate a motor vehicle with an instruction permit or license issued to another
16 person.

17 2. Every person operating or riding as a passenger on any motorcycle or motortricycle,
18 as defined in section 301.010, upon any highway of this state shall wear protective headgear at
19 all times the vehicle is in motion. The protective headgear shall meet reasonable standards and
20 specifications established by the director.

21 3. Notwithstanding the provisions of section 302.340 any person convicted of violating
22 subdivision (1) or (2) of subsection 1 of this section is guilty of a [class A] misdemeanor. **A first**
23 **violation of this section shall be punishable by a fine not to exceed three hundred dollars.**
24 **A second or subsequent violation of this section shall be punishable by imprisonment in the**
25 **county jail for a term not to exceed one year and/or a fine not to exceed one thousand**
26 **dollars.** Any person convicted a third or subsequent time of violating subdivision (1) or (2) of
27 subsection 1 of this section is guilty of a class D felony. Notwithstanding the provisions of
28 section 302.340, violation of subdivisions (3) and (4) of subsection 1 of this section is a [class

29 C] misdemeanor, **the first violation punishable by a fine not to exceed three hundred**
30 **dollars, a second or subsequent violation of this section punishable as a class C**
31 **misdemeanor**, and the penalty for failure to wear protective headgear as required by subsection
32 2 of this section is an infraction for which a fine not to exceed twenty-five dollars may be
33 imposed.

34

35 Notwithstanding all other provisions of law and court rules to the contrary, no court costs shall
36 be imposed upon any person due to such violation. No points shall be assessed pursuant to
37 section 302.302 for a failure to wear such protective headgear. **Prior pleas of guilty and prior**
38 **findings of guilty shall be pleaded and proven in the same manner as required by section**
39 **558.021.**

302.321. 1. A person commits the crime of driving while revoked if such person
2 operates a motor vehicle on a highway when such person's license or driving privilege has been
3 canceled, suspended, or revoked under the laws of this state or any other state and acts with
4 criminal negligence with respect to knowledge of the fact that such person's driving privilege has
5 been canceled, suspended, or revoked.

6 2. Any person convicted of driving while revoked is guilty of a [class A] misdemeanor.
7 **A first violation of this section shall be punishable by a fine not to exceed three hundred**
8 **dollars. A second or third violation of this section shall be punishable by imprisonment in**
9 **the county jail for a term not to exceed one year and/or a fine not to exceed one thousand**
10 **dollars.** Any person with no prior alcohol-related enforcement contacts as defined in section
11 302.525, convicted a fourth or subsequent time of driving while revoked or a county or
12 municipal ordinance of driving while suspended or revoked where the defendant was represented
13 by or waived the right to an attorney in writing, and where the prior three driving-while-revoked
14 offenses occurred within ten years of the date of occurrence of the present offense; and any
15 person with a prior alcohol-related enforcement contact as defined in section 302.525, convicted
16 a third or subsequent time of driving while revoked or a county or municipal ordinance of driving
17 while suspended or revoked where the defendant was represented by or waived the right to an
18 attorney in writing, and where the prior two driving-while-revoked offenses occurred within ten
19 years of the date of occurrence of the present offense and where the person received and served
20 a sentence of ten days or more on such previous offenses is guilty of a class D felony. **Except**
21 **upon conviction as a first offense**, no court shall suspend the imposition of sentence as to such
22 a person nor sentence such person to pay a fine in lieu of a term of imprisonment, nor shall such
23 person be eligible for parole or probation until such person has served a minimum of forty- eight
24 consecutive hours of imprisonment, unless as a condition of such parole or probation, such
25 person performs at least ten days involving at least forty hours of community service under the

26 supervision of the court in those jurisdictions which have a recognized program for community
27 service. Driving while revoked is a class D felony on the second or subsequent conviction
28 pursuant to section 577.010 or a fourth or subsequent conviction for any other offense. **Prior**
29 **pleas of guilty and prior findings of guilty shall be pleaded and proven in the same manner**
30 **as required by section 558.021.**

303.025. 1. No owner of a motor vehicle registered in this state, or required to be
2 registered in this state, shall operate, register or maintain registration of a motor vehicle, or
3 permit another person to operate such vehicle, unless the owner maintains the financial
4 responsibility which conforms to the requirements of the laws of this state. No nonresident shall
5 operate or permit another person to operate in this state a motor vehicle registered to such
6 nonresident unless the nonresident maintains the financial responsibility which conforms to the
7 requirements of the laws of the nonresident's state of residence. Furthermore, no person shall
8 operate a motor vehicle owned by another with the knowledge that the owner has not maintained
9 financial responsibility unless such person has financial responsibility which covers the person's
10 operation of the other's vehicle; however, no owner or nonresident shall be in violation of this
11 subsection if he or she fails to maintain financial responsibility on a motor vehicle which is
12 inoperable or being stored and not in operation. The director may prescribe rules and regulations
13 for the implementation of this section.

14 2. A motor vehicle owner shall maintain the owner's financial responsibility in a manner
15 provided for in section 303.160, or with a motor vehicle liability policy which conforms to the
16 requirements of the laws of this state. A nonresident motor vehicle owner shall maintain the
17 owner's financial responsibility which conforms to the requirements of the laws of the
18 nonresident's state of residence.

19 3. Any person who violates this section is guilty of a [class C] misdemeanor. **A first**
20 **violation of this section shall be punishable by a fine not to exceed three hundred dollars.**
21 **A second or subsequent violation of this section shall be punishable by imprisonment in the**
22 **county jail for a term not to exceed fifteen days and/or a fine not to exceed three hundred**
23 **dollars. Prior pleas of guilty and prior findings of guilty shall be pleaded and proven in**
24 **the same manner as required by section 558.021.** However, no person shall be found guilty
25 of violating this section if the operator demonstrates to the court that he or she met the financial
26 responsibility requirements of this section at the time the peace officer, commercial vehicle
27 enforcement officer or commercial vehicle inspector wrote the citation. In addition to any other
28 authorized punishment, the court shall notify the director of revenue of any person convicted
29 pursuant to this section and shall do one of the following:

30 (1) Enter an order suspending the driving privilege as of the date of the court order. If
31 the court orders the suspension of the driving privilege, the court shall require the defendant to

32 surrender to it any driver's license then held by such person. The length of the suspension shall
33 be as prescribed in subsection 2 of section 303.042. The court shall forward to the director of
34 revenue the order of suspension of driving privilege and any license surrendered within ten days;

35 (2) Forward the record of the conviction for an assessment of four points;

36 (3) In lieu of an assessment of points, render an order of supervision as provided in
37 section 302.303. An order of supervision shall not be used in lieu of points more than one time
38 in any thirty-six-month period. Every court having jurisdiction pursuant to the provisions of this
39 section shall forward a record of conviction to the Missouri state highway patrol, or at the written
40 direction of the Missouri state highway patrol, to the department of revenue, in a manner
41 approved by the director of the department of public safety. The director shall establish
42 procedures for the record keeping and administration of this section; or

43 (4) For a nonresident, suspend the nonresident's driving privileges in this state in
44 accordance with section 303.030 and notify the official in charge of the issuance of licenses and
45 registration certificates in the state in which such nonresident resides in accordance with section
46 303.080.

47 4. Nothing in sections 303.010 to 303.050, 303.060, 303.140, 303.220, 303.290, 303.330
48 and 303.370 shall be construed as prohibiting the department of insurance, financial institutions
49 and professional registration from approving or authorizing those exclusions and limitations
50 which are contained in automobile liability insurance policies and the uninsured motorist
51 provisions of automobile liability insurance policies.

52 5. If a court enters an order of suspension, the offender may appeal such order directly
53 pursuant to chapter 512 and the provisions of section 302.311 shall not apply.

311.325. 1. Any person under the age of twenty-one years, who purchases or attempts
2 to purchase, or has in his or her possession, any intoxicating liquor as defined in section 311.020
3 or who is visibly in an intoxicated condition as defined in section 577.001, or has a detectable
4 blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol
5 in such person's blood is guilty of a misdemeanor. **A first violation of this section shall be**
6 **punishable by a fine not to exceed three hundred dollars. A second or subsequent violation**
7 **of this section shall be punishable by imprisonment in the county jail for a term not to**
8 **exceed one year and/or a fine not to exceed one thousand dollars. Prior pleas of guilty and**
9 **prior findings of guilty shall be pleaded and proven in the same manner as required by**
10 **section 558.021.** For purposes of prosecution under this section or any other provision of this
11 chapter involving an alleged illegal sale or transfer of intoxicating liquor to a person under
12 twenty-one years of age, a manufacturer-sealed container describing that there is intoxicating
13 liquor therein need not be opened or the contents therein tested to verify that there is intoxicating
14 liquor in such container. The alleged violator may allege that there was not intoxicating liquor

15 in such container, but the burden of proof of such allegation is on such person, as it shall be
16 presumed that such a sealed container describing that there is intoxicating liquor therein contains
17 intoxicating liquor.

18 2. For purposes of determining violations of any provision of this chapter, or of any rule
19 or regulation of the supervisor of alcohol and tobacco control, a manufacturer- sealed container
20 describing that there is intoxicating liquor therein need not be opened or the contents therein
21 tested to verify that there is intoxicating liquor in such container. The alleged violator may allege
22 that there was not intoxicating liquor in such container, but the burden of proof of such allegation
23 is on such person, as it shall be presumed that such a sealed container describing that there is
24 intoxicating liquor therein contains intoxicating liquor.

25 3. Any person under the age of twenty-one years who purchases or attempts to purchase,
26 or has in his or her possession, any intoxicating liquor, or who is visibly in an intoxicated
27 condition as defined in section 577.001, shall be deemed to have given consent to a chemical test
28 or tests of the person's breath, blood, saliva, or urine for the purpose of determining the alcohol
29 or drug content of the person's blood. The implied consent to submit to the chemical tests listed
30 in this subsection shall be limited to not more than two such tests arising from the same arrest,
31 incident, or charge. Chemical analysis of the person's breath, blood, saliva, or urine shall be
32 performed according to methods approved by the state department of health and senior services
33 by licensed medical personnel or by a person possessing a valid permit issued by the state
34 department of health and senior services for this purpose. The state department of health and
35 senior services shall approve satisfactory techniques, devices, equipment, or methods to be
36 considered valid and shall establish standards to ascertain the qualifications and competence of
37 individuals to conduct analyses and to issue permits which shall be subject to termination or
38 revocation by the state department of health and senior services. The person tested may have a
39 physician, or a qualified technician, chemist, registered nurse, or other qualified person at the
40 choosing and expense of the person to be tested, administer a test in addition to any administered
41 at the direction of a law enforcement officer. The failure or inability to obtain an additional test
42 by a person shall not preclude the admission of evidence relating to the test taken at the direction
43 of a law enforcement officer. Upon the request of the person who is tested, full information
44 concerning the test shall be made available to such person. Full information is limited to the
45 following:

- 46 (1) The type of test administered and the procedures followed;
- 47 (2) The time of the collection of the blood or breath sample or urine analyzed;
- 48 (3) The numerical results of the test indicating the alcohol content of the blood and
49 breath and urine;

50 (4) The type and status of any permit which was held by the person who performed the
51 test;

52 (5) If the test was administered by means of a breath- testing instrument, the date of
53 performance of the most recent required maintenance of such instrument. Full information does
54 not include manuals, schematics, or software of the instrument used to test the person or any
55 other material that is not in the actual possession of the state. Additionally, full information does
56 not include information in the possession of the manufacturer of the test instrument.

57 4. The provisions of this section shall not apply to a student who:

58 (1) Is eighteen years of age or older;

59 (2) Is enrolled in an accredited college or university and is a student in a culinary course;

60 (3) Is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other
61 similar malt or fermented beverage as part of the required curriculum; and

62 (4) Tastes a beverage under subdivision (3) of this subsection only for instructional
63 purposes during classes that are part of the curriculum of the accredited college or university.
64 The beverage must at all times remain in the possession and control of an authorized instructor
65 of the college or university, who must be twenty-one years of age or older. Nothing in this
66 subsection may be construed to allow a student under the age of twenty-one to receive any beer,
67 ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered
68 as part of the student's required curriculum and the beverage is used only for instructional
69 purposes during classes conducted as part of the curriculum.