MISSOURI MUNICIPAL AND ASSOCIATE CIRCUIT JUDGES ASSOCIATION

Regional Seminar Notebook

Columbia

Kansas City

Sikeston

St. Louis

Nixa

November 1, 2019

Seminar Locations and Speakers

MMACJA Regional Seminars

November 1, 2019

11:30 a.m. – 4:00 p.m.

Springfield
Nixa Municipal Court
715 West Md. Vernon
Nixa, MO 65714

Columbia
Howard Municipal Building
600 East Broadway
Columbia, MO 65201

Sikeston
Three Rivers Community College Building
1400 S. Main
Sikeston, MO 63801

Kansas City
Lee's Summit PD
Police Training Facility
10 NE Tudor
Lee's Summit, MO 64086

St. Louis
Maryland Heights Municipal Court
11911 Dorsett Road
Maryland Heights, MO 63043

Regional Seminar Committee Chair

Hon. Andrea Niehoff

This program qualifies for 4.0 hours of CLE credit, which includes 1.0 hour of Ethics.

Agenda and Table of Contents

MMACJA Regional Seminars

November 1, 2019

11:30 a.m. – 4:00 p.m.

To our seminar guests: We hope you enjoy today's seminar. In order for us to improve on future programs of this type, we ask that you be sure to complete the critique form provided at registration and leave the completed form with one of the moderators at the conclusion of the seminar. Thank you for your help.

*** Note:** This agenda order is only a recommendation. The seminar moderators may utilize whatever agenda seems most effective.

Regional Seminars Committee

2019 Caselaw Update

State of Missouri v. Edwards, ED 106656

Defendant and victim were living together when an argument escalated to the Defendant hitting the victim with his fists and a mop. The victim was able to escape the house and rant to a neighbor's house and called 911. The victim told the 911 operator that her boyfriend was trying to kill her and she described what he was wearing. She also said that he had a gun, that she was hurt, and she needed an ambulance. Soon thereafter, inexplicably, the Defendant was able to grab the victim outside with a gun in his hand and drag her along the street. More than one neighbor also called 911. This was observed by police officers when they arrived on the scene. Defendant was arrested. The victim has suffered a broken nose, a hemorrhage in her eye and contusions on various parts of her body.

Defendant was charged and convicted of third-degree kidnapping, domestic assault, and unlawful use of a weapon and sentenced to 11 years. Defendant appealed the use of three 911 calls made by neighbors, not the victim, arguing the evidence was hearsay.

One of the calls at issue cited:

911 Operator: Police Department.
Caller: Yeah. I just called y'all 10 minutes ago, 20 minutes ago. There is a guy across the street dragging a girl over here telling me he's going to kill her.
911 Operator: What's the address? Caller: [states address].
911 Operator: [repeats address] He has a gun out right now?
Caller: ...He's dragging her up and down the street by her hair, hitting her with a pistol.
911 Operator: Okay, what's he wearing?
Caller: He's got a blue shirt on, some jeans. And his hairs all like a fro.
911 Operator: Blue shirt and jeans and he's dragging her right now.
Caller: Yeah. He's out here punching her in her face right now.
911 Operator: Alright, alright, we're on our way.
Caller: Alright

The Court held that the 911 calls were admissible. For the declarant's out of court statement to be admitted under the present tense impression exception: 1. The statement must be made simultaneously with the event, 2. The statement must describe the event; and 3. The declarant must have perceived the vent with his or her own senses.

"Present sense impression statements have certain indicia of trustworthiness to support their admissibility." State v. McKinney, 336 S.W.3d 499, 502-03 (Mo. App. E.D. 2011). "Errors in memory and time for calculated misstatements are not present because the statements are made as the declarant perceives the event or immediately thereafter." Id. at 503.

Defendant also contends the three calls violated his constitutional confrontation rights. The Confrontation Clause prohibits "admission of testimonial statements of a witness who did not appear at trial unless [the witness] was unavailable to testify, and the defendant had

had a prior opportunity for cross-examination." Kemp, 212 S.W.3d at 147 (citing Crawford v. Washington, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004)). The Court held that these calls were non-testimonial because they were made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency."

State ex rel. Gary Sampson v. The Honorable William E. Hickle No. 97002 (Mo. banc, May 21, 2019)

This was an original proceeding in Mandamus that was decided by the Supreme Court. This case concerned the power of a trial court in regard to probation and its power to extend the term of said probation.

In November 2012, Sampson received a SIS probation with a 5-year term. His probation was revoked in November 2013. He received a 6-year prison term with execution of sentence suspended on a 5 year term of probation. In December 2014, he admitted to violation of the probation; the court continued his probation and imposed additional conditions. Defendant's probation was revoked in July 2015 and the sentence was ordered executed. He was placed into a 120-day institutional treatment program. Pursuant to section 559.115, the court retained jurisdiction during the 120-day program. Following the 120-day program, the court granted defendant probation effective November 2015 for a term of 5 years. In December 2017, the state filed a motion to revoke his probation. Defendant filed a motion to be discharged from probation in February 2018 claiming the state filed its motion after his discharge date.

The Supreme Court determined that a court may not impose a third term of probation. However, upon completion of a 120-day treatment program under 559.115, "Once the defendant has successfully completed the program under this subsection, the court shall release the defendant to continue to serve the term of probation, which shall not be modified, enlarged, or extended based on the same incident of violation." Section 559.036.4(3).

The court was only authorized to put the defendant back on the probation imposed in December 2014 and not to impose a new five- year term of probation when he completed the program.

> Section 559.036.8 governs the circuit court's authority to revoke probation. Once a defendant's probation ends, the court's authority to revoke probation also ends. However, in certain circumstances, the court's authority to revoke probation may extend beyond the expiration of the probationary term when two conditions are met. First, there must be an affirmative manifestation of an intent to conduct a revocation hearing before the end of the probationary period. Second, the court must have made every reasonable effort…to notify the probationer and to conduct the hearing prior to the expiration of the period. Unless both requirements are met, the court loses the authority to revoke probation beyond the expiration of its term.

State of Missouri vs. Leland Dwayne Daggett WD81351

Defendant was convicted of attempted distribution of a controlled substance and unlawful possession of a firearm after law enforcement executed a search warrant on Defendant's home and seized methamphetamine and firearms from a garden located 20-30 yards from the home. Defendant appealed on the grounds that the trial court should have suppressed the evidence found in the garden because said seizure was not authorized by the search warrant because the garden was not within the curtilage of the home, and therefore not covered by the warrant and subject to search.

The Court weighed four factors that must be assessed on a case by case basis, namely: 1) the proximity of the area to the home; 2) whether the area is within an enclosure surrounding the home; 3) the nature of the uses to which the area is put; and 4) steps taken to protect the area from observation by people passing by. The Court found that the garden was in close proximity to the home, that despite no enclosure around the property there was a "no trespassing" sign posted on a utility pole in front of the home, that gardening is an activity closely associated with domestic life and thus could be regarded as an adjunct of the home and that the remote nature of the property and the "no trespassing" sign reflected the effort by Defendant to screen the premises from passersby. Conviction affirmed.

State of Missouri v. Jeanne Capozzoli WD81399

The Defendant, Capozzoli, appealed a conviction by a Cole County jury for the class B felony of Driving while intoxicated. She raised two questions on appeal: 1) Does the 2017 revision of section 490.065.2(3)(b) which prohibits an expert from offering an opinion about whether the defendant had the appropriate mental state or condition when it constitutes an element of the crime charged apply to an expert testifying about "intoxication" and 2) Did the admission of the testimony of the drug recognition examiners results meet the *Daubert* standard for the admissibility of expert testimony.

The facts of this case began when a Jefferson City Police Officer observed the defendant fail to dim headlights and then weaving nearly hitting another vehicle. The Officer stopped the defendant and smelled the odor of alcohol coming from inside the vehicle. The Defendant admitted that she had consumed vodka earlier in the evening before driving. The Officer performed some standard field sobriety tests, which she failed, and she was arrested. Her blood-alcohol level was less than .08% and thus, the Officer consulted a drug recognition expert who suggested a blood test. The blood test revealed that the Defendant tested positive for lorazepam, a controlled substance.

At trial, the Officer testified about the field sobriety tests and his observations of the defendant's behavior, but the defense objected stating that the new expert-testimony law (section 490.065.2(3)(b)) does not allow someone to testify to mental state and thus, the determination of "intoxication" should be left to the jury. The trial court overruled this objection and allowed the

officer to testify as to his opinion that the Defendant was "intoxicated". The Appellate Court affirmed this ruling. The Appellate Court stated that it would have to find that "intoxicated condition" as an element of a DWI offense constituted a "mental condition" for such testimony to fall within section 490.065.2(3)(b). The Court said that although it is unclear what criminal offenses the Legislature had in mind when it included the "mental condition" language in 490.065.2(3)(b), they did not believe that "intoxication" in a DWI case was encompassed by this statute. In fact, the Court stated that "intoxication" has been characterized as a physical condition not a mental condition. It is usually evidenced by unsteadiness, slurring of speech, lack of body coordination and impairment of reflexes. Thus, the Court stated that "intoxication" is not a mental condition and the statute does not apply.

As to the second point regarding whether the drug recognition expert testimony should have been allowed under the *Daubert* standard, the Court also rejected the Defendant's argument. Although the Court did not comment or discuss its ruling, it affirmed the trial court stating that regardless of the admissibility of the challenged evidence, the Defendant suffered no prejudice, because the testimony objected to was duplicative of that offered by the criminalist in the case who testified about the result of testing on the blood sample. The Court made no ruling as to whether the drug recognition expert testimony would meet the *Daubert* standard.

Finding no error, the Court affirmed the lower Court's rulings on both points.

Richard Ducote vs. Director of Revenue ED106763

Richard Ducote ("Ducote") appeals from Circuit Court's Judgment upholding the revocation of his driving privileges. Ducote was involved in a motor vehicle accident wherein he drove the vehicle he was operating into the rear of another vehicle immediately ahead of him which had slowed to make a left-hand turn. Trooper Baker, MSHP, was dispatched to investigate the crash.

During the investigation, Trooper Baker noticed signs of intoxication in Ducote. Trooper Baker administered various field sobriety tests and a portable breath test to Ducote. The field sobriety tests indicated signs of intoxication and the portable breath test was positive for alcohol. Trooper Baker placed Ducote under arrest and read him both his Miranda rights and the Missouri Implied Consent Law. Ducote was transported to the Jefferson County Sheriff's office to conduct a breath test which Ducote had consented to take. Trooper Baker was unable to complete the breath test due to the breath machine not functioning property.

Trooper Baker told Ducote he would take him to the next nearest breath machine at the Sunset Hills Police Department. Ducote then refused this test specifically, saying "I don't – I just want to refuse then. I don't want to go up there." Trooper Baker completed a Notice of Refusal form. Thereafter, Ducote's driving privileges were revoked.

Ducote petitioned the Circuit Court and a hearing was held. Ducote testified that he never refused and further suggested that he would submit to a blood test. Trooper Baker testified that Ducote did refuse to take a breath test and could not recall if he (Ducote) suggested he do a blood test. The Circuit Court upheld the revocation. Ducote appealed.

The Eastern District affirmed the Circuit Court and the revocation of Ducote's driving privileges. The Eastern District Court stated that the Circuit Court is free to believe any, all, or none of the evidence presented by any party. Here the Circuit Court believed Trooper Baker and did not believe Ducote. The Eastern District Court also noted that even if Ducote offered to take a blood test after refusing the breath test, his refusal to take a breath test would still be a valid refusal under Section 577.041.

Earnie R. Thomas vs. Director of Revenue ED106360-01

Mr. Thomas drove his car off the road and crashed into an embankment. The officer investigating the crash asked Mr. Thomas to submit to field sobriety tests and a preliminary breath test. Mr. Thomas consented. After each of these tests indicated Mr. Thomas may be intoxicated, the officer placed him under arrest and took him to the sheriff's office. The officer informed Mr. Thomas of the Missouri Implied Consent Law, as required by Section 577.041.1 RSMo (Cum. Supp. 2010) and asked him to submit to a chemical breath test of his blood alcohol content. The notice given by the officer included the statutorily required warning: "If you refuse to take the test, your driver license will *immediately* be revoked for one year." Mr. Thomas submitted to the breath test, which showed that his blood alcohol content was .083%.

During the trial do novo of his revocation, Thomas argued that 577.041 violated his Constitutional rights. Mr. Thomas argued that, although Section 577.041.1 expressly required the officer to inform him his license would be "immediately" revoked if he refused to submit, this was not true because the revocation would not actually begin for fifteen days. Because the false information prejudiced his ability to make an informed decision, he argued, the results were inadmissible as obtained in violation of his due process rights. The trial court reversed the revocation and the Director of Revenue appealed.

The appellate court reversed. In April 2019, the Missouri Supreme Court ruled in *Carvalho v. Director of Revenue*, No. SC97394 (Mo. banc Apr. 30, 2019) that the use of the word "immediately," as mandated by Section 577.041.1 is not misleading.

State of Missouri vs. Dawn Goucher WD82550

Goucher was a passenger in a motor vehicle that was stopped due to failure to have a properly functioning rear license plate light and traveling briefly over the fog line. During the traffic stop, the Trooper Dodson asked Goucher for permission to search the car. Goucher subsequently made incriminating statements and Trooper Dodson found methamphetamine in her purse. The trial court suppressed Goucher's statements and the drugs and Court of appeals affirmed.

The Court of Appeals held: 1. The trial court did not err in suppressing Goucher's statements made to the Trooper because the State failed to present evidence that the questions regarding drug use and the search of the contents of her purse were within the scope of the traffic investigation. Further, the State failed to present evidence that Trooper Dodson had reasonable suspicion of criminal activity which arose during the reasonable period for the traffic investigation. 2. The trial court did not err in suppressing physical evidence found in Goucher's purse because the State failed to meet its burden that there was reasonable suspicion of criminal activity sufficient to justify the search of Goucher's purse. Goucher's statements regarding having methamphetamines in her purse and consent to search the vehicle were both inadmissible and could not provide reasonable suspicion of criminal activity.

Charles Anderson v. Director of Revenue ED107027

DOR appeals the judgment of the trial court in favor or Respondent Charles Anderson, which reinstated his driver's license because it found the Director failed to establish there was probable cause to believe Anderson operated his vehicle while intoxicated. The Director argues the trial court erroneously applied Missouri law regarding what constitutes "driving."

On September 21, 2015, Sergeant Joseph Renkenmeyer of the Washington Police Department received a call from dispatch that a gas station clerk had reported a vehicle parked by the gas station for about an hour, with the driver passed out inside the vehicle. Sergeant Renkenmeyer along with Sergeant Chad Sloan observed the vehicle parked with its engine running. The officers observed Anderson in the vehicle, slumped forward with his eyes closed. After questioning Anderson, Renkenmeyer asked Anderson if he drove himself to the gas station and he stated he did, he then asked Anderson to submit to a preliminary breath test (PBT) but he refused.

The Director revoked Anderson's license, Anderson filed a petition for review in the circuit court, which reversed the revocation of Anderson's license, finding that there was not substantial and competent evidence to establish probable cause for believing Anderson drove his vehicle while intoxicated. The Director appealed.

The Director's sole point on appeal is that Anderson operated a motor vehicle while intoxicated, not that he was driving while intoxicated. According to Section 577.041.1, if a person under arrest or who has been stopped refused to submit to an officer's request for a chemical test, that "person's license shall be immediately revoked upon refusal to take the test." In order to uphold the revocation, as relevant here, the Director must show (1) the person was arrested or stopped, (2) the officer had reasonable grounds to believe that the person driving a motor vehicle while in an intoxicated condition, and (3) the person refused to submit to a chemical test.

The Director stated that both officers observed Anderson's vehicle with the engine running, which constituted Anderson operating a motor vehicle. The Director cited Cox, 98 S.W. 3d at 550. In Cox, the court found probable cause existed where the parties had stipulated that the key was in the ignition, the engine was running, and the alleged driver was sitting behind the steering wheel.

The Court of Appeals, Eastern District reverse the judgment of the trial court, and remand with directions to sustain the revocation of Anderson's driver's license.

Sylvia Johnson v. Director of Revenue SD35904

DOR suspended Sylvia Johnson's license after an administrative hearing and Johnson appealed for judicial review. The trial court tried the case on the following stipulated facts.

Johnson was driving and crashed her car. Johnson told the trooper that she'd had "way too many" drinks before the crash, but none after, and she exhibited all of the usual signs of intoxication. Johnson was arrested, given *Miranda* and implied-consent warnings, and "agreed to" a blood test. EMTs tried 3-4 times to draw her blood at the scene but failed, so the trooper drove her 30 miles to a hospital for the successful blood draw. Johnson had a 0.182% BAC, which was stipulated to at trial.

The trial court found probable cause to arrest, but rejected the BAC for "an insufficient foundation for admission of the test result, due to multiple tests in excess of the number permitted by law and no implied consent."

The Southern District reversed the trial court because this was not an implied-consent/refusal case. Since Johnson consented to the test, there is no cap on the number of permitted sample attempts. And since the result was stipulated to, it had sufficient foundation.

State of Missouri vs. Dennis W. Delapp, II WD81717

Defendant appealed his drug conviction after a warrantless search if vehicle revealed drugs. The Court of appeals held that the search was Delapp's vehicle was permissible under the automobile exception to the warrant requirement of the Fourth Amendment. Probable cause to search the vehicle was established by both information from a reliable confidential informant that Delapp was supplying drugs from his home in Warrensburg to a location in Sedalia and an alert from a drug-detecting dog to the driver-side door of Delapp's vehicle.

State of Missouri vs. Timothy Keith Ndon WD81737

In this case, Ndon appeared before two different judges on five occasions between February 22, 2017 and February 20, 2018. On each of those occasions, the court informed Ndon that he was entitled to counsel and asked him many times whether he wanted the assistance of counsel. He was also advised of the charges against him and the range of punishment. The court

explained to Ndon how counsel could assist him in cross-examining witnesses and presenting a defense, explained his right to testify or not testify, and explained the State's burden of proof. Ndon was advised numerous times that he could apply for the services of the public defender and was even given application forms. Ndon was repeatedly warned that he would be considered to have waived counsel if he did not hire an attorney or apply for a public defender. The court strongly recommended to Ndon that he not go to trial without counsel. The court cautioned Ndon that a jury trial was complicated and that, in the court's experience, "it's not good when people don't have a lawyer." Ndon never responded directly to the court's questions concerning his desire to have counsel; instead, he discussed other matters, including his purported defenses and grievances." State v. Ndon, No. WD 81737, 2019 WL 4017798, at *7 (Mo. Ct. App. Aug. 27, 2019)

In his sole point on appeal, Ndon contends the circuit court violated his constitutional rights to counsel and to due process by allowing him to represent himself without first making an adequate determination on the record that his purported waiver of counsel was voluntary, unequivocal, knowing, and intelligent. He further asserts the court plainly erred in failing to obtain a written waiver of counsel pursuant to Section 600.051. State v. Ndon, No. WD 81737, 2019 WL 4017798, at *7 (Mo. Ct. App. Aug. 27, 2019)

Two requirements must be met to effectively have a waiver of counsel:

The first requirement is an evidentiary hearing. The hearing must show that the defendant understands the rights being waived and the dangers of waiving the rights. The test is: did the hearing establish a knowing and intelligent waiver given the facts and circumstances in the case; considering the background, experience and conduct of the defendant. (In this case the conduct may have been the most important factor.) However, a knowing and intelligent waiver can be made by the conduct of the defendant. In this case the repeated refusal to acknowledge questions and lack of cooperation with the hearing (that shows additional questions would be futile) was the waiver.

The second requirement is that an opportunity has been given to the defendant to sign the written waiver of counsel as required under Section 600.051. In this case Ndon refused to sign the waiver, refused to apply for a public defender and refused to try to retain a private attorney. "Ndon impliedly waived his right to counsel through his conduct; therefore, Section 600.051's requirement of a written waiver of counsel did not apply." Id.

The appeal was denied. Note that the defendant did have a mental exam not in the record, the exam found the defendant fit to stand trial and aware of his rights.

Tyler Romines v. Department of Revenue SD 35744

Driver was pulled over for speeding, had a faint odor of alcohol in his vehicle, and admitted he had been drinking. After three field sobriety tests he was arrested and read the implied consent language. Driver refused to take a portable breath test and his driving privilege

was revoked. At a trial de novo the trial court reinstated Driver's driving privilege upon finding that "…[Director] has not met its burden on the issue of whether or not [D]river was driving a motor vehicle in an intoxicated or drugged condition…."

The issue on appeal was whether the trial court err when it found that that the Director had not proven driver was actually driving while intoxicated?

Conclusions/Findings:

The trial court's judgment misstates the law. Director's burden is to show whether the officer had "reasonable grounds to believe" Driver was driving while intoxicated. Director is not required to prove that a person was actually driving or actually intoxicated while doing so. Case reversed and remanded.

State of Missouri v. Harvey Harris ED106852

D appeals the trial court's judgment of conviction for DWI (B misdemeanor.)

Trooper arrives at accident scene and saw truck overturned. D was inside, pinned upside down. The fuel line was broken and leaking into the cab of the truck. Trooper gets first aid kit and crawls under truck to contact D. D has labored breathing and unintelligible speech. Thereafter, ambulance arrives. D is extracted from vehicle and strapped to backboard. Trooper smells alcohol on D's breath as he helps the ambulance personnel put D in the ambulance. Inside the ambulance, D tells Trooper his name, address, medical condition and how accident happened. D was cooperative and thanked Trooper for his service. Trooper notices strong odor of alcohol on D's breath and notes watery eyes and slurred speech. Trooper asks D how much he had to drink and D answered, "a few" or "a couple." No Miranda warning was given as (according to Trooper) D was not under arrest.

Trooper asks D to submit to PBT which is positive. D is then placed under arrest. Trooper read implied consent and blood was drawn. Result was over the legal limit. D is charged with DWI. He files suppression motion to suppress statement that he had "a few" or "a couple" drinks due to no Miranda warning. Motion is denied. Case is tried, D is convicted and sentenced to 30 days in jail. He appeals.

Issue on appeal: D contends trial court erred in denying motion to suppress because his statement about drinking was the product of a custodial interrogation without Miranda warning.

Eastern District says: custodial interrogation is questioning by law enforcement officer after taking the person into custody or otherwise depriving the person of his freedom of action in any significant manner. Totality of circumstances must be considered. "Ordinary traffic stops do not involve custody for Miranda purposes." Absent coercive pressure, there is no custody for purposes of Miranda. The officer's initial investigatory questioning of driver at the scene of an accident is not custodial in nature. The record here does not support a finding that Harris was subjected to a coercive environment predicating custodial interrogation. However, D argues another theory: he was in custody for Miranda

purposes when he was physically restrained in the ambulance by paramedics when Trooper asked him about drinking. Court says: physical restraint imposed by paramedics does not create the inherently coercive environment contemplated by Miranda. Here, the paramedics restrained D, not the Trooper. D was not under arrest nor was he handcuffed. The record does not demonstrate D was restrained in a situation that was police-dominated, inherently coercive, or tantamount to a formal arrest, so as to trigger Miranda protections.

Held: trial court did not err in denying motion to suppress. Conviction affirmed.

State of Missouri v. Sue Reeter WD81725

This case involves a traffic stop where the officer noticed a strong odor of intoxicants coming from the vehicle upon his approach. Ultimately the driver failed 4 of the 6 field sobriety tests administered and was taken to a hospital for further testing. At the hospital driver of the vehicle initially refused the blood test, but then consented. After blood was drawn, the driver attempted to dictate where the blood could be tested. At the trial the attorney for the defendant objected to the chain of evidence of the blood. This was overruled and the defendant was convicted of a misdemeanor driving while intoxicated.

Reeter appeals on two points. First Reeter argues there was no unconditional consent, but that her consent was qualified or conditional. The court rejected this theory, stating Reeter, although initially not giving unqualified consent, did later give unqualified consent. The court also found that simply stating where an individual request to have a test of blood done has nothing to do with consent to actually draw blood, and that her consent to draw blood occurred prior to her request concerning who and where the test would occur.

Reeters second point on appeal is that she had ineffective assistance of counsel. She reasoned her prior counsel had failed to object to the blood test results on the basis the blood was illegally obtained constituted grounds for appeal. The court reasoned that ineffective assistance of counsel is only available following conviction in misdemeanor cases by habeas corpus, and in any event, the 6th amendment right to counsel only attaches to prosecution if the prosecution actually leads to imprisonment. In this case, Reeter only received financial penalties and no imprisonment. The court reasoned there can be no ineffective assistance of counsel if there was no right to counsel in the first place.

SCS/SB 1 - This act removes the following crimes from the list of crimes where expungement is not currently available: property damage in the first degree, stealing, possession of a forging instrumentality, and fraudulent use of a credit device or debit device.

SCS/SBs 12 & 123 - Currently, sheriffs receive $10 for service of any summons, writ, subpoena, or other court order, and that money is paid into the county treasury to the credit of the deputy sheriff salary supplementation fund. This act specifies that other persons specially appointed to serve orders of court shall also receive $10 for orders they serve, which shall also be paid into the county treasury to the credit of the deputy sheriff salary supplementation fund.
This act is identical to HCS/HB 1356 (2018).

HB 192 -- COURT PROCEDURES
Currently, sheriffs receive $10 for service of any summons, writ, subpoena, or other court order, and that money is paid into the county treasury to be paid to the State Treasurer. This bill specifies that other persons serving orders of court shall also pay $10 of their fee into the deputy sheriff salary supplementation fund. The bill specifies that, where authorized by local court rule, traffic court judges in St. Louis County may review decisions of the Director of Revenue or Department of Revenue to revoke a person's driver's license for refusal to submit to a chemical test.

The bill also specifies that a court may, rather than shall, double the fine for certain traffic offenses when committed in a travel safe zone designated by the Missouri Department of Transportation.

This bill specifies that a court that serves more than one municipality shall be treated as a single municipality for the purposes of municipal judges not being allowed to serve in more than five municipalities at one time.

Currently, associate circuit judges have the ability to commute fines and costs against defendants who are unable to pay when the defendant requests to be imprisoned in the county jail. The fine shall be credited at the rate of $10 for each day's imprisonment. This bill repeals that language.

The bill repeals language that allows the court, upon a motion by the prosecuting attorney or by its own motion, to require a defendant to show cause as to why he or she should not be imprisoned for failure to pay and allows the court to imprison such defendant, if no good cause is shown, for various lengths depending on whether the offense was a misdemeanor or a felony. Instead, when a defendant fails to pay a fine or an installment, the fine or installment may be collected by any means authorized for the collection of money judgments, or it may be waived at the discretion of the judge. In no event can the recovery of costs incurred by a municipality or county for the detention, imprisonment, or holding of a person be the subject of any condition of probation, and the failure to pay costs cannot be the only basis for the issuance of a warrant.
The bill also specifies circumstances under which a court may depart from mandatory minimum prison sentences or terms.

SB147 MOTORCYCLE HEADGEAR (Sections 302.020 and 302.026)

Currently, every person operating or riding a motorcycle or motortricycle is required to wear protective headgear. This act provides that persons under the age of 18 who are operating or riding as a passenger on a motorcycle or motortricycle shall wear a helmet when the vehicle is in motion. Similarly, a person who is 18 or older, is operating a motorcycle or motortricycle, and who has been issued an instruction permit shall wear a helmet when the vehicle is in motion.

This act also provides that qualified operators who are 18 or older may operate a motorcycle or motortricycle without a helmet if he or she is covered by a health insurance policy or other form of insurance which will provide the person with medical benefits for injuries incurred as a result of a motorcycle or motortricycle accident. Proof of such coverage shall be provided on request of law enforcement by showing a copy of the qualified operator's insurance card. These provisions are similar to SCS/SB 120 (2019).

DRIVER'S LICENSE SUSPENSIONS FOR FAILURE TO APPEAR IN COURT (Section 302.341)
This act provides that the court may, rather than shall, notify the Director of Revenue of a defendant's failure to appear in court for a moving traffic violation and failure to pay any fine or court costs associated with such violation. The Department of Revenue is then required to suspend the driver's license of such person. This act further provides that such suspension provisions shall not apply to minor traffic violations originating in St. Louis City or St. Louis County. These provisions are similar to provisions in HCS/HB 427 (2019).

SB224

DISCOVERY IN CRIMINAL CASES
Under this act, prosecutors will have discretion to redact personal identifying information which is contained in materials and information that the state shall disclose to the defendant's counsel during the discovery process of a criminal proceeding.
The provisions of this rule are similar to SB 22 (2019).

HB 499

DRIVER'S LICENSE REVOCATION
If a person's license has been revoked because of a refusal to submit to a chemical test, the case may be assigned to a traffic judge. The fees for the Substance Abuse Traffic Offender Program is determined by the Division of Behavioral Health of the Department of Mental Health (Section 302.574).

This bill requires the Director of the Department of Revenue to revoke a driver's license upon notification by a law enforcement officer that an individual was involved in a physical accident where his or her negligence contributed to his or her vehicle striking a worker or highway worker, as defined in the bill, within a properly designated construction or work zone, or substantially contributed to his or her vehicle striking an emergency responder within a properly designated active emergency zone. The department shall base its determination of these facts on

the report of the law enforcement officer investigating the incident, and its determination shall be final except as specified in the bill. The revocation shall be effective not sooner than 15 days from the department's order (Sections 304.580, 304.585, and 304.894).

This bill specifies that where authorized by local court rule, traffic court judges in St. Louis County may review decisions of the Director of Revenue or Department of Revenue to revoke a person's driver's license for refusal to submit to a chemical test
(Section 479.500)

SCS HCS HB 547 -- DISPOSAL OF JUDICIAL CASES

This bill provides alternative methods for the disposal of cases in the judicial system, including through the use of treatment courts and prosecution diversion programs.

TREATMENT COURTS
Prior to August 28, 2021, circuit courts shall establish a treatment court division to provide an alternative for the judicial system to dispose of cases which stem from or are impacted by substance use. This bill provides that it is public policy of the state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders. In order to accomplish this policy, circuit courts or any combination of circuit courts may establish a veterans treatment court for cases that stem from such disorders within military veterans or current military personnel, with a preference for individuals who have combat service.

PROSECUTION DIVERSION PROGRAMS
This bill authorizes prosecuting attorneys to divert criminal cases to a prosecution diversion program.

The bill increases a criminal case surcharge from $1 to $5, which is assessed equally for prosecutor services and prosecutor training.
A prosecuting attorney, with the agreement of the accused or defendant, may divert a criminal case to a prosecution diversion program for a period of six months to two years. Prosecuting attorneys may divert cases out of the criminal justice system when they determine utilizing a prosecution diversion program outweighs taking immediate court action. The statute of limitations for certain offenses shall be tolled during this time period. The period of a prosecution diversion program may be extended by a prosecuting attorney for purposes detailed in the bill, yet no such extension shall be for a period exceeding two years.
Prior to or upon issuance of an arrest warrant or information of indictment, any prosecuting attorney may forgo continued prosecution if the parties agree to a prosecution diversion program. This program must be in writing and for a specified period of time. While a prosecuting attorney has the authority to develop prosecution diversion programs, this bill details the minimum requirements that a diversion program must meet. Additionally, a prosecuting attorney may impose conditions on the behavior of the accused or defendant that assures the safety and well-being of the community, as well as that of the accused or defendant. These conditions may be imposed at any time during the prosecution diversion program and may include, but are not

limited to, requiring the accused or defendant to remain free of any criminal behavior during the entire period of the program. The responsibility and authority on whether or not to screen and divert a case are completely within the discretion of the prosecuting attorney. The decision of a prosecuting attorney regarding the diversion of a criminal case shall not be appealable and may not be later raised as a defense in a criminal case involving the accused or defendant.
At any time, a person participating in a prosecution diversion program shall have the right to insist on criminal prosecution for the offense which he or she is accused. Also, any person participating in a diversion program may have legal counsel present at all phases of the diversion proceedings, but nothing in this bill shall create a right to appointment of counsel. Criminal proceedings may be re-initiated at any time by a prosecuting attorney for cases that have been diverted.

The potential liability of any county, city, person, organization, or agency, or employee or agent thereof, involved with the supervision of activities, programs, or community service that are a part of a prosecution diversion program is limited by provisions of this bill. Any person supervising or employing an accused or defendant under a prosecution diversion program shall report any violation of the terms of the program to the prosecuting attorney.

The bill provides that once the accused or defendant completes a prosecution diversion program to the satisfaction of the prosecuting attorney, the person shall be entitled to a dismissal or alternative disposition of charges against them. The individual shall be required to pay any associated costs prior to the dismissal of pending charges.

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1

100TH GENERAL ASSEMBLY

2019

0564S.04T

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of certain criminal records.

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

Section A. Section 610.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.140, to read as follows:

610.140. 1. Notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was charged or found guilty of any offenses, violations, or infractions for an order to expunge records of such arrest, plea, trial, or conviction. Subject to the limitations of subsection 12 of this section, a person may apply to have one or more offenses, violations, or infractions expunged if such offense, violation, or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the offenses, violations, and infractions he or she is seeking to have expunged in the petition and so long as all such offenses, violations, and infractions are not excluded under subsection 2 of this section. If the offenses, violations, or infractions were charged as counts in the same indictment or information or were committed as part of the same course of criminal conduct, the person may include all the related offenses, violations, and infractions in the petition, regardless of the limits of subsection 12 of this section, and the petition shall only count as a petition for expungement of the highest level violation or offense contained in the petition for the purpose of determining future eligibility for expungement.

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

2. The following offenses, violations, and infractions shall not be eligible for expungement under this section:

(1) Any class A felony offense;

(2) Any dangerous felony as that term is defined in section 556.061;

(3) Any offense that requires registration as a sex offender;

(4) Any felony offense where death is an element of the offense;

(5) Any felony offense of assault; misdemeanor or felony offense of domestic assault; or felony offense of kidnapping;

(6) Any offense listed, or previously listed, in chapter 566 or section 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130, 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055, 569.060, 569.065, 569.067, 569.072, **[**569.100,**]** 569.160, 570.025, **[**570.030,**]** 570.090, **[**570.100, 570.130,**]** 570.180, 570.223, 570.224, 570.310, 571.020, 571.060, 571.063, 571.070, 571.072, 571.150, 574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008, 578.305, 578.310, or 632.520;

(7) Any offense eligible for expungement under section 577.054 or 610.130;

(8) Any intoxication-related traffic or boating offense as defined in section 577.001, or any offense of operating an aircraft with an excessive blood alcohol content or while in an intoxicated condition;

(9) Any ordinance violation that is the substantial equivalent of any offense that is not eligible for expungement under this section;

(10) Any violation of any state law or county or municipal ordinance regulating the operation of motor vehicles when committed by an individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state; and

(11) Any offense of section 571.030, except any offense under subdivision (1) of subsection 1 of section 571.030 where the person was convicted or found guilty prior to January 1, 2017.

3. The petition shall name as defendants all law enforcement agencies, courts, prosecuting or circuit attorneys, municipal prosecuting attorneys, central state repositories of criminal records, or others who the petitioner has reason to

believe may possess the records subject to expungement for each of the offenses, violations, and infractions listed in the petition. The court's order of expungement shall not affect any person or entity not named as a defendant in the action.

4. The petition shall include the following information:

(1) The petitioner's:

(a) Full name;

(b) Sex;

(c) Race;

(d) Driver's license number, if applicable; and

(e) Current address;

(2) Each offense, violation, or infraction for which the petitioner is requesting expungement;

(3) The approximate date the petitioner was charged for each offense, violation, or infraction; and

(4) The name of the county where the petitioner was charged for each offense, violation, or infraction and if any of the offenses, violations, or infractions occurred in a municipality, the name of the municipality for each offense, violation, or infraction; and

(5) The case number and name of the court for each offense.

5. The clerk of the court shall give notice of the filing of the petition to the office of the prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted the offenses, violations, or infractions listed in the petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon by the parties, the court shall hold a hearing within sixty days after any written objection is filed, giving reasonable notice of the hearing to the petitioner. If no objection has been filed within thirty days after receipt of service, the court may set a hearing on the matter and shall give reasonable notice of the hearing to each entity named in the petition. At any hearing, the court may accept evidence and hear testimony on, and may consider, the following criteria for each of the offenses, violations, or infractions listed in the petition for expungement:

(1) At the time the petition is filed, it has been at least seven years if the offense is a felony, or at least three years if the offense is a misdemeanor, municipal offense, or infraction, from the date the petitioner completed any

authorized disposition imposed under section 557.011 for each offense, violation, or infraction listed in the petition;

(2) The person has not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations provided under chapters 304 and 307, during the time period specified for the underlying offense, violation, or infraction in subdivision (1) of this subsection;

(3) The person has satisfied all obligations relating to any such disposition, including the payment of any fines or restitution;

(4) The person does not have charges pending;

(5) The petitioner's habits and conduct demonstrate that the petitioner is not a threat to the public safety of the state; and

(6) The expungement is consistent with the public welfare and the interests of justice warrant the expungement.

A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and (6) of this subsection shall create a rebuttable presumption that the expungement is warranted so long as the criteria contained in subdivisions (1) to (4) of this subsection are otherwise satisfied. The burden shall shift to the prosecuting attorney, circuit attorney, or municipal prosecuting attorney to rebut the presumption. A victim of an offense, violation, or infraction listed in the petition shall have an opportunity to be heard at any hearing held under this section, and the court may make a determination based solely on such victim's testimony.

6. A petition to expunge records related to an arrest for an eligible offense, violation, or infraction may be made in accordance with the provisions of this section to a court of competent jurisdiction in the county where the petitioner was arrested no earlier than three years from the date of arrest; provided that, during such time, the petitioner has not been charged and the petitioner has not been found guilty of any misdemeanor or felony offense.

7. If the court determines that such person meets all the criteria set forth in subsection 5 of this section for each of the offenses, violations, or infractions listed in the petition for expungement, the court shall enter an order of expungement. In all cases under this section, the court shall issue an order of expungement or dismissal within six months of the filing of the petition. A copy of the order of expungement shall be provided to the petitioner and each entity possessing records subject to the order, and, upon receipt of the order, each entity shall close any record in its possession relating to any offense, violation, or

infraction listed in the petition, in the manner established by section 610.120. The records and files maintained in any administrative or court proceeding in a municipal, associate, or circuit court for any offense, infraction, or violation ordered expunged under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The central repository shall request the Federal Bureau of Investigation to expunge the records from its files.

8. The order shall not limit any of the petitioner's rights that were restricted as a collateral consequence of such person's criminal record, and such rights shall be restored upon issuance of the order of expungement. Except as otherwise provided under this section, the effect of such order shall be to restore such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her and no such inquiry shall be made for information relating to an expungement, except the petitioner shall disclose the expunged offense, violation, or infraction to any court when asked or upon being charged with any subsequent offense, violation, or infraction. The expunged offense, violation, or infraction may be considered a prior offense in determining a sentence to be imposed for any subsequent offense that the person is found guilty of committing.

9. Notwithstanding the provisions of subsection 8 of this section to the contrary, a person granted an expungement shall disclose any expunged offense, violation, or infraction when the disclosure of such information is necessary to complete any application for:

(1) A license, certificate, or permit issued by this state to practice such individual's profession;

(2) Any license issued under chapter 313 or permit issued under chapter 571;

(3) Paid or unpaid employment with an entity licensed under chapter 313, any state-operated lottery, or any emergency services provider, including any law enforcement agency;

(4) Employment with any federally insured bank or savings institution or credit union or an affiliate of such institution or credit union for the purposes of

compliance with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785;

(5) Employment with any entity engaged in the business of insurance or any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law which requires an employer engaged in the business of insurance to exclude applicants with certain criminal convictions from employment; or

(6) Employment with any employer that is required to exclude applicants with certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this subsection. Notwithstanding any provision of law to the contrary, an expunged offense, violation, or infraction shall not be grounds for automatic disqualification of an applicant, but may be a factor for denying employment, or a professional license, certificate, or permit; except that, an offense, violation, or infraction expunged under the provisions of this section may be grounds for automatic disqualification if the application is for employment under subdivisions (4) to (6) of this subsection.

10. A person who has been granted an expungement of records pertaining to a misdemeanor or felony offense, an ordinance violation, or an infraction may answer "no" to an employer's inquiry into whether the person has ever been convicted of a crime if, after the granting of the expungement, the person has no public record of a misdemeanor or felony offense, an ordinance violation, or an infraction. The person, however, shall answer such an inquiry affirmatively and disclose his or her criminal convictions, including any offense or violation expunged under this section or similar law, if the employer is required to exclude applicants with certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

11. If the court determines that the petitioner has not met the criteria for any of the offenses, violations, or infractions listed in the petition for expungement or the petitioner has knowingly provided false information in the petition, the court shall enter an order dismissing the petition. Any person whose petition for expungement has been dismissed by the court for failure to meet the criteria set forth in subsection 5 of this section may not refile another petition until a year has passed since the date of filing for the previous petition.

12. A person may be granted more than one expungement under this section provided that during his or her lifetime, the total number of offenses,

violations, or infractions for which orders of expungement are granted to the person shall not exceed the following limits:

(1) Not more than two misdemeanor offenses or ordinance violations that have an authorized term of imprisonment; and

(2) Not more than one felony offense.

A person may be granted expungement under this section for any number of infractions. Nothing in this section shall prevent the court from maintaining records to ensure that an individual has not exceeded the limitations of this subsection. Nothing in this section shall be construed to limit or impair in any way the subsequent use of any record expunged under this section of any arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense, violation, or infraction.

13. The court shall make available a form for pro se petitioners seeking expungement, which shall include the following statement: "I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information, and belief.".

14. Nothing in this section shall be construed to limit or restrict the availability of expungement to any person under any other law.

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FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 12 & 123

100TH GENERAL ASSEMBLY

2019

0414S.02T

AN ACT

To repeal section 57.280, RSMo, and to enact in lieu thereof one new section relating to charges for the service of court orders.

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

Section A. Section 57.280, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 57.280, to read as follows:

57.280. 1. Sheriffs shall receive a charge for service of any summons, writ or other order of court, in connection with any civil case, and making on the same either a return indicating service, a non est return or a nulla bona return, the sum of twenty dollars for each item to be served, except that a sheriff shall receive a charge for service of any subpoena, and making a return on the same, the sum of ten dollars; however, no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality. In addition to such charge, the sheriff shall be entitled to receive for each mile actually traveled in serving any summons, writ, subpoena or other order of court the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile, provided that such mileage shall not be charged for more than one subpoena or summons or other writ served in the same cause on the same trip. All of such charges shall be received by the sheriff who is requested to perform the service. Except as otherwise provided by law, all charges made pursuant to this section shall be collected by the court clerk as court costs and are payable prior to the time the service is rendered; provided that if the amount of such charge cannot be readily determined, then the sheriff shall receive a deposit based upon the likely amount of such charge, and the balance of such charge shall be payable immediately upon ascertainment of the proper amount of said charge. A sheriff may refuse to perform any service in any

action or proceeding, other than when court costs are waived as provided by law, until the charge provided by this section is paid. Failure to receive the charge shall not affect the validity of the service.

2. The sheriff shall receive for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, five percent on five hundred dollars and four percent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his agent or attorney. The party at whose application any writ, execution, subpoena or other process has issued from the court shall pay the sheriff 's costs for the removal, transportation, storage, safekeeping and support of any property to be seized pursuant to legal process before such seizure. The sheriff shall be allowed for each mile, going and returning from the courthouse of the county in which he resides to the place where the court is held, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile. The provisions of this subsection shall not apply to garnishment proceeds.

3. The sheriff upon the receipt of the charge herein provided for shall pay into the treasury of the county any and all charges received pursuant to the provisions of this section. The funds collected pursuant to this section, not to exceed fifty thousand dollars in any calendar year, shall be held in a fund established by the county treasurer, which may be expended at the discretion of the sheriff for the furtherance of the sheriff 's set duties. Any such funds in excess of fifty thousand dollars in any calendar year shall be placed to the credit of the general revenue fund of the county. Moneys in the fund shall be used only for the procurement of services and equipment to support the operation of the sheriff 's office. Moneys in the fund established pursuant to this subsection shall not lapse to the county general revenue fund at the end of any county budget or fiscal year.

4. Notwithstanding the provisions of subsection 3 of this section to the contrary, the sheriff**, or any other person specially appointed to serve in a county that receives funds under section 57.278,** shall receive ten dollars for service of any summons, writ, subpoena, or other order of the court included under subsection 1 of this section, in addition to the charge for such service that each sheriff receives under subsection 1 of this section. The money received by the sheriff**, or any other person specially appointed to serve in a county**

that receives funds under section 57.278, under this subsection shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer. The state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278.

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FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

CONFERENCE COMMITTEE SUBSTITUTE NO. 2 FOR

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 147

100TH GENERAL ASSEMBLY

2019

0387S.09T

AN ACT

To repeal sections 32.056, 136.055, 144.070, 300.155, 301.010, 301.020, 301.030, 301.032, 301.067, 301.191, 302.020, 302.170, 302.341, 302.720, 302.768, 304.153, 304.281, and 307.350, RSMo, and to enact in lieu thereof twenty new sections relating to motor vehicles, with penalty provisions and an effective date for certain sections.

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

Section A. Sections 32.056, 136.055, 144.070, 300.155, 301.010, 301.020, 301.030, 301.032, 301.067, 301.191, 302.020, 302.170, 302.341, 302.720, 302.768, 304.153, 304.281, and 307.350, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 32.056, 32.303, 136.055, 144.070, 300.155, 301.010, 301.020, 301.030, 301.032, 301.067, 301.191, 302.020, 302.026, 302.170, 302.341, 302.720, 302.768, 304.153, 304.281, and 307.350, to read as follows:

32.056. Except for uses permitted under 18 U.S.C. Section 2721(b)(1), the department of revenue shall not release the home address of or any information that identifies any vehicle owned or leased by any person who is a county, state or federal parole officer**[**,**];** a federal pretrial officer**[**,**];** a peace officer pursuant to section 590.010**[**,**]; a person employed by the Missouri department of corrections; any jailer or corrections officer of the state or any political subdivision of the state;** a person vested by Article V, Section 1 of the Missouri Constitution with the judicial power of the state**[**,**];** a member of the federal

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

judiciary**[**,**];** or a member of such person's immediate family contained in the department's motor vehicle or driver registration records, based on a specific request for such information from any person. Any such person may notify the department of his or her status and the department shall protect the confidentiality of the home address and vehicle records on such a person and his or her immediate family as required by this section. This section shall not prohibit the department from releasing information on a motor registration list pursuant to section 32.055 or from releasing information on any officer who holds a class A, B or C commercial driver's license pursuant to the Motor Carrier Safety Improvement Act of 1999, as amended, 49 U.S.C. 31309.

32.303. 1. Notwithstanding any biometric data restrictions contained in section 302.170, the department of revenue is hereby authorized to design and implement a secure digital driver's license program that allows applicants applying for a driver's license under chapter 302 to obtain a secure digital driver's license in addition to the physical card-based driver's license.

2. (1) A digital driver's license issued under this section shall be acceptable for all purposes for which a license, as defined in section 302.010, is used.

(2) The department may contract with one or more entities to develop the secure digital driver's license system. The department or entity may develop a mobile software application capable of being utilized through a person's electronic device to access an electronic image of the person's secure digital driver's license.

(3) The department shall suspend, disable, or terminate a person's participation in the secure digital driver's license program if:

(a) The person's driving privilege is suspended, revoked, denied, withdrawn, or cancelled as provided in chapter 302; or

(b) The person reports that his or her electronic device has been lost, stolen, or compromised.

3. The department of revenue may promulgate rules necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general

assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

4. The provisions of this section shall be subject to appropriation.

136.055. 1. Any person who is selected or appointed by the state director of revenue as provided in subsection 2 of this section to act as an agent of the department of revenue, whose duties shall be the processing of motor vehicle title and registration transactions and the collection of sales and use taxes when required under sections 144.070 and 144.440, and who receives no salary from the department of revenue, shall be authorized to collect from the party requiring such services additional fees as compensation in full and for all services rendered on the following basis:

(1) For each motor vehicle or trailer registration issued, renewed**,** or **[**transferred—three**] transferred, six** dollars **[**and fifty cents**]** and **[**seven**] twelve** dollars for those licenses sold or biennially renewed pursuant to section 301.147;

(2) For each application or transfer of **[**title—two**] title, six** dollars **[**and fifty cents**]**;

(3) For each instruction permit, nondriver license, chauffeur's, operator's**,** or driver's license issued for a period of three years or **[**less—two**] less, six** dollars **[**and fifty cents**]** and **[**five**] twelve** dollars for licenses or instruction permits issued or renewed for a period exceeding three years;

(4) For each notice of lien **[**processed—two**] processed, six** dollars **[**and fifty cents**]**;

(5) **[**No**]** Notary fee or **[**other fee or additional charge shall be paid or collected except for**]** electronic **[**telephone**]** transmission **[**reception—two**] per processing, two** dollars.

2. The director of revenue shall award fee office contracts under this section through a competitive bidding process. The competitive bidding process shall give priority to organizations and entities that are exempt from taxation under Section 501(c)(3), 501(c)(6), or 501(c)(4), except those civic organizations that would be considered action organizations under 26 C.F.R. Section 1.501 (c)(3)-1(c)(3), of the Internal Revenue Code of 1986, as amended, with special consideration given to those organizations and entities that reinvest a minimum

of seventy-five percent of the net proceeds to charitable organizations in Missouri, and political subdivisions, including but not limited to, municipalities, counties, and fire protection districts. **Points shall be allocated based upon the distance of an applicant's residential address, provided on his or her Missouri income tax form, from the fee license office in which he or she seeks an ownership interest in the following manner:**

(1) If located less than thirty-five miles from the license office address, then an additional twenty percent of total points available;

(2) If located thirty-five miles or more, but less than seventy-five miles from the license office address, then an additional ten percent of total points available; and

(3) If located seventy-five miles or more from the license office address, then no additional points shall be awarded.

The director of the department of revenue may promulgate rules and regulations necessary to carry out the provisions of this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this subsection shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

3. All fees collected by a tax-exempt organization may be retained and used by the organization.

4. All fees charged shall not exceed those in this section. The fees imposed by this section shall be collected by all permanent offices and all full-time or temporary offices maintained by the department of revenue.

5. Any person acting as agent of the department of revenue for the sale and issuance of registrations, licenses, and other documents related to motor vehicles shall have an insurable interest in all license plates, licenses, tabs, forms and other documents held on behalf of the department.

6. The fees authorized by this section shall not be collected by motor vehicle dealers acting as agents of the department of revenue under section 32.095 or those motor vehicle dealers authorized to collect and remit sales tax under subsection 8 of section 144.070.

7. Notwithstanding any other provision of law to the contrary, the state auditor may audit all records maintained and established by the fee office in the same manner as the auditor may audit any agency of the state, and the department shall ensure that this audit requirement is a necessary condition for the award of all fee office contracts. No confidential records shall be divulged in such a way to reveal personally identifiable information.

144.070. 1. At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

2. As used in subsection 1 of this section, the term "purchase price" shall mean the total amount of the contract price agreed upon between the seller and the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, regardless of the medium of payment therefor.

3. In the event that the purchase price is unknown or undisclosed, or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.

4. The director of the department of revenue shall endorse upon the official certificate of title issued by the director upon such application an entry showing that such sales tax has been paid or that the motor vehicle, trailer, boat, or outboard motor represented by such certificate is exempt from sales tax and state the ground for such exemption.

5. Any person, company, or corporation engaged in the business of renting

or leasing motor vehicles, trailers, boats, or outboard motors, which are to be used exclusively for rental or lease purposes, and not for resale, may apply to the director of revenue for authority to operate as a leasing **or rental** company **and pay an annual fee of two hundred fifty dollars for such authority**. Any company approved by the director of revenue may pay the tax due on any motor vehicle, trailer, boat, or outboard motor as required in section 144.020 at the time of registration thereof or in lieu thereof may pay a sales tax as provided in sections 144.010, 144.020, 144.070 and 144.440. A sales tax shall be charged to and paid by a leasing company which does not exercise the option of paying in accordance with section 144.020, on the amount charged for each rental or lease agreement while the motor vehicle, trailer, boat, or outboard motor is domiciled in this state. Any motor vehicle, trailer, boat, or outboard motor which is leased as the result of a contract executed in this state shall be presumed to be domiciled in this state.

6. **Every applicant to be a lease or rental company shall furnish with the application a corporate surety bond or irrevocable letter of credit, as defined in section 400.5-102, issued by any state or federal financial institution in the penal sum of one hundred thousand dollars, on a form approved by the department. The bond or irrevocable letter of credit shall be conditioned upon the lease or rental company complying with the provisions of any statutes applicable to lease or rental companies, and the bond shall be an indemnity for any loss sustained by reason of the acts of the person bonded when such acts constitute grounds for the suspension or revocation of the lease or rental license. The bond shall be executed in the name of the state of Missouri for the benefit of all aggrieved parties or the irrevocable letter of credit shall name the state of Missouri as the beneficiary; except that, the aggregate liability of the surety or financial institution to the aggrieved parties shall, in no event, exceed the amount of the bond or irrevocable letter of credit. The proceeds of the bond or irrevocable letter of credit shall be paid upon receipt by the department of a final judgment from a Missouri court of competent jurisdiction against the principal and in favor of an aggrieved party.**

7. Any corporation may have one or more of its divisions separately apply to the director of revenue for authorization to operate as a leasing company, provided that the corporation:

(1) Has filed a written consent with the director authorizing any of its divisions to apply for such authority;

(2) Is authorized to do business in Missouri;

(3) Has agreed to treat any sale of a motor vehicle, trailer, boat, or outboard motor from one of its divisions to another of its divisions as a sale at retail;

(4) Has registered under the fictitious name provisions of sections 417.200 to 417.230 each of its divisions doing business in Missouri as a leasing company; and

(5) Operates each of its divisions on a basis separate from each of its other divisions. However, when the transfer of a motor vehicle, trailer, boat or outboard motor occurs within a corporation which holds a license to operate as a motor vehicle or boat dealer pursuant to sections 301.550 to 301.573 the provisions in subdivision (3) of this subsection shall not apply.

[7.**]** **8.** If the owner of any motor vehicle, trailer, boat, or outboard motor desires to charge and collect sales tax as provided in this section, the owner shall make application to the director of revenue for a permit to operate as a motor vehicle, trailer, boat, or outboard motor leasing company. The director of revenue shall promulgate rules and regulations determining the qualifications of such a company, and the method of collection and reporting of sales tax charged and collected. Such regulations shall apply only to owners of motor vehicles, trailers, boats, or outboard motors, electing to qualify as motor vehicle, trailer, boat, or outboard motor leasing companies under the provisions of subsection 5 of this section, and no motor vehicle renting or leasing, trailer renting or leasing, or boat or outboard motor renting or leasing company can come under sections 144.010, 144.020, 144.070 and 144.440 unless all motor vehicles, trailers, boats, and outboard motors held for renting and leasing are included.

9. Any person, company, or corporation engaged in the business of renting or leasing three thousand five hundred or more motor vehicles which are to be used exclusively for rental or leasing purposes and not for resale, and that has applied to the director of revenue for authority to operate as a leasing company may also operate as a registered fleet owner as prescribed in section 301.032.

[8.**]** **10.** Beginning July 1, 2010, any motor vehicle dealer licensed under section 301.560 engaged in the business of selling motor vehicles or trailers may apply to the director of revenue for authority to collect and remit the sales tax

required under this section on all motor vehicles sold by the motor vehicle dealer. A motor vehicle dealer receiving authority to collect and remit the tax is subject to all provisions under sections 144.010 to 144.525. Any motor vehicle dealer authorized to collect and remit sales taxes on motor vehicles under this subsection shall be entitled to deduct and retain an amount equal to two percent of the motor vehicle sales tax pursuant to section 144.140. Any amount of the tax collected under this subsection that is retained by a motor vehicle dealer pursuant to section 144.140 shall not constitute state revenue. In no event shall revenues from the general revenue fund or any other state fund be utilized to compensate motor vehicle dealers for their role in collecting and remitting sales taxes on motor vehicles. In the event this subsection or any portion thereof is held to violate Article IV, Section 30(b) of the Missouri Constitution, no motor vehicle dealer shall be authorized to collect and remit sales taxes on motor vehicles under this section. No motor vehicle dealer shall seek compensation from the state of Missouri or its agencies if a court of competent jurisdiction declares that the retention of two percent of the motor vehicle sales tax is unconstitutional and orders the return of such revenues.

300.155. Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited;

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Unless otherwise directed by a pedestrian control signal as provided in section 300.160, pedestrians facing any green signal, except when the sole

green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection;

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in section 300.160, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication

(a) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown except as provided in paragraph (b) of this subdivision;

(b) The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red signal, may cautiously enter the intersection to make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that the state highways and transportation commission with reference to an intersection involving a state highway, and local authorities with reference to an intersection involving other highways under their jurisdiction, may prohibit any such right turn against a red signal at any intersection where safety conditions so require, said prohibition shall be effective when a sign is erected at such intersection giving notice thereof;

(c) **The driver of a vehicle which is in the left-most lane on a one-way street and stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red signal, may cautiously enter the intersection to make a left turn onto a one-way street but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that the state highways and transportation commission with reference to an intersection involving a state highway, and local authorities with**

reference to an intersection involving other highways under their jurisdiction, may prohibit any such left turn against a red signal at any intersection where safety conditions so require and such prohibition shall be effective when a sign is erected at such intersection giving notice thereof;

(d) Unless otherwise directed by a pedestrian control signal as provided in section 300.160, pedestrians facing a steady red signal alone shall not enter the roadway.

(4) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

301.010. As used in this chapter and sections 304.010 to 304.040, 304.120 to 304.260, and sections 307.010 to 307.175, the following terms mean:

(1) "All-terrain vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of one thousand five hundred pounds or less, traveling on three, four or more nonhighway tires;

(2) "Autocycle", a three-wheeled motor vehicle which the drivers and passengers ride in a partially or completely enclosed nonstraddle seating area**[**, that is designed to be controlled with a steering wheel and pedals,**]** and that has met applicable Department of Transportation National Highway Traffic Safety Administration requirements or federal motorcycle safety standards;

(3) "Automobile transporter", any vehicle combination capable of carrying cargo on the power unit and designed and used for the transport of assembled motor vehicles, including truck camper units;

(4) "Axle load", the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle;

(5) "Backhaul", the return trip of a vehicle transporting cargo or general freight, especially when carrying goods back over all or part of the same route;

(6) "Boat transporter", any vehicle combination capable of carrying cargo on the power unit and designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate

transporting;

(7) "Body shop", a business that repairs physical damage on motor vehicles that are not owned by the shop or its officers or employees by mending, straightening, replacing body parts, or painting;

(8) "Bus", a motor vehicle primarily for the transportation of a driver and eight or more passengers but not including shuttle buses;

(9) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers but not including vanpools or shuttle buses;

(10) "Cotton trailer", a trailer designed and used exclusively for transporting cotton at speeds less than forty miles per hour from field to field or from field to market and return;

(11) "Dealer", any person, firm, corporation, association, agent or subagent engaged in the sale or exchange of new, used or reconstructed motor vehicles or trailers;

(12) "Director" or "director of revenue", the director of the department of revenue;

(13) "Driveaway operation":

(a) The movement of a motor vehicle or trailer by any person or motor carrier other than a dealer over any public highway, under its own power singly, or in a fixed combination of two or more vehicles, for the purpose of delivery for sale or for delivery either before or after sale;

(b) The movement of any vehicle or vehicles, not owned by the transporter, constituting the commodity being transported, by a person engaged in the business of furnishing drivers and operators for the purpose of transporting vehicles in transit from one place to another by the driveaway or towaway methods; or

(c) The movement of a motor vehicle by any person who is lawfully engaged in the business of transporting or delivering vehicles that are not the person's own and vehicles of a type otherwise required to be registered, by the driveaway or towaway methods, from a point of manufacture, assembly or distribution or from the owner of the vehicles to a dealer or sales agent of a manufacturer or to any consignee designated by the shipper or consignor;

(14) "Dromedary", a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry

part of a load when operating independently or in a combination with a semitrailer;

(15) "Farm tractor", a tractor used exclusively for agricultural purposes;

(16) "Fleet", any group of ten or more motor vehicles owned by the same owner;

(17) "Fleet vehicle", a motor vehicle which is included as part of a fleet;

(18) "Fullmount", a vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination;

(19) "Gross weight", the weight of vehicle and/or vehicle combination without load, plus the weight of any load thereon;

(20) "Hail-damaged vehicle", any vehicle, the body of which has become dented as the result of the impact of hail;

(21) "Highway", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality;

(22) "Improved highway", a highway which has been paved with gravel, macadam, concrete, brick or asphalt, or surfaced in such a manner that it shall have a hard, smooth surface;

(23) "Intersecting highway", any highway which joins another, whether or not it crosses the same;

(24) "Junk vehicle", a vehicle which:

(a) Is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap; or

(b) Has been designated as junk or a substantially equivalent designation by this state or any other state;

(25) "Kit vehicle", a motor vehicle assembled by a person other than a generally recognized manufacturer of motor vehicles by the use of a glider kit or replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin;

(26) "Land improvement contractors' commercial motor vehicle", any not-for-hire commercial motor vehicle the operation of which is confined to:

(a) An area that extends not more than a radius of one hundred miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects involving soil and water conservation, or to and from equipment dealers' maintenance facilities for maintenance purposes; or

(b) An area that extends not more than a radius of fifty miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects not involving soil and water conservation. Nothing in this subdivision shall be construed to prevent any motor vehicle from being registered as a commercial motor vehicle or local commercial motor vehicle;

(27) "Local commercial motor vehicle", a commercial motor vehicle whose operations are confined to a municipality and that area extending not more than fifty miles therefrom, or a commercial motor vehicle whose property-carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle to or from a farm owned by such person or under the person's control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;

(28) "Local log truck", a commercial motor vehicle which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated solely at a forested site and in an area extending not more than a one hundred mile radius from such site, carries a load with dimensions not in excess of twenty-five cubic yards per two axles with dual wheels, and when operated on the national system of interstate and defense highways described in 23 U.S.C. Section 103, as amended, or outside the one hundred mile radius from such site with an extended distance local log truck permit, such vehicle shall not exceed the weight limits of section 304.180, does not have more than four axles, and does not pull a trailer which has more than three axles. Harvesting equipment which is used specifically for cutting, felling, trimming, delimbing, debarking, chipping, skidding, loading, unloading, and stacking may be transported on a local log truck. A local log truck may not exceed the limits required by law, however, if the truck does exceed such limits as determined by the inspecting officer, then notwithstanding any other provisions of law to the contrary, such truck shall be subject to the weight limits required by such sections as licensed for eighty thousand pounds;

(29) "Local log truck tractor", a commercial motor vehicle which is registered under this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated at a forested site and in an area extending not more than a one hundred mile radius from such site, operates with a weight not

exceeding twenty-two thousand four hundred pounds on one axle or with a weight not exceeding forty-four thousand eight hundred pounds on any tandem axle, and when operated on the national system of interstate and defense highways described in 23 U.S.C. Section 103, as amended, or outside the one hundred mile radius from such site with an extended distance local log truck permit, such vehicle does not exceed the weight limits contained in section 304.180, and does not have more than three axles and does not pull a trailer which has more than three axles. Violations of axle weight limitations shall be subject to the load limit penalty as described for in sections 304.180 to 304.220;

(30) "Local transit bus", a bus whose operations are confined wholly within a municipal corporation, or wholly within a municipal corporation and a commercial zone, as defined in section 390.020, adjacent thereto, forming a part of a public transportation system within such municipal corporation and such municipal corporation and adjacent commercial zone;

(31) "Log truck", a vehicle which is not a local log truck or local log truck tractor and is used exclusively to transport harvested forest products to and from forested sites which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state for the transportation of harvested forest products;

(32) "Major component parts", the rear clip, cowl, frame, body, cab, front-end assembly, and front clip, as those terms are defined by the director of revenue pursuant to rules and regulations or by illustrations;

(33) "Manufacturer", any person, firm, corporation or association engaged in the business of manufacturing or assembling motor vehicles, trailers or vessels for sale;

(34) "Motor change vehicle", a vehicle manufactured prior to August, 1957, which receives a new, rebuilt or used engine, and which used the number stamped on the original engine as the vehicle identification number;

(35) "Motor vehicle", any self-propelled vehicle not operated exclusively upon tracks, except farm tractors;

(36) "Motor vehicle primarily for business use", any vehicle other than a recreational motor vehicle, motorcycle, motortricycle, or any commercial motor vehicle licensed for over twelve thousand pounds:

(a) Offered for hire or lease; or

(b) The owner of which also owns ten or more such motor vehicles;

(37) "Motorcycle", a motor vehicle operated on two wheels;

(38) "Motorized bicycle", any two-wheeled or three-wheeled device having an automatic transmission and a motor with a cylinder capacity of not more than fifty cubic centimeters, which produces less than three gross brake horsepower, and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground;

(39) "Motortricycle", a motor vehicle upon which the operator straddles or sits astride that is designed to be controlled by handle bars and is operated on three wheels, including a motorcycle while operated with any conveyance, temporary or otherwise, requiring the use of a third wheel. A motortricycle shall not be included in the definition of all-terrain vehicle;

(40) "Municipality", any city, town or village, whether incorporated or not;

(41) "Nonresident", a resident of a state or country other than the state of Missouri;

(42) "Non-USA-std motor vehicle", a motor vehicle not originally manufactured in compliance with United States emissions or safety standards;

(43) "Operator", any person who operates or drives a motor vehicle;

(44) "Owner", any person, firm, corporation or association, who holds the legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner;

(45) "Public garage", a place of business where motor vehicles are housed, stored, repaired, reconstructed or repainted for persons other than the owners or operators of such place of business;

(46) "Rebuilder", a business that repairs or rebuilds motor vehicles owned by the rebuilder, but does not include certificated common or contract carriers of persons or property;

(47) "Reconstructed motor vehicle", a vehicle that is altered from its original construction by the addition or substitution of two or more new or used major component parts, excluding motor vehicles made from all new parts, and new multistage manufactured vehicles;

(48) "Recreational motor vehicle", any motor vehicle designed, constructed or substantially modified so that it may be used and is used for the purposes of temporary housing quarters, including therein sleeping and eating facilities

which are either permanently attached to the motor vehicle or attached to a unit which is securely attached to the motor vehicle. Nothing herein shall prevent any motor vehicle from being registered as a commercial motor vehicle if the motor vehicle could otherwise be so registered;

(49) "Recreational off-highway vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than sixty-seven inches in width, with an unladen dry weight of two thousand pounds or less, traveling on four or more nonhighway tires and which may have access to ATV trails;

(50) **"Recreational trailer", any trailer designed, constructed, or substantially modified so that it may be used and is used for the purpose of temporary housing quarters, including therein sleeping or eating facilities, which can be temporarily attached to a motor vehicle or attached to a unit which is securely attached to a motor vehicle;**

(51) "Rollback or car carrier", any vehicle specifically designed to transport wrecked, disabled or otherwise inoperable vehicles, when the transportation is directly connected to a wrecker or towing service;

[(51)**]** **(52)** "Saddlemount combination", a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The "saddle" is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a "double saddlemount combination". When three vehicles are towed in this manner, the combination is called a "triple saddlemount combination";

[(52)**]** **(53)** "Salvage dealer and dismantler", a business that dismantles used motor vehicles for the sale of the parts thereof, and buys and sells used motor vehicle parts and accessories;

[(53)**]** **(54)** "Salvage vehicle", a motor vehicle, semitrailer, or house trailer which:

(a) Was damaged during a year that is no more than six years after the manufacturer's model year designation for such vehicle to the extent that the total cost of repairs to rebuild or reconstruct the vehicle to its condition immediately before it was damaged for legal operation on the roads or highways exceeds eighty percent of the fair market value of the vehicle immediately preceding the time it was damaged;

(b) By reason of condition or circumstance, has been declared salvage, either by its owner, or by a person, firm, corporation, or other legal entity exercising the right of security interest in it;

(c) Has been declared salvage by an insurance company as a result of settlement of a claim;

(d) Ownership of which is evidenced by a salvage title; or

(e) Is abandoned property which is titled pursuant to section 304.155 or section 304.157 and designated with the words "salvage/abandoned property". The total cost of repairs to rebuild or reconstruct the vehicle shall not include the cost of repairing, replacing, or reinstalling inflatable safety restraints, tires, sound systems, or damage as a result of hail, or any sales tax on parts or materials to rebuild or reconstruct the vehicle. For purposes of this definition, "fair market value" means the retail value of a motor vehicle as:

a. Set forth in a current edition of any nationally recognized compilation of retail values, including automated databases, or from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles;

b. Determined pursuant to a market survey of comparable vehicles with regard to condition and equipment; and

c. Determined by an insurance company using any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner;

[(54)**]** **(55)** "School bus", any motor vehicle used solely to transport students to or from school or to transport students to or from any place for educational purposes;

[(55)**]** **(56)** "Scrap processor", a business that, through the use of fixed or mobile equipment, flattens, crushes, or otherwise accepts motor vehicles and vehicle parts for processing or transportation to a shredder or scrap metal operator for recycling;

[(56)**]** **(57)** "Shuttle bus", a motor vehicle used or maintained by any person, firm, or corporation as an incidental service to transport patrons or customers of the regular business of such person, firm, or corporation to and from the place of business of the person, firm, or corporation providing the service at no fee or charge. Shuttle buses shall not be registered as buses or as commercial motor vehicles;

[(57)**]** **(58)** "Special mobile equipment", every self-propelled vehicle not

designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers and wood-sawing equipment used for hire, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finished machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, concrete pump trucks, rock-drilling and earth-moving equipment. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;

[(58)**]** **(59)** "Specially constructed motor vehicle", a motor vehicle which shall not have been originally constructed under a distinctive name, make, model or type by a manufacturer of motor vehicles. The term specially constructed motor vehicle includes kit vehicles;

[(59)**]** **(60)** "Stinger-steered combination", a truck tractor-semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit;

[(60)**]** **(61)** "Tandem axle", a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more than ninety-six inches apart;

[(61)**]** **(62)** "Towaway trailer transporter combination", a combination of vehicles consisting of a trailer transporter towing unit and two trailers or semitrailers, with a total weight that does not exceed twenty-six thousand pounds; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers;

[(62)**]** **(63)** "Tractor", "truck tractor" or "truck-tractor", a self-propelled motor vehicle designed for drawing other vehicles, but not for the carriage of any load when operating independently. When attached to a semitrailer, it supports a part of the weight thereof;

[(63)**]** **(64)** "Trailer", any vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks, including a semitrailer or vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight rests upon and is carried by the towing vehicle. The term trailer shall not include cotton trailers

as defined in this section and shall not include manufactured homes as defined in section 700.010;

[(64)**]** **(65)** "Trailer transporter towing unit", a power unit that is not used to carry property when operating in a towaway trailer transporter combination;

[(65)**]** **(66)** "Truck", a motor vehicle designed, used, or maintained for the transportation of property;

[(66)**]** **(67)** "Truck-tractor semitrailer-semitrailer", a combination vehicle in which the two trailing units are connected with a B-train assembly which is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth-wheel connection point for the second semitrailer and has one less articulation point than the conventional A-dolly connected truck-tractor semitrailer-trailer combination;

[(67)**]** **(68)** "Truck-trailer boat transporter combination", a boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection with the trailer axle located substantially at the trailer center of gravity rather than the rear of the trailer but so as to maintain a downward force on the trailer tongue;

[(68)**]** **(69)** "Used parts dealer", a business that buys and sells used motor vehicle parts or accessories, but not including a business that sells only new, remanufactured or rebuilt parts. Business does not include isolated sales at a swap meet of less than three days;

[(69)**]** **(70)** "Utility vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than sixty-seven inches in width, with an unladen dry weight of two thousand pounds or less, traveling on four or six wheels, to be used primarily for landscaping, lawn care, or maintenance purposes;

[(70)**]** **(71)** "Vanpool", any van or other motor vehicle used or maintained by any person, group, firm, corporation, association, city, county or state agency, or any member thereof, for the transportation of not less than eight nor more than forty-eight employees, per motor vehicle, to and from their place of employment; however, a vanpool shall not be included in the definition of the term bus or commercial motor vehicle as defined in this section, nor shall a vanpool driver be deemed a chauffeur as that term is defined by section 303.020; nor shall use of a vanpool vehicle for ride-sharing arrangements, recreational, personal, or maintenance uses constitute an unlicensed use of the motor vehicle,

unless used for monetary profit other than for use in a ride-sharing arrangement;

[(71)**]** **(72)** "Vehicle", any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons;

[(72)**]** **(73)** "Wrecker" or "tow truck", any emergency commercial vehicle equipped, designed and used to assist or render aid and transport or tow disabled or wrecked vehicles from a highway, road, street or highway rights-of-way to a point of storage or repair, including towing a replacement vehicle to replace a disabled or wrecked vehicle;

[(73)**]** **(74)** "Wrecker or towing service", the act of transporting, towing or recovering with a wrecker, tow truck, rollback or car carrier any vehicle not owned by the operator of the wrecker, tow truck, rollback or car carrier for which the operator directly or indirectly receives compensation or other personal gain.

301.020. 1. Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall annually file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose containing:

(1) A brief description of the motor vehicle or trailer to be registered, including the name of the manufacturer, the vehicle identification number, the amount of motive power of the motor vehicle, stated in figures of horsepower and whether the motor vehicle is to be registered as a motor vehicle primarily for business use as defined in section 301.010;

(2) The name, the applicant's identification number and address of the owner of such motor vehicle or trailer;

(3) The gross weight of the vehicle and the desired load in pounds if the vehicle is a commercial motor vehicle or trailer.

2. If the vehicle is a motor vehicle primarily for business use as defined in section 301.010 and if such vehicle is **[**five**]** **ten** years of age or less **and has less than one hundred fifty thousand miles on the odometer**, the director of revenue shall retain the odometer information provided in the vehicle inspection report, and provide for prompt access to such information, together with the vehicle identification number for the motor vehicle to which such information pertains, for a period of **[**five**]** **ten** years after the receipt of such

information. This section shall not apply unless:

(1) The application for the vehicle's certificate of ownership was submitted after July 1, 1989; and

(2) The certificate was issued pursuant to a manufacturer's statement of origin.

3. If the vehicle is any motor vehicle other than a motor vehicle primarily for business use, a recreational motor vehicle, motorcycle, motortricycle, autocycle, bus, or any commercial motor vehicle licensed for over twelve thousand pounds and if such motor vehicle is **[**five**]** **ten** years of age or less **and has less than one hundred fifty thousand miles on the odometer**, the director of revenue shall retain the odometer information provided in the vehicle inspection report, and provide for prompt access to such information, together with the vehicle identification number for the motor vehicle to which such information pertains, for a period of **[**five**]** **ten** years after the receipt of such information. This subsection shall not apply unless:

(1) The application for the vehicle's certificate of ownership was submitted after July 1, 1990; and

(2) The certificate was issued pursuant to a manufacturer's statement of origin.

4. If the vehicle qualifies as a reconstructed motor vehicle, motor change vehicle, specially constructed motor vehicle, non-USA-std motor vehicle, as defined in section 301.010, or prior salvage as referenced in section 301.573, the owner or lienholder shall surrender the certificate of ownership. The owner shall make an application for a new certificate of ownership, pay the required title fee, and obtain the vehicle examination certificate required pursuant to subsection 9 of section 301.190. If an insurance company pays a claim on a salvage vehicle as defined in section 301.010 and the owner retains the vehicle, as prior salvage, the vehicle shall only be required to meet the examination requirements under subsection 10 of section 301.190. Notarized bills of sale along with a copy of the front and back of the certificate of ownership for all major component parts installed on the vehicle and invoices for all essential parts which are not defined as major component parts shall accompany the application for a new certificate of ownership. If the vehicle is a specially constructed motor vehicle, as defined in section 301.010, two pictures of the vehicle shall be submitted with the application. If the vehicle is a kit vehicle, the applicant shall submit the invoice and the manufacturer's statement of origin on the kit. If the vehicle requires the

issuance of a special number by the director of revenue or a replacement vehicle identification number, the applicant shall submit the required application and application fee. All applications required under this subsection shall be submitted with any applicable taxes which may be due on the purchase of the vehicle or parts. The director of revenue shall appropriately designate "Reconstructed Motor Vehicle", "Motor Change Vehicle", "Non-USA-Std Motor Vehicle", or "Specially Constructed Motor Vehicle" on the current and all subsequent issues of the certificate of ownership of such vehicle.

5. Every insurance company that pays a claim for repair of a motor vehicle which as the result of such repairs becomes a reconstructed motor vehicle as defined in section 301.010 or that pays a claim on a salvage vehicle as defined in section 301.010 and the owner is retaining the vehicle shall in writing notify the owner of the vehicle, and in a first party claim, the lienholder if a lien is in effect, that he is required to surrender the certificate of ownership, and the documents and fees required pursuant to subsection 4 of this section to obtain a prior salvage motor vehicle certificate of ownership or documents and fees as otherwise required by law to obtain a salvage certificate of ownership, from the director of revenue. The insurance company shall within thirty days of the payment of such claims report to the director of revenue the name and address of such owner, the year, make, model, vehicle identification number, and license plate number of the vehicle, and the date of loss and payment.

6. Anyone who fails to comply with the requirements of this section shall be guilty of a class B misdemeanor.

7. An applicant for registration may make a donation of one dollar to promote a blindness education, screening and treatment program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the blindness education, screening and treatment program fund established in section 209.015. Moneys in the blindness education, screening and treatment program fund shall be used solely for the purposes established in section 209.015; except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for registration at the time of issuance or renewal. The director shall inquire of each applicant at the time the applicant presents the completed application to the director whether the applicant is interested in making the one dollar donation prescribed in this subsection.

8. An applicant for registration may make a donation of one dollar to promote an organ donor program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the organ donor program fund as established in sections 194.297 to 194.304. Moneys in the organ donor fund shall be used solely for the purposes established in sections 194.297 to 194.304, except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for registration at the time of issuance or renewal. The director shall inquire of each applicant at the time the applicant presents the completed application to the director whether the applicant is interested in making the one dollar donation prescribed in this subsection.

301.030. 1. The director shall provide for the retention of license plates by the owners of motor vehicles, other than commercial motor vehicles, and shall establish a system of registration on a monthly series basis to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve months of the calendar year. For the purpose of assigning license plate numbers, each type of motor vehicle shall be considered a separate class. Commencing July 1, 1949, motor vehicles, other than commercial motor vehicles, shall be registered for a period of twelve consecutive calendar months. There are established twelve registration periods, each of which shall start on the first day of each calendar month of the year and shall end on the last date of the twelfth month from the date of beginning. **Fees for the renewal of noncommercial motor vehicle registrations shall be payable no later than the last day of the month that follows the twelfth month of the expired registration period. No delinquent renewal penalty shall be assessed under section 301.050, and no violation shall be issued under section 301.020 for an expired registration, prior to the second month that follows the twelfth month of the expired registration period.**

2. Motor vehicles, other than commercial motor vehicles, operated for the first time upon the public highways of this state, to and including the fifteenth day of any given month, shall be subject to registration and payment of a fee for the twelve-month period commencing the first day of the month of such operation; motor vehicles, other than commercial motor vehicles, operated for the first time on the public highways of this state after the fifteenth day of any given month shall be subject to registration and payment of a fee for the twelve-month period

commencing the first day of the next following calendar month.

3. All commercial motor vehicles and trailers, except those licensed under section 301.035 and those operated under agreements as provided for in sections 301.271 to 301.279, shall be registered either on a calendar year basis or on a prorated basis as provided in this section. The fees for commercial motor vehicles, trailers, semitrailers, and driveaway vehicles, other than those to be operated under agreements as provided for in sections 301.271 to 301.279 shall be payable not later than the last day of February of each year, except when such vehicle is licensed between April first and July first the fee shall be three-fourths the annual fee, when licensed between July first and October first the fee shall be one-half the annual fee and when licensed on or after October first the fee shall be one-fourth the annual fee. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Local commercial motor vehicle license plates may also be so stamped, marked or designed as to indicate they are to be used only on local commercial motor vehicles and, in addition to such stamp, mark or design, the letter "F" shall also be displayed on local commercial motor vehicle license plates issued to motor vehicles used for farm or farming transportation operations as defined in section 301.010 in the manner prescribed by the advisory committee established in section 301.129. In addition, all commercial motor vehicle license plates may be so stamped or marked with a letter, figure or other emblem as to indicate the gross weight for which issued.

4. The director shall, upon application, issue registration and license plates for nine thousand pounds gross weight for property-carrying commercial motor vehicles referred to herein, upon payment of the fees prescribed for twelve thousand pounds gross weight as provided in section 301.057.

5. Notwithstanding any other provision of law to the contrary, any motorcycle or motortricycle registration issued by the Missouri department of revenue shall expire on June thirtieth.

301.032. 1. Notwithstanding the provisions of sections 301.030 and 301.035 to the contrary, the director of revenue shall establish a system of registration of all fleet vehicles owned or purchased by a fleet owner registered pursuant to this section. The director of revenue shall prescribe the forms for such fleet registration and the forms and procedures for the registration updates prescribed in this section. Any owner of ten or more motor vehicles which must

be registered in accordance with this chapter may register as a fleet owner. All registered fleet owners may, at their option, register all motor vehicles included in the fleet on a calendar year or biennial basis pursuant to this section in lieu of the registration periods provided in sections 301.030, 301.035, and 301.147. The director shall issue an identification number to each registered owner of fleet vehicles.

2. All fleet vehicles included in the fleet of a registered fleet owner shall be registered during April of the corresponding year or on a prorated basis as provided in subsection 3 of this section. Fees of all vehicles in the fleet to be registered on a calendar year basis or on a biennial basis shall be payable not later than the last day of April of the corresponding year, with two years' fees due for biennially-registered vehicles. Notwithstanding the provisions of section 307.355, an application for registration of a fleet vehicle must be accompanied by a certificate of inspection and approval issued no more than one hundred twenty days prior to the date of application. The fees for vehicles added to the fleet which must be licensed at the time of registration shall be payable at the time of registration, except that when such vehicle is licensed between July first and September thirtieth the fee shall be three-fourths the annual fee, when licensed between October first and December thirty-first the fee shall be one-half the annual fee and when licensed on or after January first the fee shall be one-fourth the annual fee. When biennial registration is sought for vehicles added to a fleet, an additional year's annual fee will be added to the partial year's prorated fee.

3. At any time during the calendar year in which an owner of a fleet purchases or otherwise acquires a vehicle which is to be added to the fleet or transfers plates to a fleet vehicle, the owner shall present to the director of revenue the identification number as a fleet number and may register the vehicle for the partial year as provided in subsection 2 of this section. The fleet owner shall also be charged a transfer fee of two dollars for each vehicle so transferred pursuant to this subsection.

4. Except as specifically provided in this subsection, all fleet vehicles registered pursuant to this section shall be issued a special license plate which shall have the words "Fleet Vehicle" in place of the words "Show-Me State" in the manner prescribed by the advisory committee established in section 301.129. Alternatively, for a one-time additional five dollar per-vehicle fee beyond the regular registration fee, a fleet owner of at least fifty fleet vehicles may apply for fleet license plates bearing a company name or logo, the size and

design thereof subject to approval by the director. All fleet license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Fleet vehicles shall be issued multiyear license plates as provided in this section which shall not require issuance of a renewal tab. Upon payment of appropriate registration fees, the director of revenue shall issue a registration certificate or other suitable evidence of payment of the annual or biennial fee, and such evidence of payment shall be carried at all times in the vehicle for which it is issued. **[**The director of revenue shall promulgate rules and regulations establishing the procedure for application and issuance of fleet vehicle license plates.**]**

5. Notwithstanding the provisions of sections 307.350 to 307.390 to the contrary, a fleet vehicle registered in Missouri is exempt from the requirements of sections 307.350 to 307.390 if at the time of the annual fleet registration, such fleet vehicle is situated outside the state of Missouri.

6. Notwithstanding any other provisions of law to the contrary, any person, company, or corporation engaged in the business of renting or leasing three thousand five hundred or more motor vehicles which are to be used exclusively for rental or leasing purposes and not for resale, that has applied to the director of revenue for authority to operate as a lease or rental company as prescribed in section 144.070 may operate as a registered fleet owner as prescribed in the provisions of this subsection and subsections 7 to 10 of this section.

(1) The director of revenue may issue license plates after presentment of an application, as designed by the director, and payment of an annual fee of three hundred sixty dollars for the first ten plates and thirty-six dollars for each additional plate. The payment and issuance of such plates shall be in lieu of registering each motor vehicle with the director as otherwise provided by law.

(2) Such motor vehicles within the fleet shall not be exempted from the safety inspection and emissions inspection provisions as prescribed in chapters 307 and 643, but notwithstanding the provisions of section 307.355, such inspections shall not be required to be presented to the director of revenue.

7. A recipient of a lease or rental company license issued by the director of revenue as prescribed in section 144.070 operating as a

registered fleet owner under this section shall register such fleet with the director of revenue on an annual or biennial basis in lieu of the individual motor vehicle registration periods as prescribed in sections 301.030, 301.035, and 301.147. If an applicant elects a biennial fleet registration, the annual fleet license plate fees prescribed in subdivision (1) of subsection 6 of this section shall be doubled. An agent fee as prescribed in subdivision (1) of subsection 1 of section 136.055 shall apply to the issuance of fleet registrations issued under subsections 6 to 10 of this section, and if a biennial fleet registration is elected, the agent fee shall be collected in an amount equal to the fee for two years.

8. Prior to the issuance of fleet license plates under subsections 6 to 10 of this section, the applicant shall provide proof of insurance as required under section 303.024 or 303.026.

9. The authority of a recipient of a lease or rental company license issued by the director of revenue as prescribed in section 144.070 to operate as a fleet owner as provided in this section shall expire on January first of the licensure period.

10. A lease or rental company operating motor vehicles with fleet license plates issued under subsections 6 to 10 of this section shall make available, upon request, to the director of revenue and all Missouri law enforcement agencies any corresponding vehicle and registration information that may be requested as prescribed by rule.

11. The director shall make all necessary rules and regulations for the administration of this section and shall design all necessary forms required by this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

301.067. 1. For each trailer or semitrailer there shall be paid an annual fee of seven dollars fifty cents, and in addition thereto such permit fee authorized

by law against trailers used in combination with tractors operated under the supervision of the highways and transportation commission of the department of transportation. The fees for tractors used in any combination with trailers or semitrailers or both trailers and semitrailers (other than on passenger-carrying trailers or semitrailers) shall be computed on the total gross weight of the vehicles in the combination with load.

2. Any trailer or semitrailer may at the option of the registrant be registered for a period of three years upon payment of a registration fee of twenty-two dollars and fifty cents.

3. Any trailer as defined in section 301.010 or semitrailer may, at the option of the registrant, be registered permanently upon the payment of a registration fee of fifty-two dollars and fifty cents. The permanent plate and registration fee is vehicle specific. The plate and the registration fee paid is nontransferable and nonrefundable, except those covered under the provisions of section 301.442.

4. Beginning August 28, 2019, the annual registration fees imposed under this section or section 301.030 for recreational trailers, as defined under section 301.010, shall be payable in the month of May each year. Any fee that would have been due in December 2019, shall be deferred until May 2020.

301.191. 1. When an application is made for an original Missouri certificate of ownership for a previously untitled trailer **[**sixteen feet or more in length**]** which is stated to be homemade, the applicant shall present a certificate of inspection as provided in this section. No certificate of ownership shall be issued for such a homemade trailer if no certificate of inspection is presented.

2. As used in this section, "homemade" means made by a person who is not a manufacturer using readily distinguishable manufacturers' identifying numbers or a statement of origin.

3. Every person constructing a homemade trailer **[**sixteen feet or more in length**]** shall obtain an inspection from the sheriff of his or her county of residence or from the Missouri state highway patrol prior to applying for a certificate of ownership. If the person constructing the trailer sells or transfers the trailer prior to applying for a certificate of ownership, the sheriff's or the Missouri state highway patrol's certificate of inspection shall be transferred with the trailer.

4. A fee of **[**ten**]** **twenty-five** dollars shall be paid for the inspection. If

the inspection is completed by the sheriff, the proceeds from the inspections shall be deposited by the sheriff within thirty days into the county law enforcement fund if one exists; otherwise into the county general revenue fund. If the inspection is completed by the Missouri state highway patrol, the applicant shall pay the **[**ten**]** **twenty-five** dollar inspection fee to the director of revenue at the time of application for a certificate of ownership for the homemade trailer. The fee shall be deposited in the state treasury to the credit of the state highway fund.

5. The sheriff or Missouri state highway patrol shall inspect the trailer and certify it if the trailer appears to be homemade. The sheriff or Missouri state highway patrol may request the owner to provide any documents or other evidence showing that the trailer was homemade. When a trailer is certified by the sheriff, the sheriff may stamp a permanent identifying number in the tongue of the frame. The certificate of inspection shall be on a form designed and provided by the director of revenue.

6. Upon presentation of the certificate of inspection and all applicable documents and fees including the identification plate fee provided in section 301.380, the director of revenue shall issue a readily distinguishable manufacturers' identifying number plate. The identification number plate shall be affixed to the tongue of the trailer's frame.

7. The sheriff or Missouri state highway patrol may seize any trailer which has been stolen or has identifying numbers obliterated or removed. The sheriff or Missouri state highway patrol may hold the trailer as evidence while an investigation is conducted. The trailer shall be returned if no related criminal charges are filed within thirty days or when the charges are later dropped or dismissed or when the owner is acquitted.

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

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

(2) Operate a motorcycle or motortricycle upon any highway of this state unless such person has a valid license that shows the person has successfully passed an examination for the operation of a motorcycle or motortricycle as prescribed by the director. The director may indicate such upon a valid license issued to such person, or shall issue a license restricting the applicant to the operation of a motorcycle or motortricycle if the actual demonstration, required

by section 302.173, is conducted on such vehicle;

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

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

2. Every person **under eighteen years of age who is** operating or riding as a passenger on any motorcycle or motortricycle, as defined in section 301.010, upon any highway of this state shall wear protective headgear at all times the vehicle is in motion**; except that, any person eighteen years of age or older operating any motorcycle or motortricycle who has been issued an instruction permit shall wear protective headgear at all times the vehicle is in motion**. The protective headgear shall meet reasonable standards and specifications established by the director.

3. Notwithstanding the provisions of section 302.340 any person convicted of violating subdivision (1) or (2) of subsection 1 of this section is guilty of a misdemeanor. A first violation of subdivision (1) or (2) of subsection 1 of this section shall be punishable as a class D misdemeanor. A second violation of subdivision (1) or (2) of subsection 1 of this section shall be punishable as a class A misdemeanor. Any person convicted a third or subsequent time of violating subdivision (1) or (2) of subsection 1 of this section is guilty of a class E felony. Notwithstanding the provisions of section 302.340, violation of subdivisions (3) and (4) of subsection 1 of this section is a misdemeanor, the first violation punishable as a class D misdemeanor, a second or subsequent violation of this section punishable as a class C misdemeanor, and the penalty for failure to wear protective headgear as required by subsection 2 of this section is an infraction for which a fine not to exceed twenty-five dollars may be imposed. Notwithstanding all other provisions of law and court rules to the contrary, no court costs shall be imposed upon any person due to such violation. No points shall be assessed pursuant to section 302.302 for a failure to wear such protective headgear. Prior pleas of guilty and prior findings of guilty shall be pleaded and proven in the same manner as required by section 558.021.

302.026. 1. Any qualified motorcycle operator who is eighteen years of age or older may operate a motorcycle or motortricycle upon

any highway of this state without wearing protective headgear if he or she in addition to maintaining proof of financial responsibility in accordance with chapter 303, is covered by a health insurance policy or other form of insurance which will provide the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle or motortricycle.

2. Proof of coverage required by subsection 1 of this section shall be provided, upon request by authorized law enforcement, by showing a copy of the qualified operator's insurance card.

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

(1) "Biometric data", shall include, but not be limited to, the following:

(a) Facial feature pattern characteristics;

(b) Voice data used for comparing live speech with a previously created speech model of a person's voice;

(c) Iris recognition data containing color or texture patterns or codes;

(d) Retinal scans, reading through the pupil to measure blood vessels lining the retina;

(e) Fingerprint, palm prints, hand geometry, measure of any and all characteristics of biometric information, including shape and length of fingertips, or recording ridge pattern or fingertip characteristics;

(f) Eye spacing;

(g) Characteristic gait or walk;

(h) DNA;

(i) Keystroke dynamic, measuring pressure applied to key pads or other digital receiving devices;

(2) "Commercial purposes", shall not include data used or compiled solely to be used for, or obtained or compiled solely for purposes expressly allowed under Missouri law or the federal Drivers Privacy Protection Act;

(3) "Source documents", original or certified copies, where applicable, of documents presented by an applicant as required under 6 CFR Part 37 to the department of revenue to apply for a driver's license or nondriver's license. Source documents shall also include any documents required for the issuance of driver's licenses or nondriver's licenses by the department of revenue under the provisions of this chapter or accompanying regulations.

2. Except as provided in subsection 3 of this section and as required to carry out the provisions of subsection 4 of this section, the department of revenue

shall not retain copies, in any format, of source documents presented by individuals applying for or holding driver's licenses or nondriver's licenses or use technology to capture digital images of source documents so that the images are capable of being retained in electronic storage in a transferable format. Documents retained as provided or required by subsection 4 of this section shall be stored solely on a system not connected to the internet nor to a wide area network that connects to the internet. Once stored on such system, the documents and data shall be purged from any systems on which they were previously stored so as to make them irretrievable.

3. The provisions of this section shall not apply to:

(1) Original application forms, which may be retained but not scanned except as provided in this section;

(2) Test score documents issued by state highway patrol driver examiners **and Missouri commercial third-party tester examiners**;

(3) Documents demonstrating lawful presence of any applicant who is not a citizen of the United States, including documents demonstrating duration of the person's lawful presence in the United States;

(4) Any document required to be retained under federal motor carrier regulations in Title 49, Code of Federal Regulations, including but not limited to documents required by federal law for the issuance of a commercial driver's license and a commercial driver instruction permit;

(5) Documents submitted by a commercial driver's license **or commercial driver's instruction permit** applicant who is a Missouri resident and is **[**active duty military or a veteran, as "veteran" is defined in 38 U.S.C. Section 101**] a qualified current or former military service member**, which allows for waiver of the commercial driver's license knowledge test, skills test, or both; and

(6) Any other document at the request of and for the convenience of the applicant where the applicant requests the department of revenue review alternative documents as proof required for issuance of a driver's license, nondriver's license, or instruction permit.

4. (1) To the extent not prohibited under subsection 13 of this section, the department of revenue shall amend procedures for applying for a driver's license or identification card in order to comply with the goals or standards of the federal REAL ID Act of 2005, any rules or regulations promulgated under the authority granted in such Act, or any requirements adopted by the American Association of Motor Vehicle Administrators for furtherance of the Act, unless such action

conflicts with Missouri law.

(2) The department of revenue shall issue driver's licenses or identification cards that are compliant with the federal REAL ID Act of 2005, as amended, to all applicants for driver's licenses or identification cards unless an applicant requests a driver's license or identification card that is not REAL ID compliant. Except as provided in subsection 3 of this section and as required to carry out the provisions of this subsection, the department of revenue shall not retain the source documents of individuals applying for driver's licenses or identification cards not compliant with REAL ID. Upon initial application for a driver's license or identification card, the department shall inform applicants of the option of being issued a REAL ID compliant driver's license or identification card or a driver's license or identification card that is not compliant with REAL ID. The department shall inform all applicants:

(a) With regard to the REAL ID compliant driver's license or identification card:

a. Such card is valid for official state purposes and for official federal purposes as outlined in the federal REAL ID Act of 2005, as amended, such as domestic air travel and seeking access to military bases and most federal facilities;

b. Electronic copies of source documents will be retained by the department and destroyed after the minimum time required for digital retention by the federal REAL ID Act of 2005, as amended;

c. The facial image capture will only be retained by the department if the application is finished and submitted to the department; and

d. Any other information the department deems necessary to inform the applicant about the REAL ID compliant driver's license or identification card under the federal REAL ID Act;

(b) With regard to a driver's license or identification card that is not compliant with the federal REAL ID Act:

a. Such card is valid for official state purposes, but it is not valid for official federal purposes as outlined in the federal REAL ID Act of 2005, as amended, such as domestic air travel and seeking access to military bases and most federal facilities;

b. Source documents will be verified but no copies of such documents will be retained by the department unless permitted under subsection 3 of this section, except as necessary to process a request by a license or card holder or

applicant;

c. Any other information the department deems necessary to inform the applicant about the driver's license or identification card.

5. The department of revenue shall not use, collect, obtain, share, or retain biometric data nor shall the department use biometric technology to produce a driver's license or nondriver's license or to uniquely identify licensees or license applicants. This subsection shall not apply to digital images nor licensee signatures required for the issuance of driver's licenses and nondriver's licenses or to biometric data collected from employees of the department of revenue, employees of the office of administration who provide information technology support to the department of revenue, contracted license offices, and contracted manufacturers engaged in the production, processing, or manufacture of driver's licenses or identification cards in positions which require a background check in order to be compliant with the federal REAL ID Act or any rules or regulations promulgated under the authority of such Act. Except as otherwise provided by law, applicants' source documents and Social Security numbers shall not be stored in any database accessible by any other state or the federal government. Such database shall contain only the data fields included on driver's licenses and nondriver identification cards compliant with the federal REAL ID Act, and the driving records of the individuals holding such driver's licenses and nondriver identification cards.

6. Notwithstanding any provision of this chapter that requires an applicant to provide reasonable proof of lawful presence for issuance or renewal of a noncommercial driver's license, noncommercial instruction permit, or a nondriver's license, an applicant shall not have his or her privacy rights violated in order to obtain or renew a Missouri noncommercial driver's license, noncommercial instruction permit, or a nondriver's license.

7. No citizen of this state shall have his or her privacy compromised by the state or agents of the state. The state shall within reason protect the sovereignty of the citizens the state is entrusted to protect. Any data derived from a person's application shall not be sold for commercial purposes to any other organization or any other state without the express permission of the applicant without a court order; except such information may be shared with a law enforcement agency, judge, prosecuting attorney, or officer of the court, or with another state for the limited purposes set out in section 302.600, or for the purposes set forth in section 32.091, or for conducting driver history checks in

compliance with the Motor Carrier Safety Improvement Act, 49 U.S.C. Section 31309. The state of Missouri shall protect the privacy of its citizens when handling any written, digital, or electronic data, and shall not participate in any standardized identification system using driver's and nondriver's license records except as provided in this section.

8. Other than to process a request by a license or card holder or applicant, no person shall access, distribute, or allow access to or distribution of any written, digital, or electronic data collected or retained under this section without the express permission of the applicant or a court order, except that such information may be shared with a law enforcement agency, judge, prosecuting attorney, or officer of the court, or with another state for the limited purposes set out in section 302.600 or for conducting driver history checks in compliance with the Motor Carrier Safety Improvement Act, 49 U.S.C. Section 31309. A first violation of this subsection shall be a class A misdemeanor. A second violation of this subsection shall be a class E felony. A third or subsequent violation of this subsection shall be a class D felony.

9. Any person harmed or damaged by any violation of this section may bring a civil action for damages, including noneconomic and punitive damages, as well as injunctive relief, in the circuit court where that person resided at the time of the violation or in the circuit court of Cole County to recover such damages from the department of revenue and any persons participating in such violation. Sovereign immunity shall not be available as a defense for the department of revenue in such an action. In the event the plaintiff prevails on any count of his or her claim, the plaintiff shall be entitled to recover reasonable attorney fees from the defendants.

10. The department of revenue may promulgate rules necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2017, shall be invalid and void.

11. Biometric data, digital images, source documents, and licensee

signatures, or any copies of the same, required to be collected or retained to comply with the requirements of the federal REAL ID Act of 2005 shall be digitally retained for no longer than the minimum duration required to maintain compliance, and immediately thereafter shall be securely destroyed so as to make them irretrievable.

12. No agency, department, or official of this state or of any political subdivision thereof shall use, collect, obtain, share, or retain radio frequency identification data from a REAL ID compliant driver's license or identification card issued by a state, nor use the same to uniquely identify any individual.

13. Notwithstanding any provision of law to the contrary, the department of revenue shall not amend procedures for applying for a driver's license or identification card, nor promulgate any rule or regulation, for purposes of complying with modifications made to the federal REAL ID Act of 2005 after August 28, 2017, imposing additional requirements on applications, document retention, or issuance of compliant licenses or cards, including any rules or regulations promulgated under the authority granted under the federal REAL ID Act of 2005, as amended, or any requirements adopted by the American Association of Motor Vehicle Administrators for furtherance thereof.

14. If the federal REAL ID Act of 2005 is modified or repealed such that driver's licenses and identification cards issued by this state that are not compliant with the federal REAL ID Act of 2005 are once again sufficient for federal identification purposes, the department shall not issue a driver's license or identification card that complies with the federal REAL ID Act of 2005 and shall securely destroy, within thirty days, any source documents retained by the department for the purpose of compliance with such Act.

15. The provisions of this section shall expire five years after August 28, 2017.

302.341. 1. If a Missouri resident charged with a moving traffic violation of this state or any county or municipality of this state fails to dispose of the charges of which the resident is accused through authorized prepayment of fine and court costs and fails to appear on the return date or at any subsequent date to which the case has been continued, or without good cause fails to pay any fine or court costs assessed against the resident for any such violation within the period of time specified or in such installments as approved by the court or as otherwise provided by law, any court having jurisdiction over the charges shall within ten days of the failure to comply inform the defendant by ordinary mail

at the last address shown on the court records that the court **[**will**]** **may** order the director of revenue to suspend the defendant's driving privileges if the charges are not disposed of and fully paid within thirty days from the date of mailing. Thereafter, if the defendant fails to timely act to dispose of the charges and fully pay any applicable fines and court costs, the court **[**shall**]** **may** notify the director of revenue of such failure and of the pending charges against the defendant. Upon receipt of this notification, the director shall suspend the license of the driver, effective immediately, and provide notice of the suspension to the driver at the last address for the driver shown on the records of the department of revenue. Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition, or satisfactory evidence of disposition of pending charges and payment of fine and court costs, if applicable, is furnished to the director by the individual. The filing of financial responsibility with the **[**bureau of safety responsibility,**]** department of revenue**[**,**]** shall not be required as a condition of reinstatement of a driver's license suspended solely under the provisions of this section.

2. The provisions of subsection 1 of this section shall not apply to minor traffic violations**,** as defined in section 479.350**, originating in a city not within a county, or in any county with a charter form of government and with more than nine hundred fifty thousand inhabitants**.

302.720. 1. Except when operating under an instruction permit as described in this section, no person may drive a commercial motor vehicle unless the person has been issued a commercial driver's license with applicable endorsements valid for the type of vehicle being operated as specified in sections 302.700 to 302.780. A commercial driver's instruction permit shall allow the holder of a valid license to operate a commercial motor vehicle when accompanied by the holder of a commercial driver's license valid for the vehicle being operated and who occupies a seat beside the individual, or reasonably near the individual in the case of buses, for the purpose of giving instruction in driving the commercial motor vehicle. No person may be issued a commercial driver's instruction permit until he or she has passed written tests which comply with the minimum federal standards. A commercial driver's instruction permit shall be **nonrenewable and** valid for the vehicle being operated for a period of not more than **[**six months**]** **one year**, and shall not be issued until the permit holder has met all other requirements of sections 302.700 to 302.780, except for the driving

test. **[**A permit holder, unless otherwise disqualified, may be granted one six-month renewal within a one-year period.**]** The fee for such permit **[**or renewal**]** shall be **[**five**] ten** dollars. **[**In the alternative, a commercial driver's instruction permit shall be issued for a thirty-day period to allow the holder of a valid driver's license to operate a commercial motor vehicle if the applicant has completed all other requirements except the driving test. The permit may be renewed for one additional thirty-day period and the fee for the permit and for renewal shall be five dollars.**] The fee for a duplicate commercial driver's instruction permit shall be five dollars.**

2. No person may be issued a commercial driver's license until he has passed written and driving tests for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the Secretary and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570), as well as any other requirements imposed by state law. **Beginning January 1, 2020, all applicants for a commercial driver's license shall complete any entry-level driver training program established and required under 49 CFR 380.609.** All applicants for a commercial driver's license shall have maintained the appropriate class of commercial driver's instruction permit issued by this state or any other state for a minimum of fourteen calendar days prior to the date of taking the skills test. Applicants for a hazardous materials endorsement must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Nothing contained in this subsection shall be construed as prohibiting the director from establishing alternate testing formats for those who are functionally illiterate; provided, however, that any such alternate test must comply with the minimum requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570) as established by the Secretary.

(1) The written and driving tests shall be held at such times and in such places as the superintendent may designate. A twenty-five dollar examination fee shall be paid by the applicant upon completion of any written or driving test, except the examination fee shall be waived for applicants seventy years of age or older renewing a license with a school bus endorsement. The director shall delegate the power to conduct the examinations required under sections 302.700 to 302.780 to any member of the highway patrol or any person employed by the highway patrol qualified to give driving examinations. The written test shall only

be administered in the English language. No translators shall be allowed for applicants taking the test.

(2) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department of revenue. Such rules and regulations shall substantially comply with the requirements of 49 CFR 383, Section 383.75. A certification to conduct third-party testing shall be valid for one year, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester.

(3) Beginning August 28, 2006, the director shall only issue or renew third-party tester certification to community colleges established under chapter 178 or to private companies who own, lease, or maintain their own fleet and administer in-house testing to their employees, or to school districts and their agents that administer in-house testing to the school district's or agent's employees. Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his certification revoked by the department. The department shall provide written notice and an opportunity for the third-party tester to be heard in substantially the same manner as provided in chapter 536. If any applicant submits evidence that he has successfully completed a test administered by a third-party tester, the actual driving test for a commercial driver's license may then be waived.

(4) Every applicant for renewal of a commercial driver's license shall provide such certifications and information as required by the Secretary and if such person transports a hazardous material must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Such person shall be required to take the written test for such endorsement. A twenty-five dollar examination fee shall be paid upon completion of such tests.

(5) The director shall have the authority to waive the driving skills test **and written tests** for any qualified **current or former** military **service member** applicant for a commercial driver's **instruction permit or a commercial driver's** license who is currently licensed at the time of application for a commercial driver's **instruction permit or** license. The director shall impose conditions and limitations **and require certification and evidence** to restrict the applicants from whom the department may accept **the** alternative requirements for the skills **[**test**]** **and written tests** described in federal **[**regulation**]** **regulations 49 CFR 383.71 and** 49 CFR 383.77. **[**An applicant

must certify that, during the two-year period immediately preceding application for a commercial driver's license, all of the following apply:

(a) The applicant has not had more than one license;

(b) The applicant has not had any license suspended, revoked, or cancelled;

(c) The applicant has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in this chapter or federal rule 49 CFR 383.51(b);

(d) The applicant has not had more than one conviction for any type of motor vehicle for serious traffic violations;

(e) The applicant has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, but not including any parking violation, arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault;

(f) The applicant has been regularly employed within the last ninety days in a military position requiring operation of a commercial motor vehicle and has operated the vehicle for at least sixty days during the two years immediately preceding application for a commercial driver's license. The vehicle must be representative of the commercial motor vehicle the driver applicant operates or expects to operate;

(g) The applicant, if on active duty, must provide a notarized affidavit signed by a commanding officer as proof of driving experience as indicated in paragraph (f) of this subdivision;

(h) The applicant, if honorably discharged from military service, must provide a form-DD214 or other proof of military occupational specialty;

(i)**]** The applicant must meet all federal and state qualifications to operate a commercial vehicle**[**;**],** and

[(j)**]** the applicant will be required to complete all applicable knowledge tests**, except when an applicant provides proof of approved military training for waiving the knowledge and skills tests as specified in this subdivision**.

3. A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is disqualified from driving a commercial motor vehicle, when a disqualification is pending in any state or while the person's driver's license is suspended, revoked, or cancelled in any state; nor may a commercial driver's license be issued unless the person first surrenders in

a manner prescribed by the director any commercial driver's license issued by another state, which license shall be returned to the issuing state for cancellation.

4. Beginning July 1, 2005, the director shall not issue an instruction permit under this section unless the director verifies that the applicant is lawfully present in the United States before accepting the application. The director may, by rule or regulation, establish procedures to verify the lawful presence of the applicant under this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536.

5. Notwithstanding the provisions of this section or any other law to the contrary, beginning August 28, 2008, the director of the department of revenue shall certify as a third-party tester any municipality that owns, leases, or maintains its own fleet that requires certain employees as a condition of employment to hold a valid commercial driver's license; and that administered in-house testing to such employees prior to August 28, 2006.

302.768. 1. Any applicant for a commercial driver's license or commercial driver's instruction permit shall comply with the Federal Motor Carrier Safety Administration application requirements of 49 CFR Part 383.71 by certifying to one of the following applicable statements relating to federal and state driver qualification rules:

(1) Nonexcepted interstate: certifies the applicant is a driver operating or expecting to operate in interstate or foreign commerce, or is otherwise subject to and meets requirements of 49 CFR Part 391 and is required to obtain a medical examiner's certificate as defined in 49 CFR Part 391.45;

(2) Excepted interstate: certifies the applicant is a driver operating or expecting to operate entirely in interstate commerce that is not subject to Part 391 and is subject to Missouri driver qualifications and not required to obtain a medical examiner's certificate;

(3) Nonexcepted intrastate: certifies the applicant is a driver operating only in intrastate commerce and is subject to Missouri driver qualifications;

(4) Excepted intrastate: certifies the applicant operates or expects to operate only in intrastate commerce, and engaging only in operations excepted from all parts of the Missouri driver qualification requirements.

2. Any applicant who cannot meet certification requirements under one of the categories defined in subsection 1 of this section shall be denied issuance

of a commercial driver's license or commercial driver's instruction permit.

3. An applicant certifying to operation in nonexcepted interstate or nonexcepted intrastate commerce shall provide the state with an original or copy of a current medical examiner's certificate or a medical examiner's certificate accompanied by a medical variance or waiver**, until such time as the medical examiner's certificate information is received electronically through the Federal Motor Carrier Safety Administration approved verification system**. The state shall retain the **[**original or copy of the**]** documentation of physical qualification for a minimum of three years beyond the date the certificate was issued.

4. Applicants certifying to operation in nonexcepted interstate commerce or nonexcepted intrastate commerce shall provide **[**an**]** updated medical certificate or variance **[**documents**] information** to maintain a certified status during the term of the commercial driver's license or commercial driver's instruction permit in order to retain commercial privileges.

5. The director shall post the medical examiner's certificate of information, medical variance if applicable, the applicant's self-certification and certification status to the Missouri driver record within ten calendar days and such information will become part of the CDLIS driver record.

6. Applicants certifying to operation in nonexcepted interstate commerce or nonexcepted intrastate commerce who fail to provide or maintain a current medical examiner's certificate, or if the state has received notice of a medical variance or waiver expiring or being rescinded, the state shall, within ten calendar days, update the driver's medical certification status to "not certified". The state shall notify the driver of the change in certification status and require the driver to annually comply with requirements for a commercial driver's license downgrade within sixty days of the expiration of the applicant certification.

7. The department of revenue may, by rule, establish the cost and criteria for submission of updated medical certification status information as required under this section.

8. Any person who falsifies any information in an application for or update of medical certification status information for a commercial driver's license shall not be licensed to operate a commercial motor vehicle, or the person's commercial driver's license shall be cancelled for a period of one year after the director discovers such falsification.

9. The director may promulgate rules and regulations necessary to administer and enforce this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2012, shall be invalid and void.

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

(1) "Law enforcement officer", any public servant, other than a patrol officer, who is defined as a law enforcement officer under section 556.061;

(2) "Motor club", an organization which motor vehicle drivers and owners may join that provide certain benefits relating to driving a motor vehicle;

(3) **"Nonconsensual tow", the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle. For purposes of this section, all law enforcement-ordered tows are considered nonconsensual;**

(4) "Patrol officer", a Missouri state highway patrol officer;

[(4)**]** **(5)** "Tow list", a list of approved towing companies compiled, maintained, and utilized by the Missouri state highway patrol or its designee;

[(5)**]** **(6)** "Tow management company", any sole proprietorship, partnership, corporation, fiduciary, association, or other business entity that manages towing logistics for government agencies or motor clubs;

[(6)**]** **(7)** "Tow truck", a rollback or car carrier, wrecker, or tow truck as defined under section 301.010;

[(7)**]** **(8)** "Towing", moving or removing, or the preparation therefor, of a vehicle by another vehicle for which a service charge is made, either directly or indirectly, including any dues or other charges of clubs or associations which provide towing services;

[(8)**]** **(9)** "Towing company", any person, partnership, corporation, fiduciary, association, or other entity that operates a wrecker or towing service as defined under section 301.010.

2. In authorizing a towing company to perform services, any patrol officer

or law enforcement officer within the officer's jurisdiction, or Missouri department of transportation employee, may utilize the services of a tow management company or tow list, provided:

(1) The Missouri state highway patrol is under no obligation to include or retain the services of any towing company in any contract or agreement with a tow management company or any tow list established pursuant to this section. A towing company is subject to removal from a tow list at any time;

(2) Notwithstanding any other provision of law or any regulation established pursuant to this section, an owner or operator's request for a specific towing company shall be honored by the Missouri state highway patrol unless:

(a) The requested towing company cannot or does not respond in a reasonable time, as determined by a law enforcement officer; or

(b) The vehicle to be towed poses an immediate traffic hazard, as determined by a law enforcement officer.

3. A patrol officer shall not use a towing company located outside of Missouri under this section except under the following circumstances:

(1) A state or federal emergency has been declared; or

(2) The driver or owner of the vehicle, or a motor club of which the driver or owner is a member, requests a specific out-of-state towing company.

4. A towing company shall not tow a vehicle to a location outside of Missouri without the consent of the driver or owner of the motor vehicle, or without the consent of a motor club of which the driver or owner of the motor vehicle is a member.

5. Any towing company or tow truck arriving at the scene of an accident that has not been called by a patrol officer, a law enforcement officer, a Missouri department of transportation employee, the driver or owner of the motor vehicle or his or her authorized agent, including a motor club of which the driver or owner is a member, shall be prohibited from towing the vehicle from the scene of the accident, unless the towing company or tow truck operator is rendering emergency aid in the interest of public safety, or is operating during a declared state of emergency under section 44.100.

6. A tow truck operator that stops and tows a vehicle from the scene of an accident in violation of subsection 5 of this section shall be guilty of a class D misdemeanor upon conviction or pleading guilty for the first violation, and such tow truck shall be subject to impounding. The penalty for a second violation shall be a class A misdemeanor, and the penalty for any third or subsequent violation

shall be a class D felony. A violation of this section shall not preclude the tow truck operator from being charged with tampering under chapter 569.

7. The provisions of this section shall also apply to motor vehicles towed under section 304.155 or 304.157.

8. The provisions of **subsections 1 to 7 of** this section shall not apply to counties of the third or fourth classification.

9. (1) The "Towing Task Force" is hereby created. The task force shall make recommendations as provided in this subsection with respect to tows involving vehicles with a gross vehicle weight rating in excess of twenty-six thousand pounds. The task force shall consist of ten members, who shall be appointed as follows:

(a) Two members of the senate appointed by the president pro tempore of the senate, with one member appointed from the minority party and one member appointed from the majority party;

(b) Two members of the house of representatives appointed by the speaker of the house of representatives, with one member appointed from the minority party and one member appointed from the majority party;

(c) One member, or the member's designee, appointed by the director of the department of transportation or his or her designee;

(d) One member, or the member's designee, appointed by the director of the department public safety or his or her designee;

(e) One member, or the member's designee, appointed by the speaker of the house of representatives to represent the heavy duty towing and recovery industry within the state;

(f) One member, or the member's designee, appointed by the president pro tempore of the senate to represent the heavy duty towing and recovery industry within the state;

(g) One member, or the member's designee, appointed by the speaker of the house of representatives to represent an association of motor carriers within the state; and

(h) One member, appointed by president pro tempore of the senate, to represent an association of owner-operator truck drivers within the state.

(2) The task force shall have the following duties and powers:

(a) To make comprehensive recommendations on matters related to the investigation of overcharges made by towing companies,

including:

a. A process for the adjudication of consumer complaints regarding nonconsensual tow charges;

b. Factors to consider in determining whether a charge levied by a towing company is just, fair, and reasonable, including charges for the use of unnecessary equipment and labor; and

c. A process for the removal of towing companies from rotation lists for violations of the rules; and

(b) To make comprehensive recommendations regarding information that should be included on every invoice with respect to a nonconsensual tow.

(3) The task force shall make its first comprehensive recommendations in a report to the general assembly no later than January 31, 2020.

(4) The members of the towing task force shall elect a chair from among their membership. The chair shall set the times and frequency of the task force's meetings.

(5) The task force established under this subsection shall expire on May 31, 2020.

304.281. 1. Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited;

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Unless otherwise directed by a pedestrian control signal, as provided in section 304.291, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection;

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in section 304.291, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication

(a) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection at a clearly marked stop line but, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in paragraph (b);

(b) The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red signal, may cautiously enter the intersection to make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that the state highways and transportation commission with reference to an intersection involving a state highway, and local authorities with reference to an intersection involving other highways under their jurisdiction, may prohibit any such right turn against a red signal at any intersection where safety conditions so require, said prohibition shall be effective when a sign is erected at such intersection giving notice thereof;

(c) **The driver of a vehicle which is in the left-most lane on a one-way street and stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red signal, may cautiously enter the intersection to make a left turn onto a one-way street but shall yield the right-of-way to pedestrians and other traffic**

proceeding as directed by the signal at the intersection, except that the state highways and transportation commission with reference to an intersection involving a state highway, and local authorities with reference to an intersection involving other highways under their jurisdiction, may prohibit any such left turn against a red signal at any intersection where safety conditions so require and such prohibition shall be effective when a sign is erected at such intersection giving notice thereof;

(d) Unless otherwise directed by a pedestrian control signal as provided in section 304.291, pedestrians facing a steady red signal alone shall not enter the roadway.

(4) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provision of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

2. Notwithstanding the provisions of section 304.361, violation of this section is a class C misdemeanor.

307.350. 1. The owner of every motor vehicle as defined in section 301.010 which is required to be registered in this state, except:

(1) Motor vehicles **having less than one hundred fifty thousand miles**, for the **[**five-year**]** **ten-year** period following their model year of manufacture, excluding prior salvage vehicles immediately following a rebuilding process and vehicles subject to the provisions of section 307.380;

(2) Those motor vehicles which are engaged in interstate commerce and are proportionately registered in this state with the Missouri highway reciprocity commission, although the owner may request that such vehicle be inspected by an official inspection station, and a peace officer may stop and inspect such vehicles to determine whether the mechanical condition is in compliance with the safety regulations established by the United States Department of Transportation; and

(3) Historic motor vehicles registered pursuant to section 301.131;

(4) Vehicles registered in excess of twenty-four thousand pounds for a period of less than twelve months;

shall submit such vehicles to a biennial inspection of their mechanism and

equipment in accordance with the provisions of sections 307.350 to 307.390 and obtain a certificate of inspection and approval and a sticker, seal, or other device from a duly authorized official inspection station. The inspection, except the inspection of school buses which shall be made at the time provided in section 307.375, shall be made at the time prescribed in the rules and regulations issued by the superintendent of the Missouri state highway patrol; but the inspection of a vehicle shall not be made more than sixty days prior to the date of application for registration or within sixty days of when a vehicle's registration is transferred; however, if a vehicle was purchased from a motor vehicle dealer and a valid inspection had been made within sixty days of the purchase date, the new owner shall be able to utilize an inspection performed within ninety days prior to the application for registration or transfer. Any vehicle manufactured as an even-numbered model year vehicle shall be inspected and approved pursuant to the safety inspection program established pursuant to sections 307.350 to 307.390 in each even-numbered calendar year and any such vehicle manufactured as an odd-numbered model year vehicle shall be inspected and approved pursuant to sections 307.350 to 307.390 in each odd-numbered year. The certificate of inspection and approval shall be a sticker, seal, or other device or combination thereof, as the superintendent of the Missouri state highway patrol prescribes by regulation and shall be displayed upon the motor vehicle or trailer as prescribed by the regulations established by him. The replacement of certificates of inspection and approval which are lost or destroyed shall be made by the superintendent of the Missouri state highway patrol under regulations prescribed by him.

2. For the purpose of obtaining an inspection only, it shall be lawful to operate a vehicle over the most direct route between the owner's usual place of residence and an inspection station of such owner's choice, notwithstanding the fact that the vehicle does not have a current state registration license. It shall also be lawful to operate such a vehicle from an inspection station to another place where repairs may be made and to return the vehicle to the inspection station notwithstanding the absence of a current state registration license.

3. No person whose motor vehicle was duly inspected and approved as provided in this section shall be required to have the same motor vehicle again inspected and approved for the sole reason that such person wishes to obtain a set of any special personalized license plates available pursuant to section 301.144 or a set of any license plates available pursuant to section 301.142, prior

to the expiration date of such motor vehicle's current registration.

4. Notwithstanding the provisions of section 307.390, violation of this section shall be deemed an infraction.

Section B. The repeal and reenactment of sections 301.020, 301.191, and 307.350 of this act shall become effective January 1, 2020.

✓

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE NO. 4 FOR

SENATE BILL NO. 224

100TH GENERAL ASSEMBLY

2019

0633H.14T

AN ACT

To amend supreme court rules 25.03, 56.01, 57.01, 57.03, 57.04, 58.01, 59.01, and 61.01, relating to discovery.

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

Section A. Supreme court rules 25.03, 56.01, 57.01, 57.03, 57.04, 58.01, 59.01, and 61.01, are amended, to read as follows:

25.03. Misdemeanors or Felonies-Disclosure by State to Defendant Without Court Order

(a) Disclosure upon filing of felony complaint. Except as otherwise provided in these Rules, the state shall, upon written request of defendant's counsel, disclose to defendant's counsel**[**,**]** the following material and information in the possession of the prosecutor: any arrest reports, incident reports, investigative reports, written or recorded statements, documents, photographs, video, electronic communications and electronic data that relate to the offense for which defendant is charged.

(b) Disclosure after indictment or filing of information. Except as otherwise provided in these Rules, the state shall, upon written request of defendant's counsel, disclose to defendant's counsel the following material and information within its possession or control designated in the request:

(1) Any arrest reports, incident reports, investigative reports, written or recorded statements, documents, photographs, video, electronic communications and electronic data that relate to the offense for which defendant is charged; **provided that, personal identifying information of persons named in**

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

such materials may be redacted at the discretion of the prosecutor;

(2) The names and last known addresses of persons whom the state intends to call as witnesses at any hearing or at the trial, together with their written or recorded statements, and existing memoranda, reporting or summarizing part or all of their oral statements;

(3) Any written or recorded statements and the substance of any oral statements made by defendant, a co-defendant or a co-actor, a list of all witnesses to the making of the statements and a list of all witnesses to the acknowledgment of the statements including the last known addresses of the witnesses;

(4) Those portions of any existing transcript of grand jury proceedings that relate to the offense with which defendant is charged, containing testimony of defendant and testimony of persons whom the state intends to call as witnesses at a hearing or trial;

(5) Any existing transcript of the preliminary hearing and of any prior trial held in defendant's case if the state has the transcript in its possession;

(6) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(7) Any books, papers, documents, photographs, video, electronic communications, electronic data, or objects that the state intends to introduce into evidence at the hearing or trial or that were obtained from or belong to defendant; **provided that, personal identifying information of any person named in such materials, other than those obtained from the defendant, may be redacted at the discretion of the prosecutor;**

(8) Any record of prior criminal convictions of persons the state intends to call as witnesses at a hearing or the trial; and

(9) Any photographic or electronic surveillance (including wiretapping) of defendant or of conversations to which defendant was a party or of defendant's premises, relating to the offense charged. This disclosure shall be in the form of a written statement by counsel for the state briefly setting out the facts pertaining to the time, place, and persons making the photographic or electronic surveillance.

(c) The request provided for by this Rule shall be made by filing the request in the court where the case is pending and serving a copy of the request upon counsel for the state.

(d) The state may redact from any document it provides to defendant's

counsel **[**the following information: taxpayer identification number, the first five digits of a social security number, driver's license number, financial account number, personal identification code (PIN), electronic password of a victim or witness, or the actual address or mailing address of a participant in an address confidentiality program administered by the Missouri Secretary of State,**] any personal identifying information of witnesses or other persons named in any document** but must do so in a manner that makes it clear that the information has been redacted.

(e) The state may elect to provide a separate copy of a redacted document to defendant's counsel to be delivered to defendant and designated as "Defendant's Copy." If the state provides a redacted document designated as "Defendant's Copy," in addition to the information permitted to be redacted pursuant to Rule 25.03(d), the state may also redact from "Defendant's Copy" of the document the following information: date of birth, home address, work address, and personal phone number and work phone number of a victim or witness. However, the redaction must be done in a manner that makes it clear the information has been redacted from the document. Defendant's counsel shall be provided a separate document designated as "Lawyer Copy Only – Not for Defendant" that includes the information that has been redacted from the document pursuant to Rule 25.03(e). If defendant's counsel is provided with a redacted document by the state designated as "Defendant's Copy," only that copy shall be provided to defendant. Defendant's counsel shall not provide to defendant the unredacted document or any information redacted from the document pursuant to this Rule without court approval. For any document designated "Defendant's Copy" or "Lawyer Copy Only – Not for Defendant," every page of the respective document shall be so designated.

(f) Defendant is not entitled to the information redacted from a document as provided in Rule 25.03(d) or (e) unless the court determines after a showing of good cause that the disclosure of the information is necessary for the defense of the case.

(g) The state shall, without written request, disclose to defendant any material or information that tends to negate the guilt of defendant for the charged offense, mitigate the degree of the offense charged, reduce the punishment of the offense charged, and any additional material or information that would be required to be disclosed to comply with Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972) and their progeny.

(h) If material or information would be discoverable under subsections (b) and (g) of this Rule if in the possession or control of the state, but is in possession or control of other governmental personnel, the state shall use diligence and make good faith efforts to make the material or information available to defendant. If the state's efforts are unsuccessful and the material or information or other governmental personnel are subject to the jurisdiction of the court, the court, upon request, shall issue subpoenas or orders to cause the material or information to be made available to the state for disclosure to the defense.

56.01. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents**, electronically stored information,** or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter**, provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit**.

[It is not ground for objection that the information sought will be inadmissible at the trial**] Information within the scope of discovery need not be admissible in evidence to be discoverable** if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance.

(2) **Limitations. Upon the motion of any party or on its own, the court must limit the frequency or extent of discovery if it determines that:**

(A) The discovery sought is cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

(3) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 56.01(b)(2). The court may specify conditions for the discovery.

(4) Insurance Agreements. A party may obtain discovery of the existence and contents, including production of the policy and declaration page, of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this Rule **[**56.01(b)(2)**]** **56.01(b)(4)**, an application for insurance shall not be treated as part of an insurance agreement.

[(3)**]** **(5)** Trial Preparation: Materials. Subject to the provisions of Rule **[**56.01(b)(4)**]** **56.01(b)(6)**, a party may obtain discovery of documents and tangible things otherwise discoverable under Rule 56.01(b)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including an attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the adverse party is

unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. For purposes of this paragraph, a statement previously made is: (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, audio, video, motion picture or other recording, or a transcription thereof, of the party or of a statement made by the party and contemporaneously recorded.

[(4)**]** **(6)** Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Rule 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, such curriculum vitae may be attached to the interrogatory answers as a full response to such interrogatory, and to state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

(B) A party may discover by deposition the facts and opinions to which the expert is expected to testify. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

[(5)**]** **(7)** Trial Preparations: Non-retained Experts. A party, through interrogatories, may require any other party to identify each non-retained expert witness, including a party, whom the other party expects to call at trial who may provide expert witness opinion testimony by providing the expert's name, address, and field of expertise. For the purpose of this Rule **[**56.01(b)(5)**]** **56.01(b)(7)**, an expert witness is a witness qualified as an expert by knowledge, experience, training, or education giving testimony relative to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the

evidence. Discovery of the facts known and opinions held by such an expert shall be discoverable in the same manner as for lay witnesses.

[(6)**]** **(8)** Approved Interrogatories and Request for Production. A circuit court by local court rule may promulgate "approved" interrogatories and requests for production for use in specified types of litigation. Each such approved interrogatory and request for production submitted to a party shall be denominated as having been approved by reference to the local court rule and paragraph number containing the interrogatory or request for production.

(9) Claiming Privilege or Protecting Trial Preparation Materials.

(A) Information produced.

(i) If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(ii) An attorney who receives information that contains privileged communications involving an adverse or third party and who has reasonable cause to believe that the information was wrongfully obtained shall not read the information or, if he or she has begun to do so, shall stop reading it. The attorney shall promptly notify the attorney whose communications are contained in the information to return the information to the other lawyer and, if in electronic form, delete it and take reasonable measures to assure that the information is inaccessible. An attorney who has been notified about information containing privileged communications has the obligation to preserve the information.

(B) The production of privileged or work-product protected documents, electronically stored information or other information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in the proceeding.

(c) Protective Orders. Upon motion by a party or by the person from

whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place **or the allocation of expenses**;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 61.01 apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless **the parties stipulate or** the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Stipulations Regarding Discovery Procedure. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may

be taken before any person at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery. Any stipulation under subdivision (2) shall be filed.

57.01. Interrogatories to Parties

(a) Scope. **Unless otherwise stipulated or ordered by the court,** any party may serve upon any other party **no more than 25** written interrogatories**, including all discrete subparts**. Interrogatories may relate to any matter that can be inquired into under Rule 56.01. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(b) Issuance.

(1) Form. Interrogatories shall be in consecutively numbered paragraphs. The title shall identify the party to whom they are directed and state the number of the set of interrogatories directed to that party.

(2) When Interrogatories May be Served. Without leave of court, interrogatories may be served on:

(A) A plaintiff after commencement of the action, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the interrogatories shall be served on all parties not in default. The party issuing the interrogatories shall also provide each answering party an electronic copy, in a commonly used medium such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state:

(A) The name of each party who is to respond to the interrogatories;

(B) The number of the set of interrogatories,

(C) The format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the interrogatories, shall be filed with the court as provided in Rule 57.01(d).

(c) Response. The interrogatories shall be answered by each party to whom they are directed. If they are directed to a public or private corporation, limited liability company, partnership, association or governmental agency, they shall be answered by an officer or agent. The party answering the interrogatories shall furnish such information as is available to the party.

(1) When the Response is Due. Responses shall be served within 30 days after the service of the interrogatories. A defendant, however, shall not be required to respond to interrogatories before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance, or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of interrogatories. The response to the interrogatories shall quote each interrogatory, including its original paragraph number, and immediately thereunder state the answer or all reasons for not completely answering the interrogatory, including privileges, the work product doctrine and objections.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for withholding information, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Option to Produce Business Records. If the answer to an interrogatory may be derived or ascertained from:

(A) The business records of the party upon whom the interrogatory has been served, or

(B) An examination, audit or inspection of such business records, or

(C) A compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(5) Signing. Answers shall be signed under oath by the person making them. Objections shall be signed by the attorney making them or by the self-represented party.

(6) Service. The party to whom the interrogatories were directed shall serve a signed original of the answers and objections, if any, on the party that issued the interrogatories and a copy on all parties not in default. The certificate of service shall state the name of the party who issued the interrogatories and the number of the set of interrogatories.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 57.01(d).

(d) Filing. Interrogatories and answers under this Rule 57.01 shall not be filed with the court except upon court order or contemporaneously with a motion placing the interrogatories in issue. However, both when the interrogatories and answers are served, the party serving them shall file with the court a certificate of service.

The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney. The answers bearing the original signature of the party answering the interrogatories shall be served on the party submitting the interrogatories, who shall be the custodian thereof until the entire case is finally disposed.

Copies of interrogatory answers may be used in all court proceedings to the same extent the original answers may be used.

(e) Enforcement. The party submitting the interrogatory may move for an order under Rule 61.01(b) with respect to any objection to or other failure to answer an interrogatory.

(f) Use at Trial. Interrogatory answers may be used to the extent permitted by the rules of evidence.

57.03. Depositions Upon Oral Examination

(a) When Depositions May Be Taken.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination **without leave of court, except as specified in paragraph (2) of this subdivision. The attendance of witnesses may be compelled by subpoena as provided in Rule 57.09**.

(2) Leave of court, granted with or without notice, must be obtained only if **[**the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in Rule 57.09. The attendance of a party is compelled by notice as provided in subdivision (b) of this Rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court describes**]:**

(A) the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 57.04 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery; or

(B) the deponent is confined in prison.

(b) Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

A party may attend a deposition by telephone.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with Rule 58.01 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 58.01 shall apply

to the request.

(4) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.

(5) **[**Repealed effective Jan. 1, 2007.**] (A) Duration. Unless otherwise stipulated or ordered by the court, a deposition shall be limited to 1 day of 7 hours. The court may allow additional time consistent with Rule 56.01 if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.**

(B) Sanction. The court may impose an appropriate sanction, including the reasonable expenses and attorney's fees incurred by any party, on a person who impedes, delays, or frustrates the fair examination of the deponent.

(c) Non-stenographic Recording - Video Tape. Depositions may be recorded by the use of video tape or similar methods. The recording of the deposition by video tape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by video tape, every notice or subpoena for the taking of the deposition shall state that it is to be video taped and shall state the name, address and employer of the recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be video taped. Such notice must be served not less than three days prior to the date designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.

(2) Where the deposition has been recorded only by video tape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in Rule 57.03(f).

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the video taping of the deposition shall take custody of and be responsible for the safeguarding of the video tape and shall, upon request, permit the viewing thereof by the opposing party and if requested, shall provide a copy of the video tape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of video taping is to be borne by the party utilizing it and shall not be taxed as costs.

(d) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 57.03(c). If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.

(e) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken may order the officer conducting the

examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 56.01(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 61.01(g) apply to the award of expenses incurred in relation to the motion.

(f) Submission to Witness; Changes; Signing. When the testimony is fully transcribed, the officer shall make the deposition available to the witness for examination, reading and signing, unless such examination, reading, and signing are waived by the witness or by the parties. Any changes in form or substance that the witness desires to make shall be entered upon an errata sheet provided to the witness with a statement of the reasons given for making such changes. The answers or responses as originally given, together with the changes made and reasons given therefor, shall be considered as a part of the deposition. The deposition shall then be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign requires rejection of the deposition in whole or in part.

(g) Certification, Delivery, and Filing; Exhibits; Copies.

(1) Certification and Delivery. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) Filing.

(a) By the Officer. Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

(b) By a Party. A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court may enact local court rules

requiring a party who intends to use a deposition at a hearing or trial to file that deposition with the court on or prior to the date of the hearing or trial.

(c) Return of Deposition. At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

(d) Retention of Deposition. The original deposition shall be maintained until the case is finally disposed.

(3) Exhibits. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) Copies. Upon request and payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(h) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

57.04. Depositions Upon Written Questions

(a) Serving Questions; Notice.

(1) After commencement of the action, any party may take the testimony

of any person, including a party, by deposition upon written questions**, without leave of court, except as specified in paragraph (2) of this subdivision**. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 57.09. **[**The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.**]**

(2) Leave of court, granted with or without notice, must be obtained only if:

(A) the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 57.03 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery; or

(B) the deponent is confined in prison.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: **[**(1)**] (A)** the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs and **[**(2)**] (B)** the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 57.03(b)(4).

(4) Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 57.03(d), (f), and (g), to take the testimony of the

witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions.

(c) Notice of Delivery. When the deposition is delivered, the party taking it promptly shall give notice thereof to all other parties.

58.01. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request to:

(1) Produce and permit the **requesting** party **[**making the request, or someone acting on the requesting party's behalf,**] or its representative** to inspect, **[**and**]** copy, **test or sample the following items in the responding party's possession, custody, or control:**

(A) Any designated documents **or electronically stored information [(]**including writings, drawings, graphs, charts, photographs, **[**phonograph records,**] sound recordings, images,** electronic records, and other data **or** compilations from which information can be obtained**[**, translated, if necessary, by the requesting party through detection devices**] either directly or indirectly or, if necessary, after translation by the responding party** into a reasonably usable form**[)]; or [**to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 56.01(b) and that are in the possession, custody or control of the party upon whom the request is served**]**

(B) Any designated tangible things; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, and photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 56.01(b).

This Rule 58.01 does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(b) Issuance.

(1) Form. In consecutively numbered paragraphs the request shall**:**

(A) Set forth **[**the items to be inspected, either by individual item or by category, and describe each item and category**]** with reasonable particularity**[**. The request shall**] each item or category of items to be inspected;**

(B) Specify a reasonable time, place and manner of making the inspection and performing the related acts**; and**

(C) May specify that electronically stored information be produced in native format.

The title shall identify the party to whom the requests are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action; and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests;

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 58.01(d).

(c) Response. The requests shall be answered by each party to whom they are directed.

(1) When Response is Due. Responses shall be served within 30 days after the service of the request. A defendant, however, shall not be required to respond to the request before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance; or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests. The response shall quote each request, including its original paragraph number, and immediately thereunder state that the requested items will be produced or the inspection and related activities will

be permitted as requested, unless the request is objected to, in which event each reason for objection shall be stated in detail.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. **An objection to part of a request must specify the part and permit inspection of the rest.** If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Method of Production. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(5) Signing. The response shall be signed by the attorney or by the party if the party is not represented by an attorney.

(6) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests. At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 58.01(d).

(d) Filing. The request and responses thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and responses are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(e) Enforcement. The party submitting the request may move for an order under Rule 61.01(d) with respect to any objection or other failure to respond to the request or any part thereof or any failure to permit inspection as requested.

59.01. Request for and Effect of Admissions

(a) Scope. After commencement of an action, a party may serve upon any other party **[**a**] no more than 25** written **[**request**] requests** for the admission **without leave of court or stipulation of the parties**, for purposes of the pending action only, of the truth of any matters within the scope of Rule 56.01(b)

set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. **However, the limitation on the number of requests for admission specified by this Rule 59.01 shall not apply to requests for admission regarding the genuineness of documents.**

A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.

The request for admissions shall have included at the beginning of said request the following language in all capital letters, boldface type, and a character size that is as large as the largest character size of any other material in the request:

"A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE."

(b) Effect of Admission. Any matter admitted under this Rule 59.01 is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Subject to the provisions of Rule 62.01 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.

Any admission made by a party under this Rule 59.01 is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

(c) Issuance.

(1) Form. In consecutively numbered paragraphs, the request shall set forth each matter for which an admission is requested. Copies of documents about which admissions are requested shall be served with the request unless copies have already been furnished. The title shall identify the party to whom the request for admissions are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action,

(B) A defendant or respondent upon the expiration of 30 days after the

first event of the defendant entering an appearance or being served with process, and

(C) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests,

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 59.01(d).

(d) Response. The requests shall be answered by each party to whom they are directed.

(1) When Response is Due. Responses shall be served within 30 days after the service of the requests for admissions. A defendant or respondent, however, shall not be required to respond to requests for admissions before the expiration of 60 days after the earlier of the defendant:

(A) Entering an appearance, or

(B) Being served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests for admissions. The response shall quote each request, including its original paragraph number, and immediately thereunder specifically:

(A) Admit the matter; or

(B) Deny the matter; or

(C) Object to the matter and state each reason for the objection; or

(D) Set forth in detail the reasons why the responding party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.

When good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as true and qualify or deny the remainder.

A responding party may give lack of information or knowledge as a reason for failure to admit or deny if such party states that the party has made reasonable inquiry and the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; such party may deny the matter, subject to the provisions of Rule 61.01(c), or set forth reasons why the party cannot admit or deny it.

(3) Objections and Privileges. If an objection is asserted, then each reason for the objection shall be stated. If a failure to admit or deny a request is based on a privilege or the work product doctrine, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Signing. The response shall be signed by the party or the party's attorney.

(5) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 59.01(d).

(e) Filing Request and Responses. The request and response thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and the response are served the party serving them shall file with the court a certificate of service. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(f) Enforcement. The party who has requested the admissions may move to have determined the sufficiency of the answers or objections. Unless the court determines that an objection is proper, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule 59.01, it may order either that:

(1) The matter is admitted, or

(2) An amended answer be served.

The provisions of Rule 61.01(c) apply to the award of expenses incurred in relation to the motion.

61.01. Failure to Make Discovery: Sanctions

(a) Failure to Act - Evasive or Incomplete Answers. Any failure to act described in this Rule 61 may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has served timely objections to the discovery request or has applied for a protective order as provided by Rule 56.01(c).

For the purpose of this Rule 61, an evasive or incomplete answer is to be treated as a failure to answer.

(b) Failure to Answer Interrogatories. If a party fails to answer interrogatories or serve objections thereto within the time provided by law, or if objections are served thereto that are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order striking pleadings or parts thereof or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(2) Upon the showing of reasonable excuse, grant the party failing to answer the interrogatories additional time to serve answers, but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action shall dismissed or a default judgment shall be rendered against the disobedient party.

(c) Failure to Answer Request for Admissions. If a party, after being served with a request to admit the genuineness of any relevant documents or the truth of any relevant and material matters of fact, fails to serve answers or objections thereto, as required by Rule 59.01, the genuineness of any relevant documents or the truth of any relevant and material matters of fact contained in the request for admissions shall be taken as admitted. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 59.01, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay

the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(1) The request was held objectionable pursuant to Rule 59.01;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable grounds to believe that such party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

(d) Failure to Produce Documents and Things or to Permit Inspection. If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely serves objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting the disobedient party from introducing designated matters in evidence;

(2) Enter an order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(3) Enter an order treating as a contempt of court the failure to obey; or

(4) Enter an order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) Failure to Appear for Physical Examination. If a party fails to obey an order directing a physical or mental or blood examination under Rule 60.01, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rules 61.01(d)(1), (2), and (4). Where a party has failed to comply with an order requiring the production of another for examination, the court may enter such orders as are authorized by this Rule 61.01, unless the party failing to comply shows an inability to produce such person for examination.

(f) Failure to Attend Own Deposition. If a party or an officer, director or managing agent of a party or a person designated under Rules 57.03(b)(4) and 57.04(a), to testify on behalf of a party, fails to appear before the officer who is to take his deposition, after being served with notice, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just and among others, it may take any action authorized under paragraphs (1), (2), (3) and (4) of subdivision (d) of this Rule.

(g) Failure to Answer Questions on Deposition. If a witness fails or refuses to testify in response to questions propounded on deposition, the proponent of the question may move for an order compelling an answer. The proponent of the question may complete or adjourn the deposition examination before applying for an order. In ruling upon the motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 56.01(c).

If the motion is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

If the motion is granted and if the persons ordered to respond fail to comply with the court's order, the court, upon motion and reasonable notice to the other parties and all persons affected thereby, may make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rule 61.01(d).

(h) Objections to Approved Discovery. If objections to Rule **[**56.01(b)(6)**]**

56.01(b)(8) approved interrogatories or requests for production are overruled, the court may assess against such objecting party, attorney, or attorney's law firm, or all of them, the attorney's fees reasonably incurred in having such objection overruled. If such fees are not paid within sixty days, the court may enter such other appropriate orders against the disobedient party, including an order striking pleadings, dismissing the action, or entering a judgment by default.

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FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 192

100TH GENERAL ASSEMBLY

0761S.08T 2019

AN ACT

To repeal sections 57.280, 302.574, 304.590, 386.510, 386.515, 476.001, 479.020, 479.353, 479.500, 543.270, 558.006, 558.019, and 600.042, RSMo, and to enact in lieu thereof fourteen new sections relating to court procedures, with penalty provisions.

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

Section A. Sections 57.280, 302.574, 304.590, 386.510, 386.515, 476.001, 479.020, 479.353, 479.500, 543.270, 558.006, 558.019, and 600.042, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 57.280, 302.574, 304.590, 386.510, 386.515, 476.001, 479.020, 479.353, 479.354, 479.500, 543.270, 558.006, 558.019, and 600.042, to read as follows:

57.280. 1. Sheriffs shall receive a charge for service of any summons, writ or other order of court, in connection with any civil case, and making on the same either a return indicating service, a non est return or a nulla bona return, the sum of twenty dollars for each item to be served, except that a sheriff shall receive a charge for service of any subpoena, and making a return on the same, the sum of ten dollars; however, no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality. In addition to such charge, the sheriff shall be entitled to receive for each mile actually traveled in serving any summons, writ, subpoena or other order of court the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile,

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.

provided that such mileage shall not be charged for more than one subpoena or summons or other writ served in the same cause on the same trip. All of such charges shall be received by the sheriff who is requested to perform the service. Except as otherwise provided by law, all charges made pursuant to this section shall be collected by the court clerk as court costs and are payable prior to the time the service is rendered; provided that if the amount of such charge cannot be readily determined, then the sheriff shall receive a deposit based upon the likely amount of such charge, and the balance of such charge shall be payable immediately upon ascertainment of the proper amount of said charge. A sheriff may refuse to perform any service in any action or proceeding, other than when court costs are waived as provided by law, until the charge provided by this section is paid. Failure to receive the charge shall not affect the validity of the service.

2. The sheriff shall receive for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, five percent on five hundred dollars and four percent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his agent or attorney. The party at whose application any writ, execution, subpoena or other process has issued from the court shall pay the sheriff's costs for the removal, transportation, storage, safekeeping and support of any property to be seized pursuant to legal process before such seizure. The sheriff shall be allowed for each mile, going and returning from the courthouse of the county in which he resides to the place where the court is held, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile. The provisions of this subsection shall not apply to garnishment proceeds.

3. The sheriff upon the receipt of the charge herein provided for shall pay into the treasury of the county any and all charges received pursuant to the provisions of this section. The funds collected pursuant to this section, not to exceed fifty thousand dollars in any calendar year, shall be held in a fund established by the county treasurer, which may be expended at the discretion of the sheriff for the furtherance of the sheriff's set duties. Any such funds in excess of fifty thousand dollars in any calendar year shall be placed to the credit of the general revenue fund of the county. Moneys in the fund shall be used only for the procurement of services and equipment to support the operation of the sheriff's office. Moneys in the fund established pursuant to this subsection shall not lapse to the county general revenue fund at the end of any county budget or fiscal year.

4. Notwithstanding the provisions of subsection 3 of this section to the contrary, the sheriff**, or any other person specially appointed to serve in a county that receives funds under section 57.278,** shall receive ten dollars for service of any summons, writ, subpoena, or other order of the court included under subsection 1 of this section, in addition to the charge for

such service that each sheriff receives under subsection 1 of this section. The money received by the sheriff**, or any other person specially appointed to serve in a county that receives funds under section 57.278,** under this subsection shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer. The state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278.

302.574. 1. If a person who was operating a vehicle refuses upon the request of the officer to submit to any chemical test under section 577.041, the officer shall, on behalf of the director of revenue, serve the notice of license revocation personally upon the person and shall take possession of any license to operate a vehicle issued by this state which is held by that person. The officer shall issue a temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall also give the person notice of his or her right to file a petition for review to contest the license revocation.

2. Such officer shall make a certified report under penalties of perjury for making a false statement to a public official. The report shall be forwarded to the director of revenue and shall include the following:

(1) That the officer has:

(a) Reasonable grounds to believe that the arrested person was driving a motor vehicle while in an intoxicated condition; or

(b) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or

(c) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer has reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

(2) That the person refused to submit to a chemical test;

(3) Whether the officer secured the license to operate a motor vehicle of the person;

(4) Whether the officer issued a fifteen-day temporary permit;

(5) Copies of the notice of revocation, the fifteen-day temporary permit, and the notice of the right to file a petition for review. The notices and permit may be combined in one document; and

(6) Any license, which the officer has taken into possession, to operate a motor vehicle.

3. Upon receipt of the officer's report, the director shall revoke the license of the person refusing to take the test for a period of one year; or if the person is a nonresident, such person's operating permit or privilege shall be revoked for one year; or if the person is a resident without

a license or permit to operate a motor vehicle in this state, an order shall be issued denying the person the issuance of a license or permit for a period of one year.

4. If a person's license has been revoked because of the person's refusal to submit to a chemical test, such person may petition for a hearing before a circuit division or associate division of the court in the county in which the arrest or stop occurred. **Pursuant to local court rule promulgated pursuant to section 15 of article V of the Missouri Constitution, the case may also be assigned to a traffic judge pursuant to section 479.500.** The person may request such court to issue an order staying the revocation until such time as the petition for review can be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the director of revenue and shall send a copy of such order to the director. Such order shall serve as proof of the privilege to operate a motor vehicle in this state and the director shall maintain possession of the person's license to operate a motor vehicle until termination of any revocation under this section. Upon the person's request, the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the director of revenue. At the hearing, the court shall determine only:

(1) Whether the person was arrested or stopped;

(2) Whether the officer had:

(a) Reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated or drugged condition; or

(b) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or

(c) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer had reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

(3) Whether the person refused to submit to the test.

5. If the court determines any issue not to be in the affirmative, the court shall order the director to reinstate the license or permit to drive.

6. Requests for review as provided in this section shall go to the head of the docket of the court wherein filed.

7. No person who has had a license to operate a motor vehicle suspended or revoked under the provisions of this section shall have that license reinstated until such person has participated in and successfully completed a substance abuse traffic offender program defined in section 302.010, or a program determined to be comparable by the department of mental health. Assignment recommendations, based upon the needs assessment as described in subdivision (24) of section 302.010, shall be delivered in writing to the person with written

notice that the person is entitled to have such assignment recommendations reviewed by the court if the person objects to the recommendations. The person may file a motion in the associate division of the circuit court of the county in which such assignment was given, on a printed form provided by the state courts administrator, to have the court hear and determine such motion under the provisions of chapter 517. The motion shall name the person or entity making the needs assessment as the respondent and a copy of the motion shall be served upon the respondent in any manner allowed by law. Upon hearing the motion, the court may modify or waive any assignment recommendation that the court determines to be unwarranted based upon a review of the needs assessment, the person's driving record, the circumstances surrounding the offense, and the likelihood of the person committing a similar offense in the future, except that the court may modify but **[**~~may~~**] shall** not waive the assignment to an education or rehabilitation program of a person determined to be a prior or persistent offender as defined in section 577.001, or of a person determined to have operated a motor vehicle with a blood alcohol content of fifteen-hundredths of one percent or more by weight. Compliance with the court determination of the motion shall satisfy the provisions of this section for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's personal appearance at any hearing conducted under this subsection shall not be necessary unless directed by the court.

8. The fees for the substance abuse traffic offender program, or a portion thereof, to be determined by the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health, shall be paid by the person enrolled in the program. Any person who is enrolled in the program shall pay, in addition to any fee charged for the program, a supplemental fee to be determined by the department of mental health for the purposes of funding the substance abuse traffic offender program defined in section 302.010. The administrator of the program shall remit to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health on or before the fifteenth day of each month the supplemental fee for all persons enrolled in the program, less two percent for administrative costs. Interest shall be charged on any unpaid balance of the supplemental fees due to the division of **[**~~alcohol and drug abuse~~**] behavioral health** under this section, and shall accrue at a rate not to exceed the annual rates established under the provisions of section 32.065, plus three percentage points. The supplemental fees and any interest received by the department of mental health under this section shall be deposited in the mental health earnings fund, which is created in section 630.053.

9. Any administrator who fails to remit to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health the supplemental fees and interest for all persons enrolled in the program under this section shall be subject to a penalty equal to the amount of interest accrued on the supplemental fees due to the division under this section. If the supplemental fees, interest, and penalties are not remitted to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health within six months of the due date,

the attorney general of the state of Missouri shall initiate appropriate action for the collection of said fees and accrued interest. The court shall assess attorneys' fees and court costs against any delinquent program.

10. Any person who has had a license to operate a motor vehicle revoked under this section and who has a prior alcohol-related enforcement contact, as defined in section 302.525, shall be required to file proof with the director of revenue that any motor vehicle operated by the person is equipped with a functioning, certified ignition interlock device as a required condition of license reinstatement. Such ignition interlock device shall further be required to be maintained on all motor vehicles operated by the person for a period of not less than six months immediately following the date of reinstatement. If the monthly monitoring reports show that the ignition interlock device has registered any confirmed blood alcohol concentration readings above the alcohol setpoint established by the department of transportation or that the person has tampered with or circumvented the ignition interlock device within the last three months of the six-month period of required installation of the ignition interlock device, then the period for which the person **[**~~must~~**] shall** maintain the ignition interlock device following the date of reinstatement shall be extended until the person has completed three consecutive months with no violations as described in this section. If the person fails to maintain such proof with the director as required by this section, the license shall be rerevoked until proof as required by this section is filed with the director, and the person shall be guilty of a class A misdemeanor.

11. The revocation period of any person whose license and driving privilege has been revoked under this section and who has filed proof of financial responsibility with the department of revenue in accordance with chapter 303 and is otherwise eligible shall be terminated by a notice from the director of revenue after one year from the effective date of the revocation. Unless proof of financial responsibility is filed with the department of revenue, the revocation shall remain in effect for a period of two years from its effective date. If the person fails to maintain proof of financial responsibility in accordance with chapter 303, the person's license and driving privilege shall be rerevoked.

12. A person commits the offense of failure to maintain proof with the Missouri department of revenue if, when required to do so, he or she fails to file proof with the director of revenue that any vehicle operated by the person is equipped with a functioning, certified ignition interlock device or fails to file proof of financial responsibility with the department of revenue in accordance with chapter 303. The offense of failure to maintain proof with the Missouri department of revenue is a class A misdemeanor.

304.590. 1. As used in this section, the term "travel safe zone" means any area upon or around any highway, as defined in section 302.010, which is visibly marked by the department of transportation; and when a highway safety analysis demonstrates fatal or disabling motor

vehicle crashes exceed a predicted safety performance level for comparable roadways as determined by the department of transportation.

2. Upon a conviction or a plea of guilty by any person for a moving violation as defined in section 302.010 or any offense listed in section 302.302, the court **[**~~shall~~**] may** double the amount of fine authorized to be imposed by law, if the moving violation or offense occurred within a travel safe zone.

3. Upon a conviction or plea of guilty by any person for a speeding violation under section 304.009 or 304.010, the court **[**~~shall~~**] may** double the amount of fine authorized by law, if the violation occurred within a travel safe zone.

4. The penalty authorized under subsections **[**~~1~~**] 2** and 3 of this section shall only be assessed by the court if the department of transportation has erected signs upon or around a travel safe zone which are clearly visible from the highway and which state substantially the following message: "Travel Safe Zone — Fines Doubled".

5. This section shall not be construed to enhance the assessment of court costs or the assessment of points under section 302.302.

386.510. With respect to commission orders or decisions issued on and after July 1, 2011, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may file a notice of appeal with **[**~~the commission, which shall also be served on the parties to the commission proceeding in accordance with section 386.515, and which the commission shall forward to~~**]** the appellate court with the territorial jurisdiction over the county where the hearing was held or in which the commission has its principal office for the purpose of having the reasonableness or lawfulness of the original order or decision or the order or decision on rehearing inquired into or determined**, which shall also be served on the commission and the parties to the commission proceeding in accordance with section 386.515**. Except with respect to a stay or suspension pursuant to subsection 1 of section 386.520, no new or additional evidence may be introduced in the appellate court but the cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, **all necessary filing fees,** and any other information specified by the rules of the court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals. The commission and each party to the action or proceeding before the commission shall have the right to intervene and participate fully in the review proceedings. Upon the submission of the case to the court of appeals, the court of appeals shall render its opinion either affirming or setting aside, in whole

or in part, the order or decision of the commission under review. In case the order or decision is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order or render a new decision based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. No court in this state, except the supreme court or the court of appeals, shall have jurisdiction or authority to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties. The appellate courts of this state shall always be deemed open for the trial of suits brought to review the orders and decisions of the commission as provided in the public service commission law and the same shall where necessary be tried and determined as suits in equity.

386.515. With respect to commission orders or decisions issued on and after July 1, 2011, an application for rehearing is required to be served on all parties and is a prerequisite to the filing of an appeal under section 386.510. The application for rehearing puts the parties to the proceeding before the commission on notice that an appeal can follow and any such review under the appeal may proceed provided that a copy of the notice of appeal is served on said parties. With respect to commission orders or decisions issued on and after July 1, 2011, the review procedure provided for in section 386.510 continues to be exclusive except that a copy of the notice of appeal required by section 386.510 shall be served on **the commission and** each party to the proceeding before the commission by the appellant according to the rules established by the court in which the appeal is filed.

476.001. An efficient, well operating and productive judiciary is essential to the preservation of the people's liberty and prosperity. In order to achieve this goal, the general assembly and the supreme court must constantly be aware of the operations, needs, strengths and weaknesses of the judicial system. It is the purpose of sections 476.001, 476.055, 476.330 to 476.380, 476.412, 476.681, and 477.405 to provide the general assembly and the supreme court with the mechanisms to obtain on a continuing basis a comprehensive analysis of judicial resources and an efficient and organized method of identifying the problems and needs as they occur. It is the further purpose of sections 476.001, 476.055, 476.330 to 476.380, 476.412, 476.681, 477.405, 478.073, **and** 478.320**[**~~, and subdivision (12) of subsection 1 of section 600.042~~**]** to provide a system for the efficient allocation of available personnel, facilities and resources to achieve a uniform and effective operation of the judicial system.

479.020. 1. Any city, town or village, including those operating under a constitutional or special charter, may, and cities with a population of four hundred thousand or more shall, provide by ordinance or charter for the selection, tenure and compensation of a municipal judge

or judges consistent with the provisions of this chapter who shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality. The method of selection of municipal judges shall be provided by charter or ordinance. Each municipal judge shall be selected for a term of not less than two years as provided by charter or ordinance.

2. Except where prohibited by charter or ordinance, the municipal judge may be a part-time judge and may serve as municipal judge in more than one municipality.

3. No person shall serve as a municipal judge of any municipality with a population of seven thousand five hundred or more or of any municipality in a county of the first class with a charter form of government unless the person is licensed to practice law in this state unless, prior to January 2, 1979, such person has served as municipal judge of that same municipality for at least two years.

4. Notwithstanding any other statute, a municipal judge need not be a resident of the municipality or of the circuit in which the municipal judge serves except where ordinance or charter provides otherwise. Municipal judges shall be residents of Missouri.

5. Judges selected under the provisions of this section shall be municipal judges of the circuit court and shall be divisions of the circuit court of the circuit in which the municipality, or major geographical portion thereof, is located. The judges of these municipal divisions shall be subject to the rules of the circuit court which are not inconsistent with the rules of the supreme court. The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of the municipal divisions within the circuit.

6. No municipal judge shall hold any other office in the municipality which the municipal judge serves as judge. The compensation of any municipal judge and other court personnel shall not be dependent in any way upon the number of cases tried, the number of guilty verdicts reached or the amount of fines imposed or collected.

7. Municipal judges shall be at least twenty-one years of age. No person shall serve as municipal judge after that person has reached that person's seventy-fifth birthday.

8. Within six months after selection for the position, each municipal judge who is not licensed to practice law in this state shall satisfactorily complete the course of instruction for municipal judges prescribed by the supreme court. The state courts administrator shall certify to the supreme court the names of those judges who satisfactorily complete the prescribed course. If a municipal judge fails to complete satisfactorily the prescribed course within six months after the municipal judge's selection as municipal judge, the municipal judge's office shall be deemed vacant and such person shall not thereafter be permitted to serve as a municipal judge, nor shall any compensation thereafter be paid to such person for serving as municipal judge.

9. No municipal judge shall serve as a municipal judge in more than five municipalities at one time. **A court that serves more than one municipality shall be treated as a single municipality for the purposes of this subsection.**

479.353. **1.** Notwithstanding any provisions to the contrary, the following conditions shall apply to minor traffic violations and municipal ordinance violations:

(1) The court shall not assess a fine, if combined with the amount of court costs, totaling in excess of:

(a) Two hundred twenty-five dollars for minor traffic violations; and

(b) For municipal ordinance violations committed within a twelve-month period beginning with the first violation: two hundred dollars for the first municipal ordinance violation, two hundred seventy-five dollars for the second municipal ordinance violation, three hundred fifty dollars for the third municipal ordinance violation, and four hundred fifty dollars for the fourth and any subsequent municipal ordinance violations;

(2) The court shall not sentence a person to confinement, except the court may sentence a person to confinement for any violation involving alcohol or controlled substances, violations endangering the health or welfare of others, or eluding or giving false information to a law enforcement officer;

(3) A person shall not be placed in confinement for failure to pay a fine unless such nonpayment violates terms of probation or unless the due process procedures mandated by Missouri supreme court rule 37.65 or its successor rule are strictly followed by the court;

(4) Court costs that apply shall be assessed against the defendant unless the court finds that the defendant is indigent based on standards set forth in determining such by the presiding judge of the circuit. Such standards shall reflect model rules and requirements to be developed by the supreme court; and

(5) No court costs shall be assessed if the defendant is found to be indigent under subdivision (4) of this section or if the case is dismissed.

2. If an individual has been held in custody on a notice to show cause or an arrest warrant for an underlying minor traffic violation, the court, on its own motion or on the motion of any interested party, may review the original fine and sentence and waive or reduce such fine or sentence if the court finds it reasonable given the circumstances of the case.

479.354. For any notice to appear, citation, or summons on a minor traffic violation, the date and time the defendant is to appear in court shall be given when such notice to appear, citation, or summons is first provided to the defendant. If said notice is not properly given, the court shall reissue the notice, citation, or summons to the defendant and shall specifically set forth the date and time for the defendant to appear.

479.500. 1. In the twenty-first judicial circuit, a majority of the circuit judges, en banc, may establish a traffic court, which shall be a division of the circuit court, and may authorize the appointment of not more than three municipal judges who shall be known as traffic judges. The traffic judges shall be appointed by a traffic court judicial commission consisting of the presiding judge of the circuit, who shall be the chair, one circuit judge elected by the circuit judges, one associate circuit judge elected by the associate circuit judges of the circuit, and two members appointed by the county executive of St. Louis County, each of whom shall represent one of the two political parties casting the highest number of votes at the next preceding gubernatorial election. The procedures and operations of the traffic court judicial commission shall be established by circuit court rule.

2. Traffic judges may be authorized to act as commissioners to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by circuit court rule. Traffic judges may also be authorized to hear in the first instance violations of county and municipal ordinances involving motor vehicles, and other county ordinance violations, as provided by circuit court rule.

3. In the event that a county municipal court is established pursuant to section 66.010 which takes jurisdiction of county ordinance violations the circuit court may then authorize the appointment of no more than two traffic judges authorized to hear municipal ordinance violations other than county ordinance violations, and to act as commissioner to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by rule. These traffic court judges also may be authorized to act as commissioners to hear in the first instance petitions to review decisions of the department of revenue or the director of revenue filed pursuant to sections 302.309 and 302.311 and, prior to January 1, 2002, pursuant to sections 302.535 and 302.750.

4. After January 1, 2002, traffic judges, in addition to the authority provided in subsection 3 of this section, may be authorized by local court rule adopted pursuant to Article V, Section 15 of the Missouri Constitution to conduct proceedings pursuant to sections 302.535**, 302.574,** and 302.750, subject to procedures that preserve a meaningful hearing before a judge of the circuit court, as follows:

(1) Conduct the initial call docket and accept uncontested dispositions of petitions to review;

(2) The petitioner shall have the right to the de novo hearing before a judge of the circuit court, except that, at the option of the petitioner, traffic judges may hear in the first instance such petitions for review.

5. In establishing a traffic court, the circuit may be divided into such sectors as may be established by a majority of the circuit and associate circuit judges, en banc. The traffic court

in each sector shall hear those cases arising within the territorial limits of the sector unless a case arising within another sector is transferred as provided by operating procedures.

6. Traffic judges shall be licensed to practice law in this state and shall serve at the pleasure of a majority of the circuit and associate circuit judges, en banc, and shall be residents of St. Louis County, and shall receive from the state as annual compensation an amount equal to one-third of the annual compensation of an associate circuit judge. Each judge shall devote approximately one-third of his working time to the performance of his duties as a traffic judge. Traffic judges shall not accept or handle cases in their practice of law which are inconsistent with their duties as a traffic judge and shall not be a judge or prosecutor for any other court. Traffic judges shall not be considered state employees and shall not be members of the state employees' or judicial retirement system or be eligible to receive any other employment benefit accorded state employees or judges.

7. A majority of the judges, en banc, shall establish operating procedures for the traffic court which shall provide for regular sessions in the evenings after 6:00 p.m. and for Saturday or other sessions as efficient operation and convenience to the public may require. Proceedings in the traffic court, except when a judge is acting as a commissioner pursuant to this section, shall be conducted as provided in supreme court rule 37. The hearing shall be before a traffic judge without jury, and the judge shall assume an affirmative duty to determine the merits of the evidence presented and the defenses of the defendant and may question parties and witnesses. In the event a jury trial is requested, the cause shall be certified to the circuit court for trial by jury as otherwise provided by law. Clerks and computer personnel shall be assigned as needed for the efficient operation of the court.

8. In establishing operating procedure, provisions shall be made for appropriate circumstances whereby defendants may enter not guilty pleas and obtain trial dates by telephone or written communication without personal appearance, or to plead guilty and deliver by mail or electronic transfer or other approved method the specified amount of the fine and costs as otherwise provided by law, within a specified period of time.

9. Operating procedures shall be provided for electronic recording of proceedings, except that if adequate recording equipment is not provided at county expense, then, in that event, a person aggrieved by a judgment of a traffic judge or commissioner shall have the right of a trial de novo. The procedures for perfecting the right of a trial de novo shall be the same as that provided under sections 512.180 to 512.320, except that the provisions of subsection 2 of section 512.180 shall not apply to such cases.

10. The circuit court shall only have the authority to appoint two commissioners with the jurisdiction provided in subsection 3 of this section.

11. All costs to establish and operate a county municipal court under section 66.010 and this section shall be borne by such county.

543.270. **[**~~1. When any person shall be unable to pay any fine and costs assessed against him, the associate circuit judge shall have power, at the request of the defendant, to commute such fine and costs to imprisonment in the county jail, which shall be credited at the rate of ten dollars of such fine and costs for each day's imprisonment.~~

~~2.~~**]** When a fine is assessed by **[**~~an~~**] a municipal judge,** associate circuit judge, **or circuit judge,** it shall be within his **or her** discretion to provide for the payment of the fine on an installment basis under such terms and conditions as he **or she** may deem appropriate. **In no event shall the recovery of costs incurred by a municipality or county for the detention, imprisonment, or holding of any person be the subject of any condition of probation, nor shall the failure to pay such costs be the sole basis for the issuance of a warrant.**

558.006. **[**~~1.~~**]** When an offender sentenced to pay a fine defaults in the payment of the fine or in any installment, **[**~~the court upon motion of the prosecuting attorney or upon its own motion may require him or her to show cause why he or she should not be imprisoned for nonpayment. The court may issue a warrant of arrest or a summons for his or her appearance.~~

~~2. Following an order to show cause under subsection 1 of this section, unless the offender shows that his or her default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his or her part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned for a term not to exceed one hundred eighty days if the fine was imposed for conviction of a felony or thirty days if the fine was imposed for conviction of a misdemeanor or infraction. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the offender to his or her release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.~~

~~3. If it appears that the default in the payment of a fine is excusable under the standards set forth in subsection 2 of this section, the court may enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.~~

~~4. When a fine is imposed on a corporation it is the duty of the person or persons authorized to make disbursement of the assets of the corporation and their superiors to pay the fine from the assets of the corporation. The failure of such persons to do so shall render them subject to imprisonment under subsections 1 and 2 of this section.~~

~~5. Upon default in the payment of a~~**] the** fine or **[**~~any~~**]** installment **[**~~thereof, the fine may~~**] shall** be collected by any means authorized for the **[**~~enforcement~~**] collection** of money judgments**, other than a lien against real estate, or may be waived at the discretion of the sentencing judge**.

558.019. 1. This section shall not be construed to affect the powers of the governor under Article IV, Section 7, of the Missouri Constitution. This statute shall not affect those

provisions of section 565.020, section 566.125, or section 571.015, which set minimum terms of sentences, or the provisions of section 559.115, relating to probation.

2. The provisions of subsections 2 to 5 of this section shall **only** be applicable to **[**~~all classes of felonies except those set forth in chapter 579, or in chapter 195 prior to January 1, 2017, and those otherwise excluded in subsection 1 of this section~~] the offenses contained in sections 565.021, 565.023, 565.024, 565.027, 565.050, 565.052, 565.054, 565.072, 565.073, 565.074, 565.090, 565.110, 565.115, 565.120, 565.153, 565.156, 565.225, 565.300, 566.030, 566.031, 566.032, 566.034, 566.060, 566.061, 566.062, 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.086, 566.100, 566.101, 566.103, 566.111, 566.115, 566.145, 566.151, 566.153, 566.203, 566.206, 566.209, 566.210, 566.211, 566.215, 568.030, 568.045, 568.060, 568.065, 568.175, 569.040, 569.160, 570.023, 570.025, 570.030 when punished as a class A, B, or C felony, 570.145 when punished as a class A or B felony, 570.223 when punished as a class B or C felony, 571.020, 571.030, 571.070, 573.023, 573.025, 573.035, 573.037, 573.200, 573.205, 574.070, 574.080, 574.115, 575.030, 575.150, 575.153, 575.155, 575.157, 575.200 when punished as a class A felony, 575.210, 575.230 when punished as a class B felony, 575.240 when punished as a class B felony, 576.070, 576.080, 577.010, 577.013, 577.078, 577.703, 577.706, 579.065, and 579.068 when punished as a class A or B felony**. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of an offender after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include an offender's first incarceration prior to release on probation under section 217.362 or 559.115. Other provisions of the law to the contrary notwithstanding, any offender who has been found guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall be forty percent of his or her sentence or until the offender attains seventy years of age, and has served at least thirty percent of the sentence imposed, whichever occurs first;

(2) If the offender has two previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be fifty percent of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(3) If the offender has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be eighty percent of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

3. Other provisions of the law to the contrary notwithstanding, any offender who has been found guilty of a dangerous felony as defined in section 556.061 and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

4. For the purpose of determining the minimum prison term to be served, the following calculations shall apply:

(1) A sentence of life shall be calculated to be thirty years;

(2) Any sentence either alone or in the aggregate with other consecutive sentences for offenses committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years.

5. For purposes of this section, the term "minimum prison term" shall mean time required to be served by the offender before he or she is eligible for parole, conditional release or other early release by the department of corrections.

6. **An offender who was convicted of, or pled guilty to, a felony offense other than those offenses listed in subsection 2 of this section prior to August 28, 2019, shall no longer be subject to the minimum prison term provisions under subsection 2 of this section, and shall be eligible for parole, conditional release, or other early release by the department of corrections according to the rules and regulations of the department.**

7. (1) A sentencing advisory commission is hereby created to consist of eleven members. One member shall be appointed by the speaker of the house. One member shall be appointed by the president pro tem of the senate. One member shall be the director of the department of corrections. Six members shall be appointed by and serve at the pleasure of the governor from among the following: the public defender commission; private citizens; a private member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members shall be appointed by the supreme court, one from a metropolitan area and one from a rural area. All members shall be appointed to a four-year term. All members of the sentencing commission appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory commission at the pleasure of the governor.

(2) The commission shall study sentencing practices in the circuit courts throughout the state for the purpose of determining whether and to what extent disparities exist among the various circuit courts with respect to the length of sentences imposed and the use of probation for offenders convicted of the same or similar offenses and with similar criminal histories. The commission shall also study and examine whether and to what extent sentencing disparity among economic and social classes exists in relation to the sentence of death and if so, the reasons therefor, if sentences are comparable to other states, if the length of the sentence is appropriate, and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw

conclusions, and perform other duties relevant to the research and investigation of disparities in death penalty sentencing among economic and social classes.

(3) The commission shall study alternative sentences, prison work programs, work release, home-based incarceration, probation and parole options, and any other programs and report the feasibility of these options in Missouri.

(4) The governor shall select a chairperson who shall call meetings of the commission as required or permitted pursuant to the purpose of the sentencing commission.

(5) The members of the commission shall not receive compensation for their duties on the commission, but shall be reimbursed for actual and necessary expenses incurred in the performance of these duties and for which they are not reimbursed by reason of their other paid positions.

(6) The circuit and associate circuit courts of this state, the office of the state courts administrator, the department of public safety, and the department of corrections shall cooperate with the commission by providing information or access to information needed by the commission. The office of the state courts administrator will provide needed staffing resources.

[~~7.~~**] 8.** Courts shall retain discretion to lower or exceed the sentence recommended by the commission as otherwise allowable by law, and to order restorative justice methods, when applicable.

[~~8.~~**] 9.** If the imposition or execution of a sentence is suspended, the court may order any or all of the following restorative justice methods, or any other method that the court finds just or appropriate:

(1) Restitution to any victim or a statutorily created fund for costs incurred as a result of the offender's actions;

(2) Offender treatment programs;

(3) Mandatory community service;

(4) Work release programs in local facilities; and

(5) Community-based residential and nonresidential programs.

[~~9. The provisions of this section shall apply only to offenses occurring on or after August 28, 2003.~~**]**

10. Pursuant to subdivision (1) of subsection **[**~~8~~**] 9** of this section, the court may order the assessment and payment of a designated amount of restitution to a county law enforcement restitution fund established by the county commission pursuant to section 50.565. Such contribution shall not exceed three hundred dollars for any charged offense. Any restitution moneys deposited into the county law enforcement restitution fund pursuant to this section shall only be expended pursuant to the provisions of section 50.565.

11. A judge may order payment to a restitution fund only if such fund had been created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall

not have any direct supervisory authority or administrative control over any fund to which the judge is ordering a person to make payment.

12. A person who fails to make a payment to a county law enforcement restitution fund may not have his or her probation revoked solely for failing to make such payment unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence that the person either willfully refused to make the payment or that the person willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.

13. Nothing in this section shall be construed to allow the sentencing advisory commission to issue recommended sentences in specific cases pending in the courts of this state.

600.042. 1. The director shall:

(1) Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and he or she and the deputy director or directors may participate in the trial and appeal of criminal actions at the request of the defender;

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as he deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

(4) Administer and coordinate the operations of defender services and be responsible for the overall supervision of all personnel, offices, divisions and facilities of the state public defender system, except that the director shall have no authority to direct or control the legal defense provided by a defender to any person served by the state public defender system;

(5) Develop programs and administer activities to achieve the purposes of this chapter;

(6) Keep and maintain proper financial records with respect to the provision of all public defender services for use in the calculating of direct and indirect costs of any or all aspects of the operation of the state public defender system;

(7) Supervise the training of all public defenders and other personnel and establish such training courses as shall be appropriate;

(8) With approval of the commission, promulgate necessary rules, regulations and instructions consistent with this chapter defining the organization of the state public defender system and the responsibilities of division directors, district defenders, deputy district defenders, assistant public defenders and other personnel;

(9) With the approval of the commission, apply for and accept on behalf of the public defender system any funds which may be offered or which may become available from government grants, private gifts, donations or bequests or from any other source. Such moneys shall be deposited in the state general revenue fund;

(10) Contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the commission deems necessary considering the needs of the area, for fees approved and established by the commission;

(11) With the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system**[**~~;~~

~~(12) Prepare a plan to establish district offices, the boundaries of which shall coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but in no event shall any district office boundary include any geographic region of a judicial circuit without including the entire judicial circuit. The director shall submit the plan to the chair of the house judiciary committee and the chair of the senate judiciary committee, with fiscal estimates, by December 31, 2014. The plan shall be implemented by December 31, 2021~~**]**.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

3. The director and defenders shall, within guidelines as established by the commission and as set forth in subsection 4 of this section, accept requests for legal services from eligible persons entitled to counsel under this chapter or otherwise so entitled under the constitution or laws of the United States or of the state of Missouri and provide such persons with legal services when, in the discretion of the director or the defenders, such provision of legal services is appropriate.

4. The director and defenders shall provide legal services to an eligible person:

(1) Who is detained or charged with a felony, including appeals from a conviction in such a case;

(2) Who is detained or charged with a misdemeanor which will probably result in confinement in the county jail upon conviction, including appeals from a conviction in such a case, unless the prosecuting or circuit attorney has waived a jail sentence;

(3) Who is charged with a violation of probation when it has been determined by a judge that the appointment of counsel is necessary to protect the person's due process rights under section 559.036;

(4) Who has been taken into custody pursuant to section 632.489, including appeals from a determination that the person is a sexually violent predator and petitions for release, notwithstanding any provisions of law to the contrary;

(5) For whom the federal constitution or the state constitution requires the appointment of counsel; and

(6) Who is charged in a case in which he or she faces a loss or deprivation of liberty, and in which the federal or the state constitution or any law of this state requires the appointment of counsel; however, the director and the defenders shall not be required to provide legal services to persons charged with violations of county or municipal ordinances, or misdemeanor offenses except as provided in this section.

5. The director may:

(1) Delegate the legal representation of an eligible person to any member of the state bar of Missouri;

(2) Designate persons as representatives of the director for the purpose of making indigency determinations and assigning counsel.

✓

What is a complaint that you have about your Judge?

She is not very help or present often

Deft. does not appear after getting arrested on a unsecured bond. Judge orders a Motion for Bond Forfeiture Hearing. If Deft. does not appear then Judge said to send to Jefferson City as Uncollected.

Needs to devote more time to the court operations. Work with the court clerk to help create orders and other items vs. "send me what you want and I'll sign it".

My complaint is my Judge showing very little interest in the day-to-day operations of the Violations Bureau and only signing paperwork once every week and a half.

Goes to fast without giving enough time for clerk to enter the disposition and get all paperwork together for them to sign off on.

I feel this survey information will not even matter because my Judge probably will not be at the Judge's seminar on November 1st. I wish my Judge would be more involved in procedures and also communicate with the City when necessary.

1)The judge does not give me ANY time to enter dispositions into the case management system during court. 2)Starting court way too early, before the scheduled time. 3)Telling defendants incorrect information, like fines or DOR points 4) Going too fast not getting all the correct information down before going on to the next defendant. 5) judge always says he has noting to with the money... yes he does, he is the one that sets the fines.

Docket isn't called in order

They have to many other obligations and when they are available it's only for a short amount of time.

Doesn't listen to us. Poor communication. Just because someone said something in passing at his other job, doesn't mean that it applies to us and doesn't mean we are doing it wrong. And just because a lawsuit was filed doesn't mean it applies to us.

That he is always late for court!

My complaint is not the Judge but what the Judge can and cannot allow the clerks to do, every with an order.

TAKES CALLS FROM ATTORNEYS AND CONTINUES CASES WITHOUT CHECKING WITH COURT STAFF TO VERIFY WHAT IS OR WHAT HAS BEEN GOING ON WITH THE CASE

Lack of patience with defendants who do not understand court procedures.

doesn't give enough time to go over things on court night

always late

DOESN'T SIGN OFF ON THINGS IN HIS BASKET IN A TIMELY MANNER

Tardiness or and over

The Judge seems to just accept it when someone says they can't pay, and marks them indigent. There should be a formal hearing and ruling. They should have to put more effort in to getting out of their fines then just saying they can't pay. It's not fair to the others that struggle to pay, but do it anyway. The Judge believes whatever anyone says/ including attorney/defendant.

Doesn't hold the Court Administrator responsible.

always consider the workload that you put on court personnel when you make changes to benefit your schedule.

Does not listen to my input. Does not seem to know their limitations or understand the rules/guidelines laid out for Municipal Judges.

What is a procedure that you are unhappy about? How would you fix that procedure?

Explains rights even though they are posted and disseminated.

My prosecutor isn't engaged in the process. He/she gives continuances without the Judge's signature.

The procedure I am unhappy about has nothing to do with the Judge. I think the court system (SMC) it's very slow and you have to go through to many steps to update or close a case. I am the only one who update and clear my docket which is not very big but it take me at least a week to clear because of all the steps.

Our Judge taking files from our office. The only way to fix that procedure is to get a new judge.

I am not unhappy about anything with our court. I think everyone does a great job.

Going to quickly before the clerk is ready. The fix: being just a little more courteous when moving onto the next case being heard. We are required to do a lot more steps to continue a case than to just speak it.

I wish the Judge would document-create procedures and create orders. Every time I mention we need or should have an order or set documented procedures it goes by the wayside.

Holds on prisoner, when I email the judge stating the defendant has been picked up and they have a cash bond, I ask when he will like to schedule the hearing. The judge will email be back converting the bond to unsecured or recog without having a hearing or any input from the prosecutor. This can happen on defendants that have 3, 4 or 5 FTA warrants in the past. I don't like that he emails to convert the bond, it seems unprofessional of the court, we should have a hearing. I would fix this by having the hearing as the court should when a defendant is unable to post bond.

Calling the docket in alpha order.

Not being able to set up payment arrangements at the window. Forcing defendants to come in to ask the Judge for a payment arrangement. Allow clerks to set up payment arrangements at the window. (1st time only) Any additional continuances from that point on, would need to appear in front of the Judge.

Opening remarks are too long, wish he would shorten them.

Continuous. If we are continuing any case missed the first time or request from Attorney's why do we have to wait for the Judge to sign off. Why can't the courts slow down on changes. Make sure it is what the courts needs and not just what is wanted. Too many changes to fast can cause major confusion. Especially if the changes are not reaching everyone at the same time.

I would go back to the way it was before, where the Court handled the citations from the police. The citations are moving around too much (PA Assistant, to the PA and then finally back to the Court) and it's causing many problems. I have many people who are genuinely trying to take care of their cases as soon as they receive a citation, and they can't because it may be a month before the PA signs off on the citation and then the citation gets entered into the Court software system. It's totally ass-backwards and ponderous.

COURT ORDERED FINGERPRINTS. EITHER MAKE THEM GET PRINTED OR NOT...DON'T DO SOME AND NOT OTHERS

Requiring both atty and dft to sign rec letters. Allow attys to sign on behalf of their clients.

Go over policy's and make sure they are written down

his opening remarks...they are long and drawn out and even confuse me and I know what he is saying....so I would keep them short and simple

GOING BACK INTO COURT FOR A 20 MINUTE DOCKET. THAT DOCKET SHOULD BE SET FOR ONCE A MONTH. I HAVE SUGGESTED IT BUT FELL ON DEAF EARS

People stating that they are poor. I am not against anyone that is poor, however, if one person does it, it sets off a firestorm in the courtroom. Can we find a different way to do this? Maybe give people paperwork to bring back the next court date. And if they don't? What then?

That Attorney's can come in a get continuances that are months away, because the defendant may have stuff at St. Louis County that's not settled, therefore, they keep dragging out the date for our court.

While hiring an assistant for myself (Court Clerk) I had no input and no choice as to who was hired.

Have 2 Judges and 1 doesn't hold defendant's to Jailtime on Stealing like the other does.

What would you change about the way the court sessions are handled?

The check in process, the amount of space in the court room, and not been told when she would like for late comers to not be able to enter.

On Show Me Courts, when we type a defendants name, I wish we could see their multi cases on one screen, when processing a payment or if they want to know how many cases they have, etc. I wish the system can do multi task, instead of everything on one by one basis.

The prosecutor should be more accountable to the judge for issues in the court.

I wouldn't change anything our court start at 6:00 pm and is over when the last person is done. My judge stick around for a while just in case we have late arrivals.

I would like them to be more dignified. Our Judge is very lax about the rules (ie hats, clothing). He doesn't want to be viewed as a mean judge.

Have a little more patience when you see the clerk struggling to keep up with your verbal disposition. We have several steps to take after your disposition is read.

Slow the pace down a little so the defendants are actually able to speak and be heard by the Judge and also to give the Prosecutor and Court Clerks time to process the paperwork carefully and completely before moving to the next defendant. Cases continued way too many times.

I want the judge to use eBench. I want the judge to use a computer at the bench. I want to enter dispositions into SMC during court. I want the bailiff to electronically check people in. I think we should have 2 court session, one during the day and one in the evening. This would accommodate everyone. Some defendants can not miss work or school, we are not being very good public servants by making it difficult for some and causing hardship.

We would not have an issues docket.

Length. Being able to set up payment arrangements at the window prior to court would lessen the number of defendants who are forced to sit through court to get on a payment plan.

Would like to add a day session once a month.

New cases on one docket and continuing cases on another. or have computer's and printers so clerks can process right there. Attorney's have to be there by a certain time to be in front of line. Some are rude and act like it's their world.

Would start them earlier.

Would like to have a laptop in court room to dispose

I would have the pa or the pa assistant in the court room the whole time working so they could be readily available for the judge

I WOULD DO A LITTLE LESS CHATTING WITH ATTORNEYS AND HOLD PEOPLE ACCOUNTABLE FOR THEIR BEHAVIOR WHILE IN THE COURTROOM

Make people appear or have some kind of consquences!

The check in progress could go a lot smoother than what it does now.

less time talking moves the docket much faster

I would space out our dockets more, and separate the 'payment docket' from the regular 'arraignment docket"

Little more PA involvement in the courtroom versus in their office.

What is something your Judge does that you are glad they do?

Nothing

She is very pleasant, helpful, understanding, always responding to our needs.

Listens to defendants.

Treats every person the same and is kind and respectful.

Our Judge treats everyone with fairness and respect, always.

He has faith in me and stands by my decisions.

ALWAYS AVAILABLE FOR ME TO CALL ON I NEED HIM

She takes the time to listen and abide with the SB Senate bills created for them to follow.

He is always available if I need anything or have any issues. He is very understanding and easy to approach with any concerns.

My Judge listen to people when a person comes in front of him he treats them with respect. I have to be honest no matter of race, sex or gender he treat everyone the same he don't fine one person one fee and charge another person a different fee. Hes a fair and professional Judge and I LOVE that about him. He always looks after me he don't allow attorneys to call or come into our office and speck to me any kind of way because they are attorneys. I have NO complaints about my Judge

Our Judge does stand up for us with the City Administration.

Our Judge is amazing. He does a great job with the court procedures and with the defendants/attorneys.

Smile and always is available to contact. Ready to help when questions arise and the clerks need some guidance / clarification on legal issues.

He sounds confident when needs to be. Does thank everyone after court 'sometimes.'

Works with defendants to have them be in compliance. Allows community service for all fines. Very transparent while in court. Allows all pro se defendants to talk to the prosecutor and the public defender

Nothing

Very fair and respectful to all!!

Limits the amount of continuances Attorney's are allowed to get without appearing in court.

Takes time to talk to people.

Listen to what and how his clerks function and feel. Puts a lot of trust in us.

Listening to instructions!

He explains things to the Defendants and answers all their questions, to the extent that he can, without giving legal advice. He keeps the Court experience as stress-free for the Defendants as possible. Many people say ours is the best Court they have been to; that just tells me that these people get too many citations!

IF WE TELL HIM A SITUATION REGARDING AN ATTY OR DEFENDANTS BEHAVOUR OR ATTITUDE, HE WILL USUALLY HAVE OUR BACKS

Always early for court and starts the docket right on time.

When defendants are young, he gives them every chance to take a class, do community service, and he lectures them to help them understand the consequences of their actions

he definitely explains everything to everyone and doesn't matter who...he makes sure you understand

plea by mail

HEARS THE DEFENDANT OUT COMPLETELY

Listens to the defendant, let them speak, hear them out. Sometimes thats all they want. If does sometimes make your court longer, but they feel as though they have had there day.

Takes time to listen to everyone, and is always nice and professional.

He is understanding and works with the clerks as much as he can.

Credit for time served and waives off old FTA fines.

Do you feel that your Judge is involved enough in the day to day operations of the court? What would you like to see more of from him/her?

No I only see the Judge on court night she may come in sometime in the mother for 2 to 3 hours but most month only on court night

Yes, she is involve with our court session, and take interest with any needs and/or concerns about the court and her assistance.

Set a dedicated amount of time to come into the court office during business hours during the week. And stick to that schedule.

I'd like him to check in more often.

Yes I feel that my Judge is very involved in my day to day operations. If I need him for anything concerning court I can call or text him and he return my call ASAP. If I need him to come in to sign or do anything he's always available to me.

No, our Judge is not involved enough in the day to day operations. I would like to see more interest in everything.

Not so much in tune nor cares about all the behind the scenes nitty gritty grind of all the paperwork , entries and how the system works, and in dealing with attorneys and defendant calls, ect.....but yes he is accessible if needed. I would like to see them write the orders sign them then give them to us, instead of the other way around.

I think it's hard for any Judge to be involved with day to day operations of the court, but I wish our Judge knew just exactly what we do each day. I wish he would spend the day with us on a court day to see exactly how busy we are and everything that is accomplished-phone calls, mail and online payments, walk in payments, attorneys entering the day of court, all the defendants wanting continuances again, answering PA assistant questions and phone calls.

He is not involved in the day to day operations, although he is fairly easy to get a hold of during business hours and will respond to an email quickly.

The judge is somewhat involved in the day to day operations. They could visit the court office more often to help with cases that are waiting on their reply or go over recs when they are received

No. I don't feel like he would have any idea what is going on in the office on any given day.

Would like to see him stop by more often, not just once a week.

As I said before, I would like for him to spend a little more time going over procedures and making sure he wants them done the way they are being done

I think he has got better. He now will come in on weeks we don't have court to sign and review things.

NO, HE SHOULD BE MORE AVAILABLE WHEN NEEDED

NO ...NO...NO I do wish the Judges would understand that although the CLERKS ARE GREAT, we are not lawyers. We have questions and need answers and direction.

Very much, my Judge is very good about getting back to me when contacted.

No, he is only here for court and it would be nice if he would come in at least once a week. Also be present for staff meetings.

Be open to interpreting legislative changes and not put that on your clerk. You are the attorney.

I feel that our Judge is trying to take on too much responsibility without understanding what they are taking on. The Judge does not rely on me to do my job and insists on having it their way, 100%.

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

CONFERENCE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR

HOUSE BILL NO. 499

100TH GENERAL ASSEMBLY

1178H.09T 2019

AN ACT

To repeal sections 136.055, 301.010, 301.067, 302.574, 304.580, 304.585, 304.590, 304.894, and 479.500, RSMo, and to enact in lieu thereof twenty-five new sections relating to transportation, with penalty provisions.

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

Section A. Sections 136.055, 301.010, 301.067, 302.574, 304.580, 304.585, 304.590, 304.894, and 479.500, RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be known as sections 136.055, 227.453, 227.454, 227.457, 227.458, 227.459, 227.460, 227.461, 227.462, 227.469, 227.471, 227.547, 227.549, 227.550, 227.800, 227.801, 227.802, 301.010, 301.067, 302.574, 304.580, 304.585, 304.590, 304.894, and 479.500, to read as follows:

136.055. 1. Any person who is selected or appointed by the state director of revenue as provided in subsection 2 of this section to act as an agent of the department of revenue, whose duties shall be the processing of motor vehicle title and registration transactions and the collection of sales and use taxes when required under sections 144.070 and 144.440, and who receives no salary from the department of revenue, shall be authorized to collect from the party requiring such services additional fees as compensation in full and for all services rendered on the following basis:

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.

(1) For each motor vehicle or trailer registration issued, renewed or **[**~~transferred—three~~**]** **transferred, six** dollars **[**~~and fifty cents~~**]** and **[**~~seven~~**]** **twelve** dollars for those licenses sold or biennially renewed pursuant to section 301.147;

(2) For each application or transfer of **[**~~title—two~~**]** **title, six** dollars **[**~~and fifty cents~~**]**;

(3) For each instruction permit, nondriver license, chauffeur's, operator's or driver's license issued for a period of three years or **[**~~less—two~~**]** **less, six** dollars **[**~~and fifty cents~~**]** and **[**~~five~~**]** **twelve** dollars for licenses or instruction permits issued or renewed for a period exceeding three years;

(4) For each notice of lien **[**~~processed—two~~**]** **processed, six** dollars **[**~~and fifty cents~~**]**;

(5) **[**~~No~~**]** Notary fee or **[**~~other fee or additional charge shall be paid or collected except for~~**]** electronic **[**~~telephone~~**]** transmission **[**~~reception—two~~**]** **per processing, two** dollars.

2. The director of revenue shall award fee office contracts under this section through a competitive bidding process. The competitive bidding process shall give priority to organizations and entities that are exempt from taxation under Section 501(c)(3), 501(c)(6), or 501(c)(4), except those civic organizations that would be considered action organizations under 26 C.F.R. Section 1.501 (c)(3)-1(c)(3), of the Internal Revenue Code of 1986, as amended, with special consideration given to those organizations and entities that reinvest a minimum of seventy-five percent of the net proceeds to charitable organizations in Missouri, and political subdivisions, including but not limited to, municipalities, counties, and fire protection districts. The director of the department of revenue may promulgate rules and regulations necessary to carry out the provisions of this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this subsection shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

3. All fees collected by a tax-exempt organization may be retained and used by the organization.

4. All fees charged shall not exceed those in this section. The fees imposed by this section shall be collected by all permanent offices and all full-time or temporary offices maintained by the department of revenue.

5. Any person acting as agent of the department of revenue for the sale and issuance of registrations, licenses, and other documents related to motor vehicles shall have an insurable interest in all license plates, licenses, tabs, forms and other documents held on behalf of the department.

6. The fees authorized by this section shall not be collected by motor vehicle dealers acting as agents of the department of revenue under section 32.095 or those motor vehicle dealers authorized to collect and remit sales tax under subsection 8 of section 144.070.

7. Notwithstanding any other provision of law to the contrary, the state auditor may audit all records maintained and established by the fee office in the same manner as the auditor may audit any agency of the state, and the department shall ensure that this audit requirement is a necessary condition for the award of all fee office contracts. No confidential records shall be divulged in such a way to reveal personally identifiable information.

227.453. The portion of State Highway 79 from Spring Street continuing north to North Street in the City of Hannibal in Marion County shall be designated as "Jake Beckley Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.454. The portion of State Highway 79 from 5th Street continuing north to U.S. State Highway 36/Interstate 72 in the City of Hannibal in Marion County shall be designated as "Molly Brown Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.457. The portion of State Highway 740 from Audubon Drive to .25 miles east of MO 763 in Boone County shall be designated the "SGT Phillip Anderson Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.458. The portion of State Highway 740 from .25 miles east of MO 763 to .35 miles west of Providence Boulevard in Boone County shall be designated the "SPC Steven Fitzmorris Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.459. The portion of State Highway 740 from .35 miles west of Providence Boulevard to .25 miles west of Forum Boulevard in Boone County shall be designated the "SPC Jason Fingar Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.460. The portion of State Highway 740 from .25 miles west of Forum Boulevard to .25 miles south of State Highway TT in Boone County shall be designated the "SFC Charles Sadell Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.461. The portion of State Highway 740 from .25 miles south of State Highway TT to the intersection of State Highway E and Aaron Drive in Boone County shall be designated the "SPC Sterling Wyatt Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.462. The portion of Interstate 70 from State Highway A continuing east to Lake St. Louis Boulevard in St. Charles County shall be designated as the "Ralph Barrale Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.469. The portion of State Highway 76 from Stonebridge Parkway continuing east to Old Highway 76 Road shall be designated as the "Mary Herschend Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.471. The portion of State Highway 115 from Bellerive Acres to Marietta Drive in St. Louis County shall be designated as "Marguerite Ross Barnett Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.547. The portion of State Highway E from Lafayette Street South to Outer Road 70 East in Lafayette County shall be designated the "Firefighter Jeff Sanders Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.549. The portion of State Highway P from Dove Nest Lane continuing east to State Highway M in St. Charles County shall be designated as "Waylon Jennings Memorial Highway". Costs for such designation shall be paid by private donations.

227.550. The portion of State Highway 6 beginning from U.S. State Highway 169 continuing east to Riverside Road through the city of St. Joseph in Buchanan County shall be designated as "Firefighter Travis Owens Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with costs to be paid by private donations.

227.800. The portion of Interstate 70 in Jackson County from the Blue Ridge Cutoff overpass continuing west to the Troost Avenue overpass shall be designated the "Senator Phil B. Curls Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.801. The portion of Interstate 70 in the city of St. Louis from the Salisbury Street overpass continuing west to the Goodfellow Boulevard overpass shall be designated the "Senator Paula J. Carter Memorial Highway". The department of transportation shall

erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

227.802. The portion of Highway 32 in Dent County from Highway 72 continuing east to Craig Industrial Drive in the city of Salem shall be designated the "Gerald T. Lizotte, Jr. Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid by private donations.

301.010. As used in this chapter and sections 304.010 to 304.040, 304.120 to 304.260, and sections 307.010 to 307.175, the following terms mean:

(1) "All-terrain vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of one thousand five hundred pounds or less, traveling on three, four or more nonhighway tires;

(2) "Autocycle", a three-wheeled motor vehicle which the drivers and passengers ride in a partially or completely enclosed nonstraddle seating area, that is designed to be controlled with a steering wheel and pedals, and that has met applicable Department of Transportation National Highway Traffic Safety Administration requirements or federal motorcycle safety standards;

(3) "Automobile transporter", any vehicle combination capable of carrying cargo on the power unit and designed and used for the transport of assembled motor vehicles, including truck camper units;

(4) "Axle load", the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle;

(5) "Backhaul", the return trip of a vehicle transporting cargo or general freight, especially when carrying goods back over all or part of the same route;

(6) "Boat transporter", any vehicle combination capable of carrying cargo on the power unit and designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate transporting;

(7) "Body shop", a business that repairs physical damage on motor vehicles that are not owned by the shop or its officers or employees by mending, straightening, replacing body parts, or painting;

(8) "Bus", a motor vehicle primarily for the transportation of a driver and eight or more passengers but not including shuttle buses;

(9) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers but not including vanpools or shuttle buses;

(10) "Cotton trailer", a trailer designed and used exclusively for transporting cotton at speeds less than forty miles per hour from field to field or from field to market and return;

(11) "Dealer", any person, firm, corporation, association, agent or subagent engaged in the sale or exchange of new, used or reconstructed motor vehicles or trailers;

(12) "Director" or "director of revenue", the director of the department of revenue;

(13) "Driveaway operation":

(a) The movement of a motor vehicle or trailer by any person or motor carrier other than a dealer over any public highway, under its own power singly, or in a fixed combination of two or more vehicles, for the purpose of delivery for sale or for delivery either before or after sale;

(b) The movement of any vehicle or vehicles, not owned by the transporter, constituting the commodity being transported, by a person engaged in the business of furnishing drivers and operators for the purpose of transporting vehicles in transit from one place to another by the driveaway or towaway methods; or

(c) The movement of a motor vehicle by any person who is lawfully engaged in the business of transporting or delivering vehicles that are not the person's own and vehicles of a type otherwise required to be registered, by the driveaway or towaway methods, from a point of manufacture, assembly or distribution or from the owner of the vehicles to a dealer or sales agent of a manufacturer or to any consignee designated by the shipper or consignor;

(14) "Dromedary", a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating independently or in a combination with a semitrailer;

(15) "Farm tractor", a tractor used exclusively for agricultural purposes;

(16) "Fleet", any group of ten or more motor vehicles owned by the same owner;

(17) "Fleet vehicle", a motor vehicle which is included as part of a fleet;

(18) "Fullmount", a vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination;

(19) "Gross weight", the weight of vehicle and/or vehicle combination without load, plus the weight of any load thereon;

(20) "Hail-damaged vehicle", any vehicle, the body of which has become dented as the result of the impact of hail;

(21) "Highway", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality;

(22) "Improved highway", a highway which has been paved with gravel, macadam, concrete, brick or asphalt, or surfaced in such a manner that it shall have a hard, smooth surface;

(23) "Intersecting highway", any highway which joins another, whether or not it crosses the same;

(24) "Junk vehicle", a vehicle which:

(a) Is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap; or

(b) Has been designated as junk or a substantially equivalent designation by this state or any other state;

(25) "Kit vehicle", a motor vehicle assembled by a person other than a generally recognized manufacturer of motor vehicles by the use of a glider kit or replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin;

(26) "Land improvement contractors' commercial motor vehicle", any not-for-hire commercial motor vehicle the operation of which is confined to:

(a) An area that extends not more than a radius of one hundred miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects involving soil and water conservation, or to and from equipment dealers' maintenance facilities for maintenance purposes; or

(b) An area that extends not more than a radius of fifty miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects not involving soil and water conservation.

Nothing in this subdivision shall be construed to prevent any motor vehicle from being registered as a commercial motor vehicle or local commercial motor vehicle;

(27) "Local commercial motor vehicle", a commercial motor vehicle whose operations are confined to a municipality and that area extending not more than fifty miles therefrom, or a commercial motor vehicle whose property-carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle to or from a farm owned by such person or under the person's control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;

(28) "Local log truck", a commercial motor vehicle which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated solely at a forested site and in an area extending not more than a one hundred mile radius from such site, carries a load with dimensions not in excess of twenty-five cubic yards per two axles with dual wheels, and when operated on the national system of interstate and defense highways described in 23 U.S.C. Section 103, as amended, or outside the one hundred mile radius from such site with an extended distance local log truck permit, such vehicle shall not exceed the weight limits of section 304.180, does not have more than four axles, and does not pull a trailer which has more than three axles. Harvesting equipment which is used specifically for cutting, felling, trimming, delimbing, debarking, chipping, skidding, loading, unloading, and stacking may be transported on a local

log truck. A local log truck may not exceed the limits required by law, however, if the truck does exceed such limits as determined by the inspecting officer, then notwithstanding any other provisions of law to the contrary, such truck shall be subject to the weight limits required by such sections as licensed for eighty thousand pounds;

(29) "Local log truck tractor", a commercial motor vehicle which is registered under this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated at a forested site and in an area extending not more than a one hundred mile radius from such site, operates with a weight not exceeding twenty-two thousand four hundred pounds on one axle or with a weight not exceeding forty-four thousand eight hundred pounds on any tandem axle, and when operated on the national system of interstate and defense highways described in 23 U.S.C. Section 103, as amended, or outside the one hundred mile radius from such site with an extended distance local log truck permit, such vehicle does not exceed the weight limits contained in section 304.180, and does not have more than three axles and does not pull a trailer which has more than three axles. Violations of axle weight limitations shall be subject to the load limit penalty as described for in sections 304.180 to 304.220;

(30) "Local transit bus", a bus whose operations are confined wholly within a municipal corporation, or wholly within a municipal corporation and a commercial zone, as defined in section 390.020, adjacent thereto, forming a part of a public transportation system within such municipal corporation and such municipal corporation and adjacent commercial zone;

(31) "Log truck", a vehicle which is not a local log truck or local log truck tractor and is used exclusively to transport harvested forest products to and from forested sites which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state for the transportation of harvested forest products;

(32) "Major component parts", the rear clip, cowl, frame, body, cab, front-end assembly, and front clip, as those terms are defined by the director of revenue pursuant to rules and regulations or by illustrations;

(33) "Manufacturer", any person, firm, corporation or association engaged in the business of manufacturing or assembling motor vehicles, trailers or vessels for sale;

(34) "Motor change vehicle", a vehicle manufactured prior to August, 1957, which receives a new, rebuilt or used engine, and which used the number stamped on the original engine as the vehicle identification number;

(35) "Motor vehicle", any self-propelled vehicle not operated exclusively upon tracks, except farm tractors;

(36) "Motor vehicle primarily for business use", any vehicle other than a recreational motor vehicle, motorcycle, motortricycle, or any commercial motor vehicle licensed for over twelve thousand pounds:

(a) Offered for hire or lease; or

(b) The owner of which also owns ten or more such motor vehicles;

(37) "Motorcycle", a motor vehicle operated on two wheels;

(38) "Motorized bicycle", any two-wheeled or three-wheeled device having an automatic transmission and a motor with a cylinder capacity of not more than fifty cubic centimeters, which produces less than three gross brake horsepower, and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground;

(39) "Motortricycle", a motor vehicle upon which the operator straddles or sits astride that is designed to be controlled by handle bars and is operated on three wheels, including a motorcycle while operated with any conveyance, temporary or otherwise, requiring the use of a third wheel. A motortricycle shall not be included in the definition of all-terrain vehicle;

(40) "Municipality", any city, town or village, whether incorporated or not;

(41) "Nonresident", a resident of a state or country other than the state of Missouri;

(42) "Non-USA-std motor vehicle", a motor vehicle not originally manufactured in compliance with United States emissions or safety standards;

(43) "Operator", any person who operates or drives a motor vehicle;

(44) "Owner", any person, firm, corporation or association, who holds the legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner;

(45) "Public garage", a place of business where motor vehicles are housed, stored, repaired, reconstructed or repainted for persons other than the owners or operators of such place of business;

(46) "Rebuilder", a business that repairs or rebuilds motor vehicles owned by the rebuilder, but does not include certificated common or contract carriers of persons or property;

(47) "Reconstructed motor vehicle", a vehicle that is altered from its original construction by the addition or substitution of two or more new or used major component parts, excluding motor vehicles made from all new parts, and new multistage manufactured vehicles;

(48) "Recreational motor vehicle", any motor vehicle designed, constructed or substantially modified so that it may be used and is used for the purposes of temporary housing quarters, including therein sleeping and eating facilities which are either permanently attached to the motor vehicle or attached to a unit which is securely attached to the motor vehicle. Nothing herein shall prevent any motor vehicle from being registered as a commercial motor vehicle if the motor vehicle could otherwise be so registered;

(49) "Recreational off-highway vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than sixty-seven inches in width, with an unladen dry weight of two thousand pounds or less, traveling on four or more nonhighway tires and which may have access to ATV trails;

(50) **"Recreational trailer", any trailer designed, constructed, or substantially modified so that it may be used and is used for the purpose of temporary housing quarters, including therein sleeping or eating facilities, which can be temporarily attached to a motor vehicle or attached to a unit which is securely attached to a motor vehicle;**

(51) "Rollback or car carrier", any vehicle specifically designed to transport wrecked, disabled or otherwise inoperable vehicles, when the transportation is directly connected to a wrecker or towing service;

[~~(51)~~**]** **(52)** "Saddlemount combination", a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The "saddle" is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a "double saddlemount combination". When three vehicles are towed in this manner, the combination is called a "triple saddlemount combination";

[~~(52)~~**]** **(53)** "Salvage dealer and dismantler", a business that dismantles used motor vehicles for the sale of the parts thereof, and buys and sells used motor vehicle parts and accessories;

[~~(53)~~**]** **(54)** "Salvage vehicle", a motor vehicle, semitrailer, or house trailer which:

(a) Was damaged during a year that is no more than six years after the manufacturer's model year designation for such vehicle to the extent that the total cost of repairs to rebuild or reconstruct the vehicle to its condition immediately before it was damaged for legal operation on the roads or highways exceeds eighty percent of the fair market value of the vehicle immediately preceding the time it was damaged;

(b) By reason of condition or circumstance, has been declared salvage, either by its owner, or by a person, firm, corporation, or other legal entity exercising the right of security interest in it;

(c) Has been declared salvage by an insurance company as a result of settlement of a claim;

(d) Ownership of which is evidenced by a salvage title; or

(e) Is abandoned property which is titled pursuant to section 304.155 or section 304.157 and designated with the words "salvage/abandoned property". The total cost of repairs to rebuild or reconstruct the vehicle shall not include the cost of repairing, replacing, or reinstalling inflatable safety restraints, tires, sound systems, or damage as a result of hail, or any sales tax on

parts or materials to rebuild or reconstruct the vehicle. For purposes of this definition, "fair market value" means the retail value of a motor vehicle as:

a. Set forth in a current edition of any nationally recognized compilation of retail values, including automated databases, or from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles;

b. Determined pursuant to a market survey of comparable vehicles with regard to condition and equipment; and

c. Determined by an insurance company using any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner;

[~~(54)~~**]** **(55)** "School bus", any motor vehicle used solely to transport students to or from school or to transport students to or from any place for educational purposes;

[~~(55)~~**]** **(56)** "Scrap processor", a business that, through the use of fixed or mobile equipment, flattens, crushes, or otherwise accepts motor vehicles and vehicle parts for processing or transportation to a shredder or scrap metal operator for recycling;

[~~(56)~~**]** **(57)** "Shuttle bus", a motor vehicle used or maintained by any person, firm, or corporation as an incidental service to transport patrons or customers of the regular business of such person, firm, or corporation to and from the place of business of the person, firm, or corporation providing the service at no fee or charge. Shuttle buses shall not be registered as buses or as commercial motor vehicles;

[~~(57)~~**]** **(58)** "Special mobile equipment", every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers and wood-sawing equipment used for hire, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finished machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, concrete pump trucks, rock-drilling and earth-moving equipment. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;

[~~(58)~~**]** **(59)** "Specially constructed motor vehicle", a motor vehicle which shall not have been originally constructed under a distinctive name, make, model or type by a manufacturer of motor vehicles. The term specially constructed motor vehicle includes kit vehicles;

[~~(59)~~**]** **(60)** "Stinger-steered combination", a truck tractor-semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit;

[~~(60)~~**]** **(61)** "Tandem axle", a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more than ninety-six inches apart;

[~~(61)~~**]** **(62)** "Towaway trailer transporter combination", a combination of vehicles consisting of a trailer transporter towing unit and two trailers or semitrailers, with a total weight that does not exceed twenty-six thousand pounds; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers;

[~~(62)~~**]** **(63)** "Tractor", "truck tractor" or "truck-tractor", a self-propelled motor vehicle designed for drawing other vehicles, but not for the carriage of any load when operating independently. When attached to a semitrailer, it supports a part of the weight thereof;

[~~(63)~~**]** **(64)** "Trailer", any vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks, including a semitrailer or vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight rests upon and is carried by the towing vehicle. The term trailer shall not include cotton trailers as defined in this section and shall not include manufactured homes as defined in section 700.010;

[~~(64)~~**]** **(65)** "Trailer transporter towing unit", a power unit that is not used to carry property when operating in a towaway trailer transporter combination;

[~~(65)~~**]** **(66)** "Truck", a motor vehicle designed, used, or maintained for the transportation of property;

[~~(66)~~**]** **(67)** "Truck-tractor semitrailer-semitrailer", a combination vehicle in which the two trailing units are connected with a B-train assembly which is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth-wheel connection point for the second semitrailer and has one less articulation point than the conventional A-dolly connected truck-tractor semitrailer-trailer combination;

[~~(67)~~**]** **(68)** "Truck-trailer boat transporter combination", a boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection with the trailer axle located substantially at the trailer center of gravity rather than the rear of the trailer but so as to maintain a downward force on the trailer tongue;

[~~(68)~~**]** **(69)** "Used parts dealer", a business that buys and sells used motor vehicle parts or accessories, but not including a business that sells only new, remanufactured or rebuilt parts. Business does not include isolated sales at a swap meet of less than three days;

[~~(69)~~**]** **(70)** "Utility vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than sixty-seven inches in width,

with an unladen dry weight of two thousand pounds or less, traveling on four or six wheels, to be used primarily for landscaping, lawn care, or maintenance purposes;

[~~(70)~~**]** **(71)** "Vanpool", any van or other motor vehicle used or maintained by any person, group, firm, corporation, association, city, county or state agency, or any member thereof, for the transportation of not less than eight nor more than forty-eight employees, per motor vehicle, to and from their place of employment; however, a vanpool shall not be included in the definition of the term bus or commercial motor vehicle as defined in this section, nor shall a vanpool driver be deemed a chauffeur as that term is defined by section 303.020; nor shall use of a vanpool vehicle for ride-sharing arrangements, recreational, personal, or maintenance uses constitute an unlicensed use of the motor vehicle, unless used for monetary profit other than for use in a ride-sharing arrangement;

[~~(71)~~**]** **(72)** "Vehicle", any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons;

[~~(72)~~**]** **(73)** "Wrecker" or "tow truck", any emergency commercial vehicle equipped, designed and used to assist or render aid and transport or tow disabled or wrecked vehicles from a highway, road, street or highway rights-of-way to a point of storage or repair, including towing a replacement vehicle to replace a disabled or wrecked vehicle;

[~~(73)~~**]** **(74)** "Wrecker or towing service", the act of transporting, towing or recovering with a wrecker, tow truck, rollback or car carrier any vehicle not owned by the operator of the wrecker, tow truck, rollback or car carrier for which the operator directly or indirectly receives compensation or other personal gain.

301.067. 1. For each trailer or semitrailer there shall be paid an annual fee of seven dollars fifty cents, and in addition thereto such permit fee authorized by law against trailers used in combination with tractors operated under the supervision of the highways and transportation commission of the department of transportation. The fees for tractors used in any combination with trailers or semitrailers or both trailers and semitrailers (other than on passenger-carrying trailers or semitrailers) shall be computed on the total gross weight of the vehicles in the combination with load.

2. Any trailer or semitrailer may at the option of the registrant be registered for a period of three years upon payment of a registration fee of twenty-two dollars and fifty cents.

3. Any trailer as defined in section 301.010 or semitrailer may, at the option of the registrant, be registered permanently upon the payment of a registration fee of fifty-two dollars and fifty cents. The permanent plate and registration fee is vehicle specific. The plate and the registration fee paid is nontransferable and nonrefundable, except those covered under the provisions of section 301.442.

4. Beginning August 28, 2019, the annual registration fees imposed under this section or section 301.030 for recreational trailers, as defined under section 301.010, shall be payable in the month of May each year. Any fee that would have been due in December 2019, shall be deferred until May 2020.

302.574. 1. If a person who was operating a vehicle refuses upon the request of the officer to submit to any chemical test under section 577.041, the officer shall, on behalf of the director of revenue, serve the notice of license revocation personally upon the person and shall take possession of any license to operate a vehicle issued by this state which is held by that person. The officer shall issue a temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall also give the person notice of his or her right to file a petition for review to contest the license revocation.

2. Such officer shall make a certified report under penalties of perjury for making a false statement to a public official. The report shall be forwarded to the director of revenue and shall include the following:

(1) That the officer has:

(a) Reasonable grounds to believe that the arrested person was driving a motor vehicle while in an intoxicated condition; or

(b) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or

(c) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer has reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

(2) That the person refused to submit to a chemical test;

(3) Whether the officer secured the license to operate a motor vehicle of the person;

(4) Whether the officer issued a fifteen-day temporary permit;

(5) Copies of the notice of revocation, the fifteen-day temporary permit, and the notice of the right to file a petition for review. The notices and permit may be combined in one document; and

(6) Any license, which the officer has taken into possession, to operate a motor vehicle.

3. Upon receipt of the officer's report, the director shall revoke the license of the person refusing to take the test for a period of one year; or if the person is a nonresident, such person's operating permit or privilege shall be revoked for one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, an order shall be issued denying the person the issuance of a license or permit for a period of one year.

4. If a person's license has been revoked because of the person's refusal to submit to a chemical test, such person may petition for a hearing before a circuit division or associate division of the court in the county in which the arrest or stop occurred. **Pursuant to local court rule promulgated pursuant to section 15 of article V of the Missouri Constitution, the case may also be assigned to a traffic judge pursuant to section 479.500.** The person may request such court to issue an order staying the revocation until such time as the petition for review can be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the director of revenue and shall send a copy of such order to the director. Such order shall serve as proof of the privilege to operate a motor vehicle in this state and the director shall maintain possession of the person's license to operate a motor vehicle until termination of any revocation under this section. Upon the person's request, the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the director of revenue. At the hearing, the court shall determine only:

(1) Whether the person was arrested or stopped;

(2) Whether the officer had:

(a) Reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated or drugged condition; or

(b) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or

(c) Reasonable grounds to believe that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer had reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

(3) Whether the person refused to submit to the test.

5. If the court determines any issue not to be in the affirmative, the court shall order the director to reinstate the license or permit to drive.

6. Requests for review as provided in this section shall go to the head of the docket of the court wherein filed.

7. No person who has had a license to operate a motor vehicle suspended or revoked under the provisions of this section shall have that license reinstated until such person has participated in and successfully completed a substance abuse traffic offender program defined in section 302.010, or a program determined to be comparable by the department of mental health. Assignment recommendations, based upon the needs assessment as described in subdivision (24) of section 302.010, shall be delivered in writing to the person with written notice that the person is entitled to have such assignment recommendations reviewed by the court if the person objects to the recommendations. The person may file a motion in the associate

division of the circuit court of the county in which such assignment was given, on a printed form provided by the state courts administrator, to have the court hear and determine such motion under the provisions of chapter 517. The motion shall name the person or entity making the needs assessment as the respondent and a copy of the motion shall be served upon the respondent in any manner allowed by law. Upon hearing the motion, the court may modify or waive any assignment recommendation that the court determines to be unwarranted based upon a review of the needs assessment, the person's driving record, the circumstances surrounding the offense, and the likelihood of the person committing a similar offense in the future, except that the court may modify but **[**~~may~~**] shall** not waive the assignment to an education or rehabilitation program of a person determined to be a prior or persistent offender as defined in section 577.001, or of a person determined to have operated a motor vehicle with a blood alcohol content of fifteen-hundredths of one percent or more by weight. Compliance with the court determination of the motion shall satisfy the provisions of this section for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's personal appearance at any hearing conducted under this subsection shall not be necessary unless directed by the court.

8. The fees for the substance abuse traffic offender program, or a portion thereof, to be determined by the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health, shall be paid by the person enrolled in the program. Any person who is enrolled in the program shall pay, in addition to any fee charged for the program, a supplemental fee to be determined by the department of mental health for the purposes of funding the substance abuse traffic offender program defined in section 302.010. The administrator of the program shall remit to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health on or before the fifteenth day of each month the supplemental fee for all persons enrolled in the program, less two percent for administrative costs. Interest shall be charged on any unpaid balance of the supplemental fees due to the division of **[**~~alcohol and drug abuse~~**] behavioral health** under this section, and shall accrue at a rate not to exceed the annual rates established under the provisions of section 32.065, plus three percentage points. The supplemental fees and any interest received by the department of mental health under this section shall be deposited in the mental health earnings fund, which is created in section 630.053.

9. Any administrator who fails to remit to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health the supplemental fees and interest for all persons enrolled in the program under this section shall be subject to a penalty equal to the amount of interest accrued on the supplemental fees due to the division under this section. If the supplemental fees, interest, and penalties are not remitted to the division of **[**~~alcohol and drug abuse~~**] behavioral health** of the department of mental health within six months of the due date, the attorney general of the state of Missouri shall initiate appropriate action for the collection of

said fees and accrued interest. The court shall assess attorneys' fees and court costs against any delinquent program.

10. Any person who has had a license to operate a motor vehicle revoked under this section and who has a prior alcohol-related enforcement contact, as defined in section 302.525, shall be required to file proof with the director of revenue that any motor vehicle operated by the person is equipped with a functioning, certified ignition interlock device as a required condition of license reinstatement. Such ignition interlock device shall further be required to be maintained on all motor vehicles operated by the person for a period of not less than six months immediately following the date of reinstatement. If the monthly monitoring reports show that the ignition interlock device has registered any confirmed blood alcohol concentration readings above the alcohol setpoint established by the department of transportation or that the person has tampered with or circumvented the ignition interlock device within the last three months of the six-month period of required installation of the ignition interlock device, then the period for which the person **[**~~must~~**] shall** maintain the ignition interlock device following the date of reinstatement shall be extended until the person has completed three consecutive months with no violations as described in this section. If the person fails to maintain such proof with the director as required by this section, the license shall be rerevoked until proof as required by this section is filed with the director, and the person shall be guilty of a class A misdemeanor.

11. The revocation period of any person whose license and driving privilege has been revoked under this section and who has filed proof of financial responsibility with the department of revenue in accordance with chapter 303 and is otherwise eligible shall be terminated by a notice from the director of revenue after one year from the effective date of the revocation. Unless proof of financial responsibility is filed with the department of revenue, the revocation shall remain in effect for a period of two years from its effective date. If the person fails to maintain proof of financial responsibility in accordance with chapter 303, the person's license and driving privilege shall be rerevoked.

12. A person commits the offense of failure to maintain proof with the Missouri department of revenue if, when required to do so, he or she fails to file proof with the director of revenue that any vehicle operated by the person is equipped with a functioning, certified ignition interlock device or fails to file proof of financial responsibility with the department of revenue in accordance with chapter 303. The offense of failure to maintain proof with the Missouri department of revenue is a class A misdemeanor.

304.580. As used in sections 304.582 and 304.585, the term "construction zone" or "work zone" means any area upon or around any highway as defined in section 302.010 which is visibly marked by the department of transportation or a contractor or subcontractor performing work for the department of transportation as an area where construction, maintenance, incident removal, or other work is temporarily occurring. The term "work zone" or "construction zone"

also includes the lanes of highway leading up to the area upon which an activity described in this subsection is being performed, beginning at the point where appropriate signs or traffic control devices are posted or placed. The terms "worker" or "highway worker" as used in sections 304.582 and 304.585 shall mean any person **[**~~that~~**]** **who** is working in a construction zone or work zone **on a state highway or the right-of-way of a state highway**, **[**~~or~~**]** any employee of the department of transportation **[**~~that~~**]** **who** is performing duties under the department's motorist assist program on a state highway or the right-of-way of a state highway**, or any utility worker performing utility work on a state highway or the right-of-way of a state highway. "Utility worker" means any employee or person employed under contract of a utility that provides gas, heat, electricity, water, steam, telecommunications or cable services, or sewer services, whether privately, municipally, or cooperatively owned, while in performance of his or her job duties**.

304.585. 1. A person shall be deemed to commit the offense of "endangerment of a highway worker" upon conviction for any of the following when the offense occurs within a construction zone or work zone, as defined in section 304.580:

(1) Exceeding the posted speed limit by fifteen miles per hour or more;

(2) Passing in violation of subsection 4 of section 304.582;

(3) Failure to stop for a work zone flagman or failure to obey traffic control devices erected in the construction zone or work zone for purposes of controlling the flow of motor vehicles through the zone;

(4) Driving through or around a work zone by any lane not clearly designated to motorists for the flow of traffic through or around the work zone;

(5) Physically assaulting, or attempting to assault, or threatening to assault a highway worker in a construction zone or work zone, with a motor vehicle or other instrument;

(6) Intentionally striking, moving, or altering barrels, barriers, signs, or other devices erected to control the flow of traffic to protect workers and motorists in the work zone for a reason other than avoidance of an obstacle, an emergency, or to protect the health and safety of an occupant of the motor vehicle or of another person; or

(7) Committing any of the following offenses for which points may be assessed under section 302.302:

(a) Leaving the scene of an accident in violation of section 577.060;

(b) Careless and imprudent driving in violation of subsection 4 of section 304.016;

(c) Operating without a valid license in violation of subdivision (1) or (2) of subsection 1 of section 302.020;

(d) Operating with a suspended or revoked license;

(e) Driving while in an intoxicated condition or under the influence of controlled substances or drugs or driving with an excessive blood alcohol content;

(f) Any felony involving the use of a motor vehicle.

2. Upon conviction or a plea of guilty for committing the offense of endangerment of a highway worker under subsection 1 of this section if no injury or death to a highway worker resulted from the offense, in addition to any other penalty authorized by law, the person shall be subject to a fine of not more than one thousand dollars and shall have four points assessed to his or her driver's license under section 302.302.

3. A person shall be deemed to commit the offense of "aggravated endangerment of a highway worker" upon conviction or a plea of guilty for any offense under subsection 1 of this section when such offense occurs in a construction zone or work zone as defined in section 304.580 and results in the injury or death of a highway worker. Upon conviction or a plea of guilty for committing the offense of aggravated endangerment of a highway worker, in addition to any other penalty authorized by law, the person shall be subject to a fine of not more than five thousand dollars if the offense resulted in injury to a highway worker and ten thousand dollars if the offense resulted in death to a highway worker. In addition, such person shall have twelve points assessed to their driver's license under section 302.302 and shall be subject to the provisions of section 302.304 regarding the revocation of the person's license and driving privileges.

4. Except for the offense established under subdivision (6) of subsection 1 of this section, no person shall be deemed to commit the offense of endangerment of a highway worker except when the act or omission constituting the offense occurred when one or more highway workers were in the construction zone or work zone.

5. No person shall be cited or convicted for endangerment of a highway worker or aggravated endangerment of a highway worker, for any act or omission otherwise constituting an offense under subsection 1 of this section, if such act or omission resulted in whole or in part from mechanical failure of the person's vehicle or from the negligence of another person or a highway worker.

6. (1) Notwithstanding any provision of this section or any other law to the contrary, the director of the department of revenue or his or her agent shall order the revocation of a driver's license upon its determination that an individual holding such license was involved in a physical accident where his or her negligent acts or omissions contributed to his or her vehicle striking a highway worker within a designated construction zone or work zone where department of transportation guidelines involving notice and signage were properly implemented. The department shall make its determination of these facts on the basis of the report of a law enforcement officer investigating the incident and this determination shall be final unless a hearing is requested and held as provided under subdivision (2) of this subsection. Upon its determination that the facts support a license revocation, the department shall issue a notice of revocation

which shall be mailed to the person at the last known address shown on the department's records. The notice is deemed received three days after mailing unless returned by postal authorities. The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation which shall be at least fifteen days from the date the department issued its order, the right of the person to request a hearing, and the date by which the request for a hearing must be made.

(2) An individual who received notice of revocation from the department under this section may seek reinstatement by either:

(a) Taking and passing the written and driving portions of the driver's license examination, in which case the individual's driver's license shall be immediately reinstated; or

(b) Petitioning for a hearing before a circuit division or associate division of the court in the county in which the work zone accident occurred. The individual may request such court to issue an order staying the revocation until such time as the petition for review can be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the director of revenue and shall send a copy of such order to the director. Such order shall serve as proof of the privilege to operate a motor vehicle in this state, and the director shall maintain possession of the person's license to operate a motor vehicle until the termination of any suspension under this subsection. The clerk of the court shall notify the prosecuting attorney of the county, and the prosecutor shall appear at the hearing on behalf of the director of revenue. At the hearing, the court shall determine only:

a. Whether the person was involved in a physical accident where his or her vehicle struck a highway worker within a designated construction or work zone;

b. Whether the department of transportation guidelines involving notice and signage were properly implemented in such work zone; and

c. Whether the investigating officer had probable cause to believe the person's negligent acts or omissions contributed to his or her vehicle striking a highway worker.

If the court determines subparagraph a., b., or c. of this paragraph not to be in the affirmative, the court shall order the director to reinstate the license or permit to drive.

(3) The department of revenue administrative adjudication to reinstate a driver's license that was revoked under this subsection, and any evidence provided to the department related to such adjudication, shall not be produced by subpoena or any other means and made available as evidence in any other administrative action, civil case, or criminal prosecution. The court's determinations issued under this section, and the evidence provided to the court relating to such determinations, shall not be produced by

subpoena or any other means and made available in any other administrative action, civil case, or criminal prosecution. Nothing in this subdivision shall be construed to prevent the department from providing information to the system authorized under 49 U.S.C. Section 31309, or any successor federal law, pertaining to the licensing, identification, and disqualification of operators of commercial motor vehicles.

304.590. 1. As used in this section, the term "travel safe zone" means any area upon or around any highway, as defined in section 302.010, which is visibly marked by the department of transportation; and when a highway safety analysis demonstrates fatal or disabling motor vehicle crashes exceed a predicted safety performance level for comparable roadways as determined by the department of transportation.

2. Upon a conviction or a plea of guilty by any person for a moving violation as defined in section 302.010 or any offense listed in section 302.302, the court **[**~~shall~~**] may** double the amount of fine authorized to be imposed by law, if the moving violation or offense occurred within a travel safe zone.

3. Upon a conviction or plea of guilty by any person for a speeding violation under section 304.009 or 304.010, the court **[**~~shall~~**] may** double the amount of fine authorized by law, if the violation occurred within a travel safe zone.

4. The penalty authorized under subsections **[**~~1~~**] 2** and 3 of this section shall only be assessed by the court if the department of transportation has erected signs upon or around a travel safe zone which are clearly visible from the highway and which state substantially the following message: "Travel Safe Zone — Fines Doubled".

5. This section shall not be construed to enhance the assessment of court costs or the assessment of points under section 302.302.

304.894. 1. A person commits the offense of endangerment of an emergency responder for any of the following offenses when the offense occurs within an active emergency zone:

(1) Exceeding the posted speed limit by fifteen miles per hour or more;

(2) Passing in violation of subsection 3 of section 304.892;

(3) Failure to stop for an active emergency zone flagman or emergency responder, or failure to obey traffic control devices erected, or personnel posted, in the active emergency zone for purposes of controlling the flow of motor vehicles through the zone;

(4) Driving through or around an active emergency zone via any lane not clearly designated for motorists to control the flow of traffic through or around the active emergency zone;

(5) Physically assaulting, attempting to assault, or threatening to assault an emergency responder with a motor vehicle or other instrument; or

(6) Intentionally striking, moving, or altering barrels, barriers, signs, or other devices erected to control the flow of traffic to protect emergency responders and motorists unless the

action was necessary to avoid an obstacle, an emergency, or to protect the health and safety of an occupant of the motor vehicle or of another person.

2. Upon a finding of guilt or a plea of guilty for committing the offense of endangerment of an emergency responder under subsection 1 of this section, if no injury or death to an emergency responder resulted from the offense, the court shall assess a fine of not more than one thousand dollars, and four points shall be assessed to the operator's license pursuant to section 302.302 upon conviction.

3. A person commits the offense of aggravated endangerment of an emergency responder upon a finding of guilt or a plea of guilty for any offense under subsection 1 of this section when such offense results in the injury or death of an emergency responder. Upon a finding of guilt or a plea of guilty for committing the offense of aggravated endangerment of an emergency responder, in addition to any other penalty authorized by law, the court shall assess a fine of not more than five thousand dollars if the offense resulted in injury to an emergency responder, and ten thousand dollars if the offense resulted in the death of an emergency responder. In addition, twelve points shall be assessed to the operator's license pursuant to section 302.302 upon conviction.

4. Except for the offense established under subdivision (6) of subsection 1 of this section, no person shall be deemed to have committed the offense of endangerment of an emergency responder except when the act or omission constituting the offense occurred when one or more emergency responders were responding to an active emergency.

5. No person shall be cited for, or found guilty of, endangerment of an emergency responder or aggravated endangerment of an emergency responder, for any act or omission otherwise constituting an offense under subsection 1 of this section, if such act or omission resulted in whole or in part from mechanical failure of the person's vehicle, or from the negligence of another person or emergency responder.

6. (1) Notwithstanding any provision of this section or any other law to the contrary, the director of the department of revenue or his or her agent shall order the revocation of a driver's license upon its determination that an individual holding such license was involved in a physical accident where his or her negligent acts or omissions substantially contributed to his or her vehicle striking an emergency responder within an active emergency zone where the appropriate visual markings for active emergency zones were properly implemented. The department shall make its determination of these facts on the basis of the report of a law enforcement officer investigating the incident and this determination shall be final unless a hearing is requested and held as provided under subdivision (2) of this subsection. Upon its determination that the facts support a license revocation, the department shall issue a notice of revocation which shall be mailed to the person at the last known address shown on the department's records. The notice is deemed

received three days after mailing unless returned by postal authorities. The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation which shall be at least fifteen days from the date the department issued its order, the right of the person to request a hearing, and the date by which the request for a hearing must be made.

(2) An individual who received notice of revocation from the department under this section may seek reinstatement by either:

(a) Taking and passing the written and driving portions of the driver's license examination, in which case the individual's driver's license shall be immediately reinstated; or

(b) Petitioning for a hearing before a circuit division or associate division of the court in the county in which the emergency zone accident occurred. The individual may request such court to issue an order staying the revocation until such time as the petition for review can be heard. If the court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the director of revenue and shall send a copy of such order to the director. Such order shall serve as proof of the privilege to operate a motor vehicle in this state, and the director shall maintain possession of the person's license to operate a motor vehicle until the termination of any suspension under this subsection. The clerk of the court shall notify the prosecuting attorney of the county, and the prosecutor shall appear at the hearing on behalf of the director of revenue. At the hearing, the court shall determine only:

a. Whether the person was involved in a physical accident where his or her vehicle struck an emergency responder within an active emergency zone;

b. Whether the guidelines involving notice and signage were properly implemented in such emergency zone; and

c. Whether the investigating officer had probable cause to believe the person's negligent acts or omissions substantially contributed to his or her vehicle striking an emergency responder.

If the court determines subparagraph a., b., or c. of this paragraph not to be in the affirmative, the court shall order the director to reinstate the license or permit to drive.

(3) The department of revenue administrative adjudication to reinstate a driver's license that was revoked under this subsection, and any evidence provided to the department related to such adjudication, shall not be produced by subpoena or any other means and made available as evidence in any other administrative action, civil case, or criminal prosecution. The court's determinations issued under this section, and the evidence provided to the court relating to such determinations, shall not be produced by

subpoena or any other means and made available in any other administrative action, civil case, or criminal prosecution. Nothing in this subdivision shall be construed to prevent the department from providing information to the system authorized under 49 U.S.C. Section 31309, or any successor federal law, pertaining to the licensing, identification, and disqualification of operators of commercial motor vehicles.

479.500. 1. In the twenty-first judicial circuit, a majority of the circuit judges, en banc, may establish a traffic court, which shall be a division of the circuit court, and may authorize the appointment of not more than three municipal judges who shall be known as traffic judges. The traffic judges shall be appointed by a traffic court judicial commission consisting of the presiding judge of the circuit, who shall be the chair, one circuit judge elected by the circuit judges, one associate circuit judge elected by the associate circuit judges of the circuit, and two members appointed by the county executive of St. Louis County, each of whom shall represent one of the two political parties casting the highest number of votes at the next preceding gubernatorial election. The procedures and operations of the traffic court judicial commission shall be established by circuit court rule.

2. Traffic judges may be authorized to act as commissioners to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by circuit court rule. Traffic judges may also be authorized to hear in the first instance violations of county and municipal ordinances involving motor vehicles, and other county ordinance violations, as provided by circuit court rule.

3. In the event that a county municipal court is established pursuant to section 66.010 which takes jurisdiction of county ordinance violations the circuit court may then authorize the appointment of no more than two traffic judges authorized to hear municipal ordinance violations other than county ordinance violations, and to act as commissioner to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by rule. These traffic court judges also may be authorized to act as commissioners to hear in the first instance petitions to review decisions of the department of revenue or the director of revenue filed pursuant to sections 302.309 and 302.311 and, prior to January 1, 2002, pursuant to sections 302.535 and 302.750.

4. After January 1, 2002, traffic judges, in addition to the authority provided in subsection 3 of this section, may be authorized by local court rule adopted pursuant to Article V, Section 15 of the Missouri Constitution to conduct proceedings pursuant to sections 302.535**, 302.574,** and 302.750, subject to procedures that preserve a meaningful hearing before a judge of the circuit court, as follows:

(1) Conduct the initial call docket and accept uncontested dispositions of petitions to review;

(2) The petitioner shall have the right to the de novo hearing before a judge of the circuit court, except that, at the option of the petitioner, traffic judges may hear in the first instance such petitions for review.

5. In establishing a traffic court, the circuit may be divided into such sectors as may be established by a majority of the circuit and associate circuit judges, en banc. The traffic court in each sector shall hear those cases arising within the territorial limits of the sector unless a case arising within another sector is transferred as provided by operating procedures.

6. Traffic judges shall be licensed to practice law in this state and shall serve at the pleasure of a majority of the circuit and associate circuit judges, en banc, and shall be residents of St. Louis County, and shall receive from the state as annual compensation an amount equal to one-third of the annual compensation of an associate circuit judge. Each judge shall devote approximately one-third of his working time to the performance of his duties as a traffic judge. Traffic judges shall not accept or handle cases in their practice of law which are inconsistent with their duties as a traffic judge and shall not be a judge or prosecutor for any other court. Traffic judges shall not be considered state employees and shall not be members of the state employees' or judicial retirement system or be eligible to receive any other employment benefit accorded state employees or judges.

7. A majority of the judges, en banc, shall establish operating procedures for the traffic court which shall provide for regular sessions in the evenings after 6:00 p.m. and for Saturday or other sessions as efficient operation and convenience to the public may require. Proceedings in the traffic court, except when a judge is acting as a commissioner pursuant to this section, shall be conducted as provided in supreme court rule 37. The hearing shall be before a traffic judge without jury, and the judge shall assume an affirmative duty to determine the merits of the evidence presented and the defenses of the defendant and may question parties and witnesses. In the event a jury trial is requested, the cause shall be certified to the circuit court for trial by jury as otherwise provided by law. Clerks and computer personnel shall be assigned as needed for the efficient operation of the court.

8. In establishing operating procedure, provisions shall be made for appropriate circumstances whereby defendants may enter not guilty pleas and obtain trial dates by telephone or written communication without personal appearance, or to plead guilty and deliver by mail or electronic transfer or other approved method the specified amount of the fine and costs as otherwise provided by law, within a specified period of time.

9. Operating procedures shall be provided for electronic recording of proceedings, except that if adequate recording equipment is not provided at county expense, then, in that event, a person aggrieved by a judgment of a traffic judge or commissioner shall have the right of a trial de novo. The procedures for perfecting the right of a trial de novo shall be the same as that

provided under sections 512.180 to 512.320, except that the provisions of subsection 2 of section 512.180 shall not apply to such cases.

10. The circuit court shall only have the authority to appoint two commissioners with the jurisdiction provided in subsection 3 of this section.

11. All costs to establish and operate a county municipal court under section 66.010 and this section shall be borne by such county.

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FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 547

100TH GENERAL ASSEMBLY

1004S.03T 2019

AN ACT

To repeal sections 56.765, 478.001, and 650.058, RSMo, and to enact in lieu thereof four new sections relating to alternative methods for the disposal of cases in the judicial system.

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

Section A. Sections 56.765, 478.001, and 650.058, RSMo, are repeated and four new sections enacted in lieu thereof, to be known as sections 56.765, 478.001, 557.014, and 650.058, to read as follows:

56.765. 1. A surcharge of **[**~~one dollar~~**]** **five dollars** shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality.

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state of Missouri and remitted to the director of revenue who shall deposit the amount collected pursuant to this section to the credit of the "Missouri Office of Prosecution Services Fund" which is hereby created in the state treasury. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760. The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting

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.

from the investment of money in the fund shall be credited to the Missouri office of prosecution services fund. The Missouri office of prosecution services may collect a registration fee to pay for expenses included in sponsoring training conferences. The revenues and expenditures of the Missouri office of prosecution services shall be subject to an annual audit to be performed by the Missouri state auditor. The Missouri office of prosecution services shall also be subject to any other audit authorized and directed by the state auditor.

3. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the county treasurer of each county from which such funds were generated. The county treasurer shall deposit all of such funds into the county treasury in a separate fund to be used solely for the purpose of additional training for circuit and prosecuting attorneys and their staffs. If the funds collected and deposited by the county are not totally expended annually for the purposes set forth in this subsection, then the unexpended moneys shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year, or at the request of the circuit or prosecuting attorney, with the approval of the county commission or the appropriate governing body of the county or the City of St. Louis, and may be used to pay for expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial, for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

4. There is hereby established in the state treasury the "Missouri Office of Prosecution Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of prosecution services from registration fees, federal and state grants or any other source established in section 56.760 in connection with the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited into the fund.

5. The moneys in the Missouri office of prosecution services revolving fund shall be kept separate and apart from all other moneys in the state treasury. The state treasurer shall administer the fund and shall disburse moneys from the fund to the Missouri office of prosecution services pursuant to appropriations for the purposes set forth in sections 56.750, 56.755 and 56.760.

6. Any unexpended balances remaining in the Missouri office of prosecution services fund and the Missouri office of prosecution services revolving fund at each biennium shall be exempt from the provisions of section 33.080 relating to the transfer of unexpended balances to general revenue.

478.001. 1. For purposes of sections 478.001 to 478.009, the following terms shall mean:

(1) "Adult treatment court", a treatment court focused on addressing the substance use disorder or co-occurring disorder of defendants charged with a criminal offense;

(2) "Community-based substance use disorder treatment program", an agency certified by the department of mental health as a substance use disorder treatment provider;

(3) "Co-occurring disorder", the coexistence of both a substance use disorder and a mental health disorder;

(4) "DWI court", a treatment court focused on addressing the substance use disorder or co-occurring disorder of defendants who have pleaded guilty to or been found guilty of driving while intoxicated or driving with excessive blood alcohol content;

(5) "Family treatment court", a treatment court focused on addressing a substance use disorder or co-occurring disorder existing in families in the juvenile court, family court, or criminal court in which a parent or other household member has been determined to have a substance use disorder or co-occurring disorder that impacts the safety and well-being of the children in the family;

(6) "Juvenile treatment court", a treatment court focused on addressing the substance use disorder or co-occurring disorder of juveniles in the juvenile court;

(7) "Medication-assisted treatment", the use of pharmacological medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders;

(8) "Mental health disorder", any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive, volitional, or emotional function and that constitutes a substantial impairment in a person's ability to participate in activities of normal living;

(9) "Risk and needs assessment", an actuarial tool, approved by the treatment courts coordinating commission and validated on a targeted population of drug-involved adult offenders, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior;

(10) "Substance use disorder", the recurrent use of alcohol or drugs that causes clinically significant impairment, including health problems, disability, and failure to meet major responsibilities at work, school, or home;

(11) "Treatment court commissioner", a person appointed by a majority of the circuit and associate circuit judges in a circuit to preside as the judicial officer in the treatment court division;

(12) "Treatment court division", a specialized, nonadversarial court division with jurisdiction over cases involving substance-involved offenders and making extensive use of

comprehensive supervision, drug or alcohol testing, and treatment services. Treatment court divisions include, but are not limited to, the following specialized courts: adult treatment court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof;

(13) "Treatment court team", the following members who are assigned to the treatment court: the judge or treatment court commissioner, treatment court administrator or coordinator, prosecutor, public defender or member of the criminal defense bar, a representative from the division of probation and parole, a representative from law enforcement, substance use disorder treatment providers, and any other person selected by the treatment court team;

(14) "Veterans treatment court", a treatment court focused on substance use disorders, co-occurring disorders, or mental health disorders of defendants charged with a criminal offense who are military veterans or current military personnel.

2. A treatment court division **[**~~may~~**] shall** be established**, prior to August 28, 2021,** by any circuit court pursuant to sections 478.001 to 478.009 to provide an alternative for the judicial system to dispose of cases which stem from, or are otherwise impacted by, substance use. The treatment court division may include, but not be limited to, cases assigned to an adult treatment court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof. A treatment court shall combine judicial supervision, drug or alcohol testing, and treatment of participants. Except for good cause found by the court, a treatment court making a referral for substance use disorder treatment, when such program will receive state or federal funds in connection with such referral, shall refer the person only to a program which is certified by the department of mental health, unless no appropriate certified treatment program is located within the same county as the treatment court. Upon successful completion of the treatment court program, the charges, petition, or penalty against a treatment court participant may be dismissed, reduced, or modified, unless otherwise stated. Any fees received by a court from a defendant as payment for substance treatment programs shall not be considered court costs, charges or fines.

3. An adult treatment court may be established by any circuit court under sections 478.001 to 478.009 to provide an alternative for the judicial system to dispose of cases which stem from substance use.

4. Under sections 478.001 to 478.009, a DWI court may be established by any circuit court to provide an alternative for the judicial system to dispose of cases that stem from driving while intoxicated.

5. A family treatment court may be established by any circuit court. The juvenile division of the circuit court or the family court, if one is established under section 487.010, may refer one or more parents or other household members subject to its jurisdiction to the family

treatment court if he or she has been determined to have a substance use disorder or co-occurring disorder that impacts the safety and well-being of the children in the family.

6. A juvenile treatment court may be established by the juvenile division of any circuit court. The juvenile division may refer a juvenile to the juvenile treatment court if the juvenile is determined to have committed acts that violate the criminal laws of the state or ordinances of a municipality or county and a substance use disorder or co-occurring disorder contributed to the commission of the offense.

7. **The general assembly finds and declares that it is the public policy of this state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders. In order to effectuate this public policy,** a veterans treatment court may be established by any circuit court, or combination of circuit courts upon agreement of the presiding judges of such circuit courts, to provide an alternative for the judicial system to dispose of cases that stem from a substance use disorder, mental health disorder, or co-occurring disorder of military veterans or current military personnel. A veterans treatment court shall combine judicial supervision, drug or alcohol testing, and substance use and mental health disorder treatment to participants who have served or are currently serving the United States Armed Forces, including members of the Reserves or National Guard**, with preference given to individuals who have combat service. For the purposes of this section, combat service shall be shown through military service documentation that reflects service in a combat theater, receipt of combat service medals, or receipt of imminent danger or hostile fire pay or tax benefits**. Except for good cause found by the court, a veterans treatment court shall make a referral for substance use or mental health disorder treatment, or a combination of substance use and mental health disorder treatment, through the Department of Defense health care, the Veterans Administration, or a community-based substance use disorder treatment program. Community-based programs utilized shall receive state or federal funds in connection with such referral and shall only refer the individual to a program certified by the department of mental health, unless no appropriate certified treatment program is located within the same circuit as the veterans treatment court.

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

(1) "Accusatory instrument", a warrant of arrest, information, or indictment;

(2) "Accused", an individual accused of a criminal offense, but not yet charged with a criminal offense;

(3) "Defendant", any person charged with a criminal offense;

(4) "Deferred prosecution", the suspension of a criminal case for a specified period upon the request of both the prosecuting attorney and the accused or the defendant;

(5) "Diversionary screening", the discretionary power of the prosecuting attorney to suspend all formal prosecutorial proceedings against a person who has become involved in the criminal justice system as an accused or defendant;

(6) "Prosecution diversion", the imposition of conditions of behavior and conduct by the prosecuting attorney upon an accused or defendant for a specified period of time as an alternative to proceeding to adjudication on a complaint, information, or indictment;

(7) "Prosecuting attorney", includes the prosecuting attorney or circuit attorney for each county of the state and the city of St. Louis.

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

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

4. Prior to or upon the issuance of an accusatory instrument, with consent of the accused or defendant, other than for an offense enumerated in this section, the prosecuting attorney may forego continued prosecution upon the parties' agreement to a prosecution diversion plan. The prosecution diversion plan shall be for a specified period and be in writing. The prosecuting attorney has the sole authority to develop diversionary program requirements, but minimum requirements are as follows:

(1) The alleged crime is nonviolent, nonsexual, and does not involve a child victim or possession of an unlawful weapon;

(2) The accused or defendant must submit to all program requirements;

(3) Any newly discovered criminal behavior while in a prosecution diversion program will immediately forfeit his or her right to continued participation in said program at the sole discretion of the prosecuting attorney;

(4) The alleged crime does not also constitute a violation of a current condition of probation or parole;

(5) The alleged crime is not a traffic offense in which the accused or defendant was a holder of a commercial driver license or was operating a commercial motor vehicle at the time of the offense; and

(6) Any other criteria established by the prosecuting attorney.

5. During any period of prosecution diversion, the prosecuting attorney may impose conditions upon the behavior and conduct of the accused or defendant that assures the safety and well-being of the community as well as that of the accused or defendant. The conditions imposed by the prosecuting attorney shall include, but are not limited to, requiring the accused or defendant to remain free of any criminal behavior during the entire period of prosecution diversion.

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

7. Any person participating in the program:

(1) Shall have the right to insist on criminal prosecution for the offense for which he or she is accused at any time; and

(2) May have counsel of the person's choosing present during all phases of the prosecution diversion proceedings, but counsel is not required and no right to appointment of counsel is hereby created.

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

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

10. Any person supervising or employing an accused or defendant under the program shall report to the prosecuting attorney any violation of the terms of the prosecution diversion program.

11. After completion of the program and any conditions imposed upon the accused or defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled to a dismissal or alternative disposition of charges against them. Such disposition may, in the discretion of the prosecuting attorney, be without prejudice to the state of Missouri for

the reinstitution of criminal proceedings, within the statute of limitations, upon any subsequent criminal activity on the part of the accused. Any other provision of law notwithstanding, such individual shall be required to pay any associated costs prior to dismissal of pending charges.

650.058. 1. Notwithstanding the sovereign immunity of the state, any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of DNA profiling analysis may be paid restitution. The individual may receive an amount of **[**~~fifty~~**]** **one hundred** dollars per day for each day of postconviction incarceration for the crime for which the individual is determined to be actually innocent. The petition for the payment of said restitution shall be filed with the sentencing court. For the purposes of this section, the term "actually innocent" shall mean:

(1) The individual was convicted of a felony for which a final order of release was entered by the court;

(2) All appeals of the order of release have been exhausted;

(3) The individual was not serving any term of a sentence for any other crime concurrently with the sentence for which he or she is determined to be actually innocent, unless such individual was serving another concurrent sentence because his or her parole was revoked by a court or the board of probation and parole in connection with the crime for which the person has been exonerated. Regardless of whether any other basis may exist for the revocation of the person's probation or parole at the time of conviction for the crime for which the person is later determined to be actually innocent, when the court's or the board of probation and parole's sole stated reason for the revocation in its order is the conviction for the crime for which the person is later determined to be actually innocent, such order shall, for purposes of this section only, be conclusive evidence that their probation or parole was revoked in connection with the crime for which the person has been exonerated; and

(4) Testing ordered under section 547.035, or testing by the order of any state or federal court, if such person was exonerated on or before August 28, 2004, or testing ordered under section 650.055, if such person was or is exonerated after August 28, 2004, demonstrates a person's innocence of the crime for which the person is in custody.

Any individual who receives restitution under this section shall be prohibited from seeking any civil redress from the state, its departments and agencies, or any employee thereof, or any political subdivision or its employees. This section shall not be construed as a waiver of sovereign immunity for any purposes other than the restitution provided for herein. The department of corrections shall determine the aggregate amount of restitution owed during a fiscal year. If insufficient moneys are appropriated each fiscal year to pay restitution to such

persons, the department shall pay each individual who has received an order awarding restitution a pro rata share of the amount appropriated. Provided sufficient moneys are appropriated to the department, the amounts owed to such individual shall be paid on June thirtieth of each subsequent fiscal year, until such time as the restitution to the individual has been paid in full. However, no individual awarded restitution under this subsection shall receive more than thirty-six thousand five hundred dollars during each fiscal year. No interest on unpaid restitution shall be awarded to the individual. No individual who has been determined by the court to be actually innocent shall be responsible for the costs of care under section 217.831.

2. If the results of the DNA testing confirm the person's guilt, then the person filing for DNA testing under section 547.035, shall:

(1) Be liable for any reasonable costs incurred when conducting the DNA test, including but not limited to the cost of the test. Such costs shall be determined by the court and shall be included in the findings of fact and conclusions of law made by the court; and

(2) Be sanctioned under the provisions of section 217.262.

3. A petition for payment of restitution under this section may only be filed by the individual determined to be actually innocent or the individual's legal guardian. No claim or petition for restitution under this section may be filed by the individual's heirs or assigns. An individual's right to receive restitution under this section is not assignable or otherwise transferrable. The state's obligation to pay restitution under this section shall cease upon the individual's death. Any beneficiary designation that purports to bequeath, assign, or otherwise convey the right to receive such restitution shall be void and unenforceable.

4. An individual who is determined to be actually innocent of a crime under this chapter shall automatically be granted an order of expungement from the court in which he or she pled guilty or was sentenced to expunge from all official records all recordations of his or her arrest, plea, trial or conviction. Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the court shall be confidential and only available to the parties or by order of the court for good cause shown. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section.

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ETHICS REGIONALS 2019

This year's presentation is based on actual advisory opinions and conclusions issued by the Commission on Retirement, Removal and Discipline of Judges in recent years. While not all judicial canons apply to part-time judges, it is important to know what the Commission felt was important enough to issue these opinions. While some of these may not apply to you, they are a cautionary tale and as Judges, we need to be mindful of how our behavior can be perceived by the public, whether specifically prohibited, or not.

From a 2015 NPR St. Louis Public Radio article- About 240 complaints are made against judges in the state of Missouri each year. When complaints are filed—and they can be, by citizens, city officials and other judges--they rarely result in disciplinary action.

"Most of the complaints that we receive are from citizens who were involved in a lawsuit and it didn't turn out the way they wanted," said Skip Waltham, a Columbia-based attorney who serves as chairman for the state committee that processes complaints made against judges. "That isn't something that we have any control over."

Complaints regarding Missouri judges can be filed by anyone and are heard by the Commission on Retirement, Removal and Discipline. The six-member commission, which is comprised of two lawyers, two judges and two citizens, votes on how each case will proceed in a closed-door meeting. The commission itself cannot confirm or deny the existence of a complaint until it goes to a formal proceeding.

85 percent of cases have been dismissed without investigation since July of 1998, Commission records show.

Out of nearly 3,500 cases between July 1998 – June 2014:

96 complaints were dismissed with an informal reprimand or cease and desist order
27 judges chose to resign, and the complaints were dismissed.
Four judges have received formal reprimands or suspension without pay
The Commission has also recommended disability retirement for Judges, some on their own motion, who have become disabled, but are no eligible to retire.

The following are two recent actual cases involving the Commission which resulted in public disciplinary action.

In re: Barbara T. Peebles, Supreme Court Case No. SC92811 (March 29, 2013), the Supreme Court issued a 6-month suspension of the Judge. The Commission had recommended her removal from office. The facts of the case come from the Commission's brief…

The Presiding Judge of the 22nd Judicial Circuit alleged misconduct involving the Honorable Barbara T. Peebles. The complaint concluded:

"It is clear to me that her tardiness is symptomatic of her overall lack of supervision, management, sloppiness in handling her docket due to her being routinely late throughout the year, and further not being there at all times without providing for full coverage while in China is simply a failure to perform her judicial responsibilities. Clerks were placed in an impossible situation to the overall detriment of the court resulting in a serious breach of public trust."

The Commission considered the complaint, along with a newspaper article making similar allegations. The Commission's investigation included a series of letters to Respondent, her responses and the interviews of numerous witnesses. The Commission found Respondent guilty of Counts I, 4, 5, 6, and 9 and not guilty of Counts 2, 3, 7, and 8.

In Count 1 the Commission found Respondent made statements to a newspaper reporter to justify her decision to lower the bond in a pending case. Respondent admitted the statements violated Canon 3B(9).

In Count 4 the Commission found Respondent had a pattern of being an hour or more late on the bench, causing discourtesy and delay.

In Count 5 the Commission found Respondent failed to supervise her clerk when the clerk called the docket and Respondent was either in chambers or not at the courthouse. Even though Respondent approved the clerk's announcements at a later time, the process was found to create an appearance that the clerk was functioning as the judge. The Commission also found that Respondent failed to make proper arrangements for a substitute judge or to continue her dockets when she was on vacation. With Respondent out of the country, the clerk started to call the docket as before, once again creating the appearance that the clerk was acting as a judge.

In Count 6 the Commission found that Respondent destroyed a filed Motion to Dismiss without notice to the parties, knowing she had no authority to do so and then made statements to her clerk encouraging the clerk to deny knowledge of this event if questioned by the Circuit Attorney.

In Count 9 the Commission found Respondent failed to be candid in a phone call to the Circuit Attorney's Office about her destruction of the Motion in Count 6.

The Commission concluded that Respondent violated various Canons including I, 2A, 3A, 3B I, 3B2, 3B3, 3B4, 3B8, 3B9, 3C 1, 3C2, 3C3, VAMS 575.110 and that her actions were misconduct, willful neglect of duty and the commission of a crime under Article V, §24 of the Constitution.

The second case, involving Judge Prewitt, resulted in a reprimand from the Supreme Court.

In 2017, the Judge was cited for ex parte communications with a Defendant, about his own case and other cases in his court, which included recommending a specific lawyer to represent the Defendant in his courtroom.

The Commission has also published advisory opinions, here are the recommendations issues in the last few years…

1. **To what extend may a judge be involved in social media? May a judge use social media as part of a campaign for judicial office?**

The Commission considers a judge's social media involvement to be under the same ethical requirements as any other public statements. That is, all the Code of Judicial Conduct's limitations apply such as avoiding impropriety, the appearance of impropriety, not lending the prestige of office to advance the private interests of others, making no statements indicating bias or prejudice based on race, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, making no statements that would impair the fairness of pending or impending matters in any court, or not being involved in charitable or political fundraising.

It is the Commission's further opinion that "friending," "unfriending", or "liking" in social media may not be determinative of whether a judge's impartiality is reasonably questioned. However, the use of these terms in a social media setting is a factor to consider in gauging the judge's relationship with the attorney, party or witness and whether recusal is required. As such disclosure to the attorneys and parties of the existence of a "friend", "unfriend", or "liking" social media relationship may be appropriate.

The Commission also understands the impossibility of policing all posts of all "friends" or of all "friends of friends" of the judge. Nonetheless, it is the Commission's view that a judge who participates in social media must make reasonable efforts to review such posts and sever or "unfriend" anyone whose conduct or postings would place the judge in position of appearing to endorse the above stated prohibited conduct.

When a judge chooses to use social media as part of the judge's election campaign, best practice would suggest that a separate public social media site be used. Such site should be limited to the judge's identity, qualifications, present position or other facts that are relevant to allowing the voters to make an informed decision. Such site may also be operated by the judge's campaign committee. The judge must take care to ensure that any postings on the judge's public site or any site operated by the judge's campaign committee conform to the restrictions of political activity and campaign conduct as outlined in the Code of Judicial Conduct. For example these sites must not misrepresent any facts, make pledges or promises of conduct in office other than the faithful and impartial performance of judicial duties or make statements that detract from the dignity of judicial office.

These public sites may be used to solicit publicly states support or campaign contributions but

such solicitations would again be subject to the restrictions of Code of Judicial Conduct.

Finally, while the Commission does not think that judicial involvement in social media is per se unethical, it is conduct that exposes the judge to unnecessary danger of engaging in conduct that may be violative of the Code of Judicial Conduct. If a judge chooses to nonetheless be involved in social media, it is the Commission's view that under a best practice consideration, the judge should limit the judge's "friends" to those persons for whom the judge would recuse in the event such persons appeared in the judge's court. Further, in order to limit the potential of ethical violations and the number of cases in which the judge might be required to recuse, the judge should take care to adjust the "privacy" setting of the judge's personal Facebook or other social media account such that it could be viewed only by those who are the judge's listed "friends" and not by the general public.

(Dated: April 24, 2015)

2. May a Municipal Judge have the court clerk investigate the prior records of DWI defendants prior to hearing in order to determine whether pursuant to VAMS 479.170 the case should be referred to the Associate Circuit Court?

It is the Commission's opinion that this is an issue of error and not jurisdiction [*State ex rel. Webb*, 275 SW3d 249].

The controlling rule is Supreme Court Rule 2-2.9(C): "A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that properly may be judicially noticed." In addition, a judge per Supreme Court Rule 2-2.12 must require court staff to "act in a manner consistent with the judge's obligations under this Code."

Accordingly, it is the Commission's view that the judge should not instruct the clerk to investigate defendants' prior records on the judge's behalf and should recuse in any pending cases in which the clerks have previously done so.

The judge may inquire of the defendant as part of any plea or sentencing as to whether the case violates section 479.170 and then make a ruling taking into consideration any relevant disclosure.

Finally, the judge may wish to contact the local Circuit Court presiding judge, the Supreme Court Rules Committee or the Missouri Legislature to promulgate a rule or law that would provide for the clerk to perform the relevant background investigations and to report such findings to the court.

(Dated April 30, 2014)

3. May an associate circuit judge serve as a member of the Executive Committee for the United Way? In that position the judge would make no solicitations for funds.

Supreme Court Rule 2-3.7 provides that "a judge may serve as an officer, director, trustee, or nonlegal advisor to ... a ... charitable ... organization, not conducted for profit, subject to the following requirements and the other requirements of this Rule 2."

The Commission previously opined in Opinion 115 that an associate circuit judge should not serve as division chairman of the United Way campaign since, at that time, the United Way campaign "has the sole purpose of soliciting funds for various charities and philanthropic organizations." The Commission determined that such an involvement in a charity that existed solely to raise and distribute funds would be an appearance of impropriety. The Commission determined that an involvement in a charity that existed solely to raise and distribute funds would create an appearance of impropriety.

Opinion 115 was drafted in 1985 when a different canon (Supreme Court Rule 2, Canon 5B) was in effect. The current rule (Supreme Court Rule 2-3.7) contains new language that explicitly authorized judges to "assist ... an organization in planning fund raising and may participate in the management and investment of the organization's funds but shall not personally participate in the solicitation of funds or other fund-raising activities ...." Clearly, judges are not prohibited from belonging to organizations that engage in fund raising activities; they simply cannot personally engage in fund raising.

The United Way has expanded its mission beyond fund raising and now assesses community needs and priorities and changes in those needs and priorities over time. The United Way now provides leadership in developing strategic community engagement plans and community investment priorities and recommendations. Given the expansion of the United Way's mission and the rule changes noted above, the Commission now concludes that a judge is permitted to serve on the Executive Committee of the United Way, subject to the admonition that the judge cannot personally participate in fund raising activities, and subject to the remaining provisions of Rule 2-3.7.

Prior Opinion 115 of the Commission is withdrawn.

(April 30, 2014)

4. How political can a Judge be? Excerpts from an opinion involving Judges and the non--partisan court plan.

In Opinion 128, the Commission approved a judge's participation in a media publicity campaign to recruit foster families as being consistent with Canon 4B, so long as the judge's involvement did not involve the solicitation of funds.

Similarly, in Opinion 158, the Commission held that since such conduct was on behalf of measures to improve the law, the legal system, or the administration of justice, a judge could

express views and testify before the legislature concerning proposed legislation to create a new judicial circuit without violating the prohibition in the predecessor of Canon 5A(4).

Finally, in Opinion 160, the Commission held that, pursuant to former Canon 7A(4), which was identical to present Canon 5A(4), a judge may publicly endorse or criticize the nonpartisan court plan since such conduct was on behalf of the improvement of the law, the legal system, or the administration of justice (although a judge should not publicly endorse a specific candidate).

Thus, the Commission has previously opined that judges generally may publicly state their support for, or opposition to, the non-partisan court plan because it relates to the method of selecting judges and therefore is an effort to improve the law, the legal system or the administration of justice. The Commission's opinions make no distinction between expressing those views verbally or in writing.

The Canon's generally do not constrain a judge's activities in furtherance of efforts to improve the law, the legal system, or the administration of justice. We note that by implication, this means that judges may also engage in activities against measures that can be viewed as impairing the law, the legal system or the administration of justice. Since we have recognized that efforts to change the nonpartisan court plan address methods for selecting judges and therefore are matters pertaining to improvement of the law, the legal system, or the administration of justice, a judge's activities in support or opposition of those efforts is permitted unless forbidden elsewhere in the Canons or by law.

Analysis of involvement in politics…

Mo. Const. art. V, §25(f) provides:

No judge of any court in this state, appointed to or retrained in office in the manner prescribed in sections 25(a)-(g), shall directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any political campaign.

As can be seen, the section prohibits judges from (a) contributing to or holding office in a political party, (b) contributing to or hold office in a *political organization*, and (c) taking part in any *political campaign*.

The first prohibition in the section, a judge cannot "contribute to or hold office in a political party," is unambiguous. "Language is ambiguous if it is reasonably open to different constructions." *Gulf Ins. Co. v. Noble Broadcast*, 936 S.W.2d 810, 814 (Mo. banc 1997). Contributing money, or holding office, both have an ordinary, usual and common meaning. They are susceptible to more than one meaning. Similarly, the phrase "political party" is commonly understood as parties, such as the Republican party and the Democratic party whose goal is to elect their candidates to office. They are involved in partisan political activity. To the extent the dictionary would need to be consulted, "political party" is defined as "[a]n organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office." Black's Law Dictionary 1197 (8th ed.

2004). Another definition is a "group of persons organized for the purpose of directing the policies of a government especially by providing the principal political personnel and usually having as a basis for common action one or more factors (as principle, special interest, or tradition) upon which they have substantial agreement." Webster Third New International Dictionary 1648, 1755 (1993). There is no ambiguity in this provision.

The same is true of the second prohibition, that a judge cannot contribute to or hold office in a political organization, because the Supreme Court of Missouri has defined the phrase "political organization." When the Supreme Court of Missouri promulgated Supreme Court Rule 2, the Code of Judicial Conduct, it adopted the ABA Model Rules of Judicial Conduct with modifications. Among those modifications were inclusion of Canon 5A(1), which copies Mo. Const. art. V § 25(f) virtually verbatim. At the same time, the Supreme Court of Missouri defined the phrase "political organization" as used in Canon 5A(1) by Supreme Court Rule. Rule 2.02 provides definitions and context to words and phrases used in the Canons. Rule 2.02 (n) provides: "'Political organization' denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Canon 5." "If a term is defined in [a Supreme Court Rule], we are bound to apply that definition." *In re A.S.O.*, 75 S.W.3d 905, 910 (Mo. App. W.D. 2002). Therefore, to the extent any ambiguity may have existed as to the meaning of "political organization," the Supreme Court has already spoken to resolve the issue, and it is the understanding of the phrase that must be applied. Accordingly, a judge cannot contribute to or hold office in a "political organization," that is, one involved in partisan political activity to secure election of or appointment of candidates to public office.

While the first two prohibitions of Mo. Const. art. V §25(f) and Canon 5A(1) may be clear and unambiguous, the same cannot be said for the third. This is so because the phrase "political campaign" is reasonably open to different constructions. Is a political campaign only an election contest between or among candidates for office? What about a school bond election, or a sewer bond issue, or a judicial retention election? How about an annexation, creation of a fire protection or road district, or perhaps a rural water district? And what of a single-issue initiative petition to amend a provision of the Constitution? Needless to say, there are any number of varieties of ballot issues presented to the people for their vote, and the question is, does Mo. Const. art. V.§ 25(f) prohibit taking part in all of them.

Political campaigns

There are few definitions of the phrase "political campaign." It is not defined as Black's Law Dictionary supra, Webster's Third New International Dictionary supra, Random House Unabridged Dictionary (1993), A Dictionary of American English on Historical Principles (1942) or Word Menu (1992). The definitions that do appear tend to focus on partisan political elections. For example, the phrase is defined as "1. A race between candidates for elective office; "I managed his campaign for governor'; 'he is raising money for a Senate run [;]' 2. the campaign of a candidate to be elected [syn: campaigning]." "political campaign." Likewise, the single word "campaign," when defined in a political or elective sense, frequently tends to contemplate partisan political activities on behalf of candidates. One definition is "the completion by rival political candidates and organizations for public office." Thus, it can be

argued that "political campaign" as used in Mo. Const. art. V, § 25(f) refers to campaigns involving election of candidates.

But there is also definitional support for a broader view of the phrase "political campaign."

Applying these definitions, "political campaign" can be given a very board meaning, such as any organized effort designed to promote some cause or achieve some result relating to government or the conduct of government affairs. Accordingly, the understanding of Mo. Const. art. V, § 25(f) varies depending on whether the phrase "political campaign" is given a narrow or broad construction.

The Commission is of the opinion that both nonpartisan and elective judges may generally engage in the following activities in support of or in opposition to the proposed initiative amendment, subject to the advisories discussed *infra*:

(1) Speak in favor or against the proposition before civic groups;

(2) Support or oppose the proposition in response to media or voter inquires;

(3) Serve on citizen's committees supporting or opposing the proposition;

(4) Make a monetary contribution to a citizens' committee supporting or opposing the proposition;

(5) Allow their names to be used in advertisements that support or oppose the proposition.

But…

While opining that a judge may comment in support or opposition of matters on behalf of the law, the legal system, or the administration of justice, the Commission also notes the Supreme Court Order of July 18, 2002 In Re: Enforcement of Rule 2.03, Canon 5B (1)(c). That order required that: "Recusal, or other remedial action, may nonetheless be required of any judge in cases that involve an issue about which the judge has announced his or her views as otherwise may be appropriate under the Code of Judicial Conduct." A judge who actively engages in any of the permitted activities outlined above supporting or opposing the suggested initiative may be required to recuse on any case coming to the court relating to the initiative; however, in the opinion of the Commission unless the judge who is actively involved in these activities was in fact acting on behalf of the court en banc, that judge's engagement is such activities would not require the recusal of other judges sitting on the same court who have not announced their views or become actively engaged in activities supporting or opposing the suggested initiative.

Likewise, all judges are expressly reminded of the admonitions of Canon 4A, which states:

Extrajudicial Activities in General. A judge shall conduct all the judge's extrajudicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

In particular, it is the Commission's view that Canon 4(A)(2) is to be construed broadly, and therefore, it is the Commission's opinion that any judge, elective or nonpartisan, contemplating engaging in any of the more public types of permitted conduct enumerated supra, such as making statements or permitting their name to be used in advertisements, should exercise caution. Judges should always maintain the dignity appropriate to judicial office. Doing so most certainly means, at a minimum, that a judge must not misrepresent facts directly or indirectly in any statement or advertisement.

It is also the opinion of the Commission that Canon 4C prohibits judges from personally soliciting funds on behalf of an organization supporting or opposing the initiative. Canon 4C(3)(b) permits a judge to assist such an organization "in planning fund-raising," but states that judges "shall not personally participate in the solicitation of funds or other fundraising activities …" Similarly, Canon 4C(3)(b)(iii) declares that a judge "shall not personally participate in membership solicitation if the solicitation might reasonable be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism."

In addition, while a judge may serve on a citizen's committee as described herein, Canon 4C(3)(a) contains the following restrictions:

A judge shall not serve as an officer director, trustee or nonlegal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Canon 3C (2) specifies that a judge must require the judge's staff and court officials subject to the judge's direction and control to observe the "standards of fidelity and diligence that apply to the judge." In addition, Canon 5A (5) provides that employees of circuit and associate judges appointed pursuant to the nonpartisan court plan "shall not directly or indirectly make any contributions to or hold an office in a political party or organization or take part in any political campaign." As such, it is the opinion of the Commission that court personnel employed by nonpartisan judges are restricted in their activities in the same manner and to the same extent as the judge, judges or court for whom they work. The Commission notes, however, that these restrictions can be modified by statue such as § 477.011, which requires that "[a]ll services

required by the judicial conference of the State of Missouri … shall be furnished by employees of the supreme court."

Canon 3B (9):

A judge shall abstain from public comment about *a pending or impending proceeding in any court* and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the Court. (emphasis added).

The Commentary to Canon 3B (9) goes on to state: "This requirement continues during any appellate process until final disposition."

Finally, the Commission suggests to all judges who consider participating in activities related to the improvement of the law, the legal system or the administration of justice that they be mindful of some of the thoughts expressed in the Preamble to the Canons.

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concept of justice and the rule of law. Intrinsic to all sections of this Rule 2 are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

(Dated October 20, 2009.)

5. **May a judge employ the Remittal of Disqualification provision of the Code of Judicial Conduct to avoid recusal in a case wherein the judge knows any party is a great-grandparent, grandparent, parent, step-parent, guardian, foster parent, spouse, former spouse, child, step-child, foster child, ward, niece, nephew, brother, sister, uncle, aunt or cousin?**

Discussion:

The Remittal of Disqualification provision of the Code of Judicial Conduct (Canon 3F) allows a judge, having disclosed on the record the basis of disqualification, to nonetheless participate in a proceeding provided that the base of the disqualification is "other than personal bias or prejudice concerning the party and lawyers" and provided that the parties and attorneys, so advised of the basis of disqualification, nonetheless agree that the judge may participate in the proceeding.

On the other hand, VAMS 105.464.1 provides:

1. No person serving in a judicial or quasi-judicial capacity shall participate in such capacity in any proceeding in which the person knows that a party is any of the following: the person or the person's great-grandparent, grandparent, parent, stepparent, guardian, foster parent, spouse, former spouse, child, stepchild, foster child, ward, niece, nephew, brother, sister, uncle, aunt or cousin.

2. No provision in this section shall be construed to prohibit him or her from entering an order disqualifying himself or herself or transferring the matter to another court, body, or person for further proceedings.

In the opinion of the Commission on Retirement, Removal and Discipline, while Canon 3F's provision on Remittal of Disqualification would appear to allow a judge, with consent of the attorneys and parties, to remain on some proceedings wherein disqualification would otherwise be required, the dictates of VAMS 105.464.1 limits the application of Canon 3F.

Canon 3B(2) requires that a judge shall be faithful to the law and the law, VAMS 105.464.1 contains no remittal of disqualification provision. Even with the consent of the attorneys and parties, a judge may not participate in any proceeding wherein a party is the judge's great-grandparent, grandparent, parent, stepparent, guardian, foster parent, spouse, former spouse, child, stepchild, foster child, ward, niece, nephew, brother, sister, uncle, aunt, or cousin.

(July 21, 2008)

6. May a judge allow a condition of probation or of a plea bargain requiring donations to a county school fund in lieu of a fine?

Discussion:

The Commission has issued a series of Opinions (172, 173 and 176) dealing with the questions pertaining to the imposition of conditions of probation requiring donation in lieu of fines:

In Opinion 176 concerning the issue of whether a judge can allow such payment if it is a precondition to a plea bargain, the Commission held:

Even though the judge does not impose a charitable or civic payment as part of a sentence or condition of probation, when the judge knows such a payment is a pre-condition to receiving the recommendation, the appearance of a "payoff" remains. The judge has the obligation to review the plea agreement and exercise discretion in a manner so as not to create the appearance of a "payoff." The judge should not approve such a plea bargain absent an ordinance, statute or constitutional provision authorizing such payments.

The question now before the Commission is whether the appearance of a "payoff" is avoided by making the donation to the same fund (the county school fund) that receives fine money pursuant to Article IX, Section 7 of the Missouri Constitution. The pertinent language of Article

IX Section 7 of the Missouri Constitution provides that ... the clear proceeds of all penalties, forfeitures and fines ... shall be distributed to the county school fund. The Commission notes that there is no specific mention in Article V, Section 7 of payments made as a condition of probation or a plea agreement, and thus, the Commission finds no specific constitutional provision authorizing such payments.

In Opinion 173, the Commission reviewed VAMS Section 559.021(2) to determine whether that statute authorized conditions of probation requiring payments to the county treasury, county crime reduction fund or a specified charity absent a state or constitutional provision authorizing such payments. The Commission stated:

In addition, VAMS Section 559.021(2) in pertinent part provides: "... the court may order such condition as the court believes will serve to compensate the victim, any dependent of the victim, or society." The Commission does not interpret the words "or society" to override the language of Article IX, Section 7, of the Constitution of the State and Missouri or the prohibitions in Supreme Court Rule 2, Canons 2 and 4, against fund raising and creating the appearance of impropriety.

It is the Commission's opinion that even though a condition of probation or a plea agreement requires that a payment go to the same fund (county school fund) as required by the Constitution for fines, there is still the appearance of a "payoff" and the appearance of impropriety. Such conditions of probation or a plea agreement should not be allowed unless specifically authorized by a municipal ordinance (in the case of municipal charges) or by a statute or constitution in state charges.

(February 20, 2002)

7. May a judge speak at a continuing legal education course sponsored by a law firm wherein the judge's participation in the course is advertised to either the Bar or the general public? Secondly, what restrictions are there on the use of the judge's name and title in the promotion of continuing legal education programs sponsored by bar associations, law schools or other organizations that are not likely to appear before the judge as a party or an attorney for a party?

This situation involves balancing two conflicting goals found within the Code of Judicial Conduct. This first encourages judges to be involved in legal education and the second is to avoid giving the appearance that the judicial office is being used to promote the private interests of the sponsors.

The commentary to Canon 4B provides:

As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or

through a bar association, a judicial conference or other organization dedicated to the improvement of the law.

In addition, in Opinion 121 the Commission has provided that a judge may "speak at a training session for police officers and discuss the types of problems that arise in driving while intoxicated cases and what steps those officers might take to better prepare cases before they come to court." In Opinion 160 the Commission opined that a judge under the nonpartisan court plan could "publicly endorse or criticize the nonpartisan court plan in an effort to improve the law, the legal system or the administration of justice." The Commission's opinion has been and continues to be that a judge's participation in educational endeavors having to do with the law, the legal system or the administration of justice should be encouraged and thus, the judge may appear at schools, bar associations, the Attorney General's, public defender's or prosecutor's offices, police departments, private law firms, and even political functions so long as the judge's appearance is confined to an educational endeavor to improve the law, the legal system or the administration of justice.

If the judge chooses to make such appearances, the judge should also be available for similar appearances before other organizations with competing, opposing or similar viewpoints. That is, if the judge lectures at the public defender's office, the judge should also be available to the office of the prosecuting attorney.

The second issue involved is that of advertising. Canon 2B requires that a judge: "shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." The commentary to Canon 2 also provides as follows:

A judge should avoid lending the prestige of judicial office for the advancement of the private interests of others ... in contracts for publications of the judge's writings a judge should retain control over the advertising to avoid exploitation of the judge's office.

As a result of the restrictions of Canon 2, it is the opinion of the Commission that the judge should avoid speaking at any continuing legal education program or educational endeavor that is sponsored and advertised by an organization, public or private, that is likely to appear before the judge as a party or attorney for a party. This restriction would include educational functions sponsored by private law firms. Judges could appear at advertised programs sponsored by bar associations, law schools or profit groups organized solely to conduct educational program as such organizations would not likely appear before the judge as a party or counsel to a party. Judges could continue to appear at in-house programs of organizations likely to appear before the judge, such as law firms, so long as these programs are not publicly advertised and so long as the judge is available for similar programs given by other competing, opposing, or similar organizations.

The Judicial Proprieties Committee of the State of Delaware provided a requesting judge an opinion on April 11, 1995, concerning judicial participation in for-profit seminars on legal issues. The Commission on Retirement, Removal and Discipline has concurred with the

following language of that opinion:

The Judicial Proprieties Committee has considered this matter an unanimously opined that your participation in such a presentation would not constitute a violation of any provision of the Delaware Judges' Code of Judicial Conduct, subject to the qualifications noted below:

It is generally appropriate for a judge to 'speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice' so long as such activities do not interfere with the judge's ability to properly perform the judge's duties or 'cast reasonable doubt' on the judge's impartiality. Judges' Code of Judicial Conduct, Canon 4A. Thus, your participation in a seminar on collection law in Delaware is generally consistent with your ethical obligations so long as the qualifications specified in Canon 4A are satisfied.

However, there is an additional ethical consideration as set forth in Judges' Code of Judicial Conduct, Canon 2B, which prohibits a judge from "lend[ing] the prestige of the judicial office to advance the private interests of others." Although this consideration does not preclude a judge from participating in a seminar being presented by a for-profit organization, it does require that the judge take care to avoid the impression that the prestige of the judicial office is being used to advance the private interest of another. Thus, the judge must be assured that the judge's title or office will not be used in promotional materials in a way that calls special attention to the office so as to encourage participation or attendance in the seminar. The judge also may not participate in the marketing aspects of the program. Also, to ensure that there is not appearance of favoritism, the judge should be willing and available to accept similar invitations from other organizations, should other invitations occur.

We note that we have addressed this issued previously in an opinion issued December 18, 1989, and came to the same conclusion. In that opinion, the Judicial Proprieties Committee held that the Judge could speak at a conference on matrimonial law sponsored by a for profit corporation. We noted that the committee on Codes of Conduct of the Judicial Conference on the United States reached a similar conclusion:

In the last twenty years or so, there have been a significant increase in the scope and importance of continuing education programs for the practicing bar, programs often conducted outside the confines of traditional legal education. It is appropriate for judges to participate in such programs for compensation, but there are some additional concerns. For instance, these programs are often widely advertised. Judges participating in such programs should ensure that promotion of the program does not trade on the judicial office, and in particular that the judge's official position Is not emphasized to encourage participation in the program.

See Advisory Committee on the Codes of Conduct, Advisory Opinion No. 79 (May 6, 1987). Similarly, the judicial ethics advisory opinions from many other jurisdictions have reach a similar conclusion. *See, e.g., The Digest of Judicial Ethics Advisory Opinions*, Fla. 76-18 (December 1, 1976) at 110; Ga, 102 (August 28, 1987) at 200; Ks. JE-22 (October 30, 1987) at 223; Or. 87-3 (August 10, 1987) at 461; Tn. 89-9/issue 1 (1989) at 508.

To ensure that the judge's office is not emphasized in the promotional materials to encourage participation in the program, the judge's title may be noted on the program but only to the same degree that the titles and positions of the other speakers are noted. The judge's official position should not be featured or singled out in the marketing of the program.

Finally, the issue of whether you may receive compensation for participating as a panelist in this program is addressed in Canon [4H] of the Judge's Code of Judicial Conduct. A judge may receive compensation or reimbursement for expenses for law-related and extra-judicial activities permitted by the Code if the source does not give the appearance of influencing the judge in the judge's judicial duties, or otherwise give the appearance of impropriety, and if the amount is reasonable and does not exceed what the panelists who are not judge's receive. In addition, expense reimbursements should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge. See Canon [4H]. Thus, it is appropriate for you to accept a small stipend for your participation in the seminar, so long as the amount is reasonable and the same as that received by all of the other panelist. Also, you may attend a luncheon at the seminar at no cost to you if the other panelists are also invited to the luncheon.

In conclusion, it is the opinion of the Commission on Retirement, Removal and Discipline that a judge should not be involved in a continuing legal education program sponsored by a law firm where the program will be advertised to the Bar or the general public using the judge's name and title. Such advertisement would give the appearance that the judge is lending the prestige of judicial office to advance the private interest of the law firm.

The use of the judge's name and title in promotion of continuing legal education programs sponsored by bar associations, law schools or other organizations that are not likely to appear before the judge as a party or an attorney for a party is allowed to the limited extent as outlined in the State of Delaware opinion quoted herein.

(Dated: July 20, 2001)

MMACJA 2019 NOVEMBER CONFERENCES

LEGISLATIVE UDPATE

PREPARED BY: RICH AUBUCHON, GOVERNMENTAL CONSULTANT

1. GENERAL HISTORY OF RECENT SESSIONS

   A. 2015 – Coming off the most successful election cycle for Republicans in Missouri to date, Republicans earned 118 seats in the House. Right to work was passed in Missouri. Riots of Ferguson caught national attention and Auditor Tom Schweich passed by suicide. Speaker Diehl resigned and Todd Richardson becomes Speaker of the House. It was a tumultuous year setting the stage to greater scrutiny of municipal courts in Missouri. Legislation of the year included issues of surcharges for courts and procedures of court.
      1. SB 5 – Modified distribution of traffic fines and court costs
      2. SB 67 – Related to court surcharges and reporting requirements for municipal courts.
      3. SB 254 – Motor vehicle legislation
      4. HB 799 – Moved the 12th Division of the 16th Judicial Circuit Court
      5. SB 5 - Litigation Ensues
      6. Ferguson Report
   B. 2016 – Presidential election year. Massive gains in statewide offices by Republicans. Greitens becomes Governor and takes on big issues with a strong public approach. Infighting between the Governor and legislators started immediately.
      1. SB 572 – Major shifts for municipal courts and municipalities.
      2. SB 588 – Expungement Law Reform
      3. SB 765 – Traffic citation quota ban and mobile recording requirements
   C. 2017 – Special Sessions on utility rates to spur economic development and a growing anxiety over Governor Greitens' antagonistic stance toward the legislature creates tensions that result in a boiling point. A relatively unproductive legislative session follows.
      1. SB 128 – Vetoed – Municipal Judge and traffic violation rewrite to walk back parts of SB 572 and SB 5.
      2. HB 50 – Changes Divisions of court in City of Independence
   D. 2018 – 2018 will go down as the most tense, unpredictable year in the Missouri Capital known by most anyone. The legislature impeaches Governor Greitens and the Governor resigns his office faced with pressure from criminal charges and civil lawsuits. Governor Parson is sworn in as Governor and the legislature has one of the most productive sessions of recent memory. Massive issues are passed and peace enters the Capitol for the first time in two years.
      1. HB 2562 – Vetoed by the Governor – Drug Treatment Courts and Municipal Court changes
      2. HB 2 – Special Session - Drug Treatment Courts

2. ISSUES FOR FUTURE: Court costs and surcharge legislation will likely be the next big step on judicial reform in the legislature and municipal court changes like those of HB 2562 above.

3. BALLOT INITIATIVES: Amendment 2, Clean Missouri, Medical Marijuana

4. SESSION STATISTICS IN A GLANCE
   1. **1990 Individual pieces of legislation filed in 2019;**
   2. **191 Bills were Tracked For MMACJA;**
   3. **101 Bills TAFP (w/ budget bills);**

5. DETAILED REVIEW OF LEGISLATION PASSED in 2019
   1. **HB 192 (Board costs as court costs)**
   2. **HB 499 (Transportation)**
   3. **HB 547 (Veterans' Treatment Courts)**
   4. **SB 1 (Expungement)**
   5. **SB 7 (Joinder Reform)**
   6. **SB 12 (Service Fees)**
   7. **SB 83 (Court Proceedings - Visitation)**
   8. **SB 147 (Motor Vehicles)**
   9. **SB 224 (Civil and Criminal Discovery Rules)**
   10. **SB 230 (Guardianship/Conservatorship Proceedings)**
   11. **SB 297 (Jury duty exceptions for those over 75yrs old)**

6. 2020 SESSION
   1. **Election Year Politics – Presidential Election Year**
      a. **2020 Election favors incumbents**
   2. **Possibly more bills on criminal justice reform**
   3. **Civil Justice Reform bills will likely be filed and become priorities**
   4. **Look for bills to change Title IX process to be filed**
   5. **Education Reform bills will likely be filed to expand Charter Schools**
   6. **Budgets will be key for courts**
   7. **Legislation likely will be filed similar to HB 2562 in 2018 for municipal courts**

2019 Summary of Supreme Court Rule Changes

Below is a summary of relevant amendments to the Supreme Court Rules, which the Supreme Court issued by Order from July 1, 2018 through June 30, 2019. Additions to the rules are shown in **blue**, deletions are in **[red]**.

The information provided is not the official copy of the rule changes. The official copy of the orders and rule changes may be found at http://www.courts.mo.gov, click on Rules & Resources, Court Rules, click on Orders/Rules. If you have any questions about this summary, please contact Kelly Cramer, Assistant Legal Counsel, at 573-751-4377.

Ordinance Violations and Violation Bureaus (Rules 37-38)

37.01 RULES – WHEN APPLICABLE

Effective: May 1, 2019

Rule 37 governs the procedure in all courts of this state having original jurisdiction of ordinance violations and the disposition of any such violation in a local violations bureau.

37.04 SUPERVISION OF COURTS HEARING ORDINANCE VIOLATIONS

Effective July 1, 2018 – Correction

➢ *Revised the date that a municipal judge's substantial certification with MOS is due from January 1 and July 1 of each year to a single report due by September 1 of each year. Revised the Presiding Judge's deadline for submitting completed MOS certifications of municipal judges from February 1st and August 1st to a single reporting on October 1st of each year.*

Appendix A

Minimum Operating Standards for Municipal Divisions

and Municipal Division Judges – Annual Certification Requirement

Minimum Operating Standard # 10: Municipal divisions shall be well-managed and accountable to the law, with appropriate oversight of municipal division operations provided by the circuit court presiding judge of the judicial circuit.

♦ **Financial and Bookkeeping (section 483.075.1, RSMo)**

***

☐ The municipal division maintains bond coverage or employee theft coverage for all personnel with access to municipal division monies.

Certification of Compliance with Minimum Operating Standards

♦ **Principal/Chief Judge**

By September 1 of each year, the municipal judge in each municipality with one regular municipal judge, or the chief municipal judge in municipalities with more than one municipal judge, subject to the exceptions listed below, shall certify to the Office of State Courts Administrator compliance with **all** minimum operating standards.

This certification must be made personally by the judge, and not by a clerk, court administrator, or other personnel. This certification shall be submitted in an electronic format as designated by the Clerk of the Supreme Court of Missouri, and shall include the following electronic attachments:

* Semiannual disposition report of intoxication-related traffic offenses provided to the circuit court *en banc* pursuant to section 479.172, RSMo;

* Executed substantial compliance certification form, section 479.360.1(1-10), RSMo; and

* CLE compliance form, Rule 18.

In consolidated municipal courts which serve more than one municipality, a separate certification must be filed for each municipality served.

♦ **Non-principal/non-chief judge**

By September 1 of each year,

* in municipalities with more than one municipal judge, each regular municipal judge other than the chief municipal judge, and

* in all municipal divisions, each substitute, provisional, part-time, and *pro tem* municipal division judge, subject to the exceptions listed below, shall certify to the Office of State Courts Administrator that the individual judge is in compliance with Minimum Operating Standards 1B, 2, 3, 4B, 5B, and 9. This certification must be made personally by each individual non-principal/non-chief judge, and not by a clerk, court administrator, or other personnel. This certification shall be submitted in an electronic format as designated by the Clerk of the Supreme Court of Missouri, and shall include the following electronic attachment:

* CLE compliance form, Rule 18.

Exceptions: Certification of Compliance with Minimum Operating Standards shall not be required of associate circuit judges presiding over municipal division cases for municipalities which have elected to have their cases heard by the associate division of the circuit court, special judges sitting temporarily by assignment from the Supreme Court of Missouri, or special judges sitting by assignment from the presiding judge of the circuit. (The exception for associate circuit judges applies only to associate circuit judges hearing municipal division cases at the state circuit court. An associate circuit judge who hears municipal division cases by agreement in a freestanding municipal division is required to file the same certification as would be required of a municipal judge.)

Within one month after each reporting cycle, the Office of State Courts Administrator shall provide the presiding circuit judge of the judicial circuit with the results of its municipal division judges' certifications. Subject to the exceptions above, the presiding circuit judge shall be responsible for ensuring that: each municipal division and the principal municipal division judge is in compliance with all minimum operating standards and each municipal division judge other than the principal municipal division judge is in compliance with minimum operating standards 1B, 2, 3, 4B, 5B, and 9.

SUPERVISION OF COURTS HEARING ORDINANCE VIOLATIONS
Appendix E
PROTOCOLS FOR PRESIDING CIRCUIT COURT JUDGES IN SUPERVISING MUNICIPAL DIVISION JUDGES

Effective July 1, 2018

➢ *Revised the date the Presiding Judge supervising municipal division judges is required to submit each municipal judge's MOS certification from Appendix A from February 1 and August 1 of each year to a single submission due by October 1 of each year.*

***

(b) In fulfilling their obligation to supervise municipal divisions within their circuit, the presiding circuit judge shall:

***

(4) Submit to the clerk of the Supreme Court of Missouri by ~~[February 1 and August 1]~~ October 1 of each year each judge's executed minimum operating standards form referenced in Appendix A to Rule 37.04 and to provide a list of any judges or divisions that did not return the form for the most recent reporting period.

(c) The presiding circuit judge has the authority to take prompt and appropriate action in regard to the municipal division itself, to the municipal judge, or both, as appropriate, if the annual review or other information brought to the attention of the presiding circuit judge indicates that the municipal division or judge is having difficulty substantiallycomplying with the law and minimum operating standards. If the presiding circuit judge is unable to obtain substantial compliance voluntarily or believes that the noted deficiencies are serious or continuing, he or she shall immediately give written notice to the clerk of the Supreme Court of Missouri of the identified noncompliance/deficiencies.

(d) The presiding judge, with the assistance of the clerk of the Supreme Court, shall prepare a plan for remediation of the identified concerns and, until the plan for remediation is fully implemented, shall keep the clerk apprised in writing, at least once every 60 days, of the municipal division's success in coming into substantial compliance with the plan.

(e) If the circumstances appear to the presiding judge or the clerk or judges of the Supreme Court to require more immediate and decisive action in the interests of justice, any or all of them may take appropriate action with regard to the noncompliant municipal division. By way of example, this could include directives for necessary changes in operations with appropriate deadlines for compliance; consultation with the governing authorities of the municipality; reassignment of all cases pending in the division to another judge or to multiple judges as may be necessary to handle the case load; suspension of the division's operations until sufficient remediation of the identified noncompliance/deficiencies has been accomplished; reporting the municipal judge to the appointing authority for that judge or to the Commission on Retirement, Removal and Discipline; or other appropriate action within the constitutional authority of the presiding circuit judge or the Supreme Court of Missouri.

37.06 DEFINITIONS

Effective July 1, 2018

➢ *Added new definitions.*

Whenever in this Rule 37 the following terms are used, they mean the following:

(a) "Animal control violation," any violation of an ordinance relating to the care or control of any animal;

(b) "Clerk," any duly appointed court clerk or court administrator or any deputy or division court clerk serving courts to which this Rule 37 applies;

(c) **"Committee," a committee consisting of judges appointed by this Court to establish the uniform fine schedule for Rule 37 violations bureaus;**

([e]**d**) "Corrections official," a person in control of a detention facility;

([d]**e**) "County," includes the [C]**c**ity of St. Louis;

([e]**f**)"Court," a division of the circuit court having jurisdiction to hear ordinance violations;

([f]**g**) "Detention facility," any jail, workhouse, lockup or other facility normally operated to hold sentenced offenders or that is used to confine adults awaiting trial;

([g]**h**) "Housing violation," any violation of an ordinance relating to the condition or maintenance of residential buildings and residential real property; ([h]i) "Law," includes constitutions, statutes, ordinances, judicial decisions and this Rule 37;

(j) **"Local violations bureau," a violations bureau established by court order pursuant to Rule 37.49 of this Court;**

(k) **"Missouri charge code," as defined by section 43.500, RSMo;**

([i]l) "Municipal division," any division of the circuit court presided over by a judge having original jurisdiction to hear and determine municipal ordinance violations;

([j]m) "Municipality," includes all charter, first, second, third and fourth class cities, towns and villages;

([k]n) "Ordinance," a law enacted by a municipality or county;

([l]o) "Peace Officer," includes police officers, members of the state highway patrol, sheriffs, marshals, constables, and their deputies; ([m]p) "Person," includes corporations;

([n]q) "Prosecutor," any attorney or counselor who represents any county, city, town, or village in the prosecution of a person for a violation of an ordinance;

([o]r) "Traffic violation," any violation of an ordinance relating to the control of traffic;

([p]s) "Violation," any ordinance violation within the jurisdiction of any court to which this Rule 37 applies.

37.14 CONDITIONS OF RELEASE: RULES OF EVIDENCE INAPPLICABLE

Effective January 1, 2019

- *Revised the title to the rule.*

37.17 ARREST WITHOUT WARRANT

Effective January 1, 2019

When an arrest is made without a warrant, the peace officer may accept bond **within 24 hours of arrest** in accordance with a [bail] **bond** schedule furnished by the court having jurisdiction. **If the judge has not issued an arrest warrant within 24** hours of arrest, the peace officer shall release the accused from custody.

37.19 MODIFICATION OF CONDITIONS OF RELEASE

Effective January 1, 2019

- *Clarifies that release conditions may be set for an accused that has been sentenced to confinement.*

(a) Upon motion by the prosecutor or by the accused, or upon the court's own motion, the court in which the proceeding is pending may modify the requirements for release after notice to the parties and hearing when the court finds that:

(1) New, different, or additional requirements for release are necessary;

(2) The conditions for release that have been set are excessive;

(3) The accused has failed to comply with or has violated the conditions for the accused's release; or

(4) The accused has been convicted of the ordinance violation charged and sentenced to confinement.

37.33 VIOLATION NOTICE – CONTENTS

Effective May 1, 2019

- *Adds the court date and time for initial appearance to the violation notice. Requires the Missouri charge code number be included with every violation notice.*

(a) A violation notice shall be in writing and shall:

(1) State the name and address of the court;

(2) State the court date and time for initial appearance;

([~~2~~]3) State the name of the prosecuting county or municipality;

([~~3~~]4) State the name and date of birth of the accused or, if not known, designate the accused by any name or description by which the accused can be identified with reasonable certainty;

([~~4~~]5) State the date and place of the ordinance violation as definitely as can be done;

([~~5~~]6) State the facts that support a finding of probable cause to believe the ordinance violation was committed and that the accused committed it;

([~~6~~]7) State that the facts contained therein are true;

([~~7~~]8) Be signed and on a form bearing notice that false statements made therein are punishable by law;

([~~8~~]9) Cite the chapter and section of the ordinance alleged to have been violated and the chapter and section that fixes the penalty or punishment;

([~~9~~]10) State other legal penalties prescribed by law may be imposed for failure to appear and dispose of the violation; and

([~~10~~]11) State the Missouri [~~state-approved~~] charge code if one exists.

(b) When a violation has been designated by the court to be within the authority of a local violations bureau pursuant to Rule 37.49, the accused shall also be provided the following information:

(1) The specified fine and costs for the violation; and

(2) That a person must respond to the violation notice by:

(A) Paying the specified fine and court costs; or

(B) Pleading not guilty and appearing at trial.

(c) The violation notice shall be substantially in the form of the Uniform Citation set out in Form 37.A, with such additions as may be necessary to adapt the Uniform Citation to the jurisdiction involved.

37.34 ORDINANCE VIOLATIONS – INFORMATION

Effective January 1, 2019

➢ *The information has to be supported by a PC statement or violation notice.*

All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based on the prosecutor's information and belief that the ordinance violation was committed. The information shall be supported by a violation notice or statement of probable cause as prescribed by Rule 37.[~~33.~~]

37.35 INFORMATION – FORM OF – CONTENTS

Effective January 1, 2019

➢ *Requires the city prosecutor to include the charge code on the information filed with the court.*

(a) The information shall:

(1) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(2) State plainly, concisely, and definitely the essential facts constituting the ordinance violation charged, including facts necessary for any enhanced punishment;

(3) State the date and place of the ordinance violation charged as definitely as can be done;

(4) Cite the chapter and section of the ordinance alleged to have been violated and the chapter and section providing the penalty or punishment; and

(5) Cite the state approved charge code if one exists.

37.43 ORDINANCE VIOLATION – SUMMONS OR ARREST WARRANT – WHEN ISSUED – FAILURE TO APPEAR

Effective January 1, 2019 – Correction

➢ *Requires the city prosecutor to file a probable cause statement with the information for all ordinance violations.*

When an information charging the commission of an ordinance violation and a statement of probable cause are [is] filed pursuant to Rule 37[.34], a summons shall be issued unless the court finds that there are:

(a) Sufficient facts stated to show probable cause that an ordinance violation has been committed, and

(b) Reasonable grounds for the court to believe that the accused [defendant] will not appear upon the summons, or a showing has been made to the court that the accused poses a danger to a victim, the community, or any other person.

If the court so finds, a warrant for the arrest of the accused [defendant] may be issued.

37.435 STATEMENT OF PROBABLE CAUSE

Effective January 1, 2019

A statement of probable cause must be in writing and shall:

(a) State the name of the accused or, if not known designate the accused by any name or description by which the accused can be identified with reasonable certainty;

(b) State the date and place of the ordinance violation as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe an ordinance violation was committed and that the accused committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the accused will not appear upon the summons or that the defendant poses a danger to a victim, the community, or any other person;

(e) State the facts contained therein are true;

(f) Be signed and on a form bearing notice that false statements made therein are punishable by law; and

(g) Shall accompany an information when an arrest warrant is sought.

37.49 LOCAL VIOLATIONS BUREAU – VIOLATIONS CLERK – SCHEDULE OF FINES – PAYMENT

Effective May 1, 2019

➢ *Sets out which violations are not eligible for a local violations bureau, subsection (c)(1-7). Requires a local violations bureau to adopt the uniform fine schedules. Sets out that a violations ticket can be paid through an electronic payment system, in person or by mail. Establishes that payment of the fine and costs prior to initial appearance is considered a guilty plea and waiver of trial. See sample order on CIC.*

(a) Any judge having original jurisdiction of any animal control violation, housing violation, or traffic violation may establish by court order a local violations bureau, which shall be subject to the supervision of the circuit court.

(b) The order [judge] shall designate a clerk. The clerk shall perform the duties designated by the court, including accepting appearance, waiver of trial, plea of guilty, and payment of fines and costs for the designated violations, entering the plea on the record, and transmitting the violation record as required by law, subject to the limitations hereinafter prescribed.

(c) The violations within the authority of the bureau shall be designated by the order [of the judge], but shall only include animal control violations, housing violations, or traffic violations. Such designated violations may be amended from time to time but shall in no event include the following:

(1) Any violation submitted by the prosecutor for disposition through a court appearance;

(2) Any violation for which a summons to appear is issued;

([1]3) Any violation resulting in personal injury or property damage;

([2]4) Operating a motor vehicle while intoxicated or under the influence of intoxicants or drugs;

([3]5) Operating a vehicle with a counterfeited, altered, suspended, or revoked license;

([4]6) Fleeing or attempting to elude an officer; and

([5]7) Any other violation excluded by law.

(d) For those violations included within the authority of the bureau by virtue of an order pursuant to Rule 37.49(a) and (c), t[T]**he [judge, by] order** shall adopt the uniform fine schedule established by Rule 37.495. The schedule shall be **prominently posted at the place where the fines are to be paid,** and **shall specify by schedule the amount of fines and costs to be imposed for each violation.**

(e) [Within the time fixed by the judge and subject to the judge's order, a]Any person charged with [an animal control, housing, or traffic] a violation[, except violations] designated within the order [requiring court appearance,] may pay [deliver by mail, automatic teller machine, or as otherwise directed] the specified amount of the fine and costs to the bureau; (1) through an electronic payment system authorized in the order; (2) in person; or (3) by mail. Full payment received before the court date and time for initial appearance constitutes a guilty plea and waiver of trial. Full payment received on or after the initial appearance date and time may, in the court's discretion, be accepted as[. This delivery constitutes] a guilty plea and waiver of trial.

37.57 PRESENCE OF DEFENDANT – WHEN REQUIRED

Effective January 1, 2019

➢ Added new subsection (c) regarding the presence of the defendant and presumption the defendant was present during the entire trial.

(a) No trial [defendant] shall [either be tried or permitted to enter] be conducted or a plea of guilty entered unless the defendant is [personally] present [or the judge], except the court, the prosecuting attorney, and the defendant [, and prosecutor consent to such trial or plea in the defendant's] may agree that the defendant need not be present.

(b) A verdict may be received by the court in the absence [. The defendant's presence in the courtroom shall not be required in the event of a reduction of sentence] of the defendant when such absence is voluntary.

(c) If there is a record entry showing that the defendant was present at the commencement or at any stage of the trial, it shall be presumed, in the absence of any record entry to the contrary, that he was present during the entire trial.

37.58 PLEAS

Effective January 1, 2019

(b) Advice to Defendant. Except as provided by Rule 37.49 or Rule 37.57, before accepting a plea of guilty, the judge shall [address the defendant personally in open court. The judge shall] inform the defendant of the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) The defendant's right to be represented by an attorney and that the judge will appoint an attorney for the defendant if defendant is indigent and if it appears to the judge that there would possibly be a jail sentence upon conviction; and

(3) That if defendant pleads guilty there will not be a trial of any kind, so that by pleading guilty the defendant waives the right to a trial, and

(4) The defendant's right to plead not guilty or to persist in that plea if it has already been made.

The judge shall further inform defendant of any right to a jury trial, the right to present witnesses on behalf of the defendant, that defendant has the right to confront and cross-examine witnesses against defendant, that defendant has the right to testify and that nobody can compel defendant to testify.

The judge shall determine whether the defendant understands, upon oral or written information provided, the matters presented.

37.61 TRIALS – ISSUES OF FACT – JURY – CERTIFICATION

Effective January 1, 2019

➢ *After a defendant has requested certification to associate division for trial they can submit a motion waiving their request and the judge can remand the case back to the municipal division for processing unless the judge finds remand is unfair to the parties.*

(f) If the defendant files a written motion [so] requesting to waive a jury trial and attaches [thereto] a waiver of the right to a jury trial, the case [may] shall be remanded to the municipal division for [trial] further proceedings unless the judge finds such remand would be unfair to the parties.

37.62 ORDER OF TRIAL

Effective January 1, 2019

(h) The court may fix the length of time for arguments and shall announce it to counsel. The prosecutor shall make the opening argument, the attorney for the defendant shall make an argument, and the prosecutor [for the state] shall conclude the argument.

Each party may waive the right to argument.

37.64 SENTENCE AND JUDGMENT

Effective January 1, 2019 – Correction

➢ *Eliminates time period restrictions for a stay of execution.*

(f) Stay of Sentence. The court in which any judgment, whether of [~~imprisonment~~] incarceration or fine, was rendered may grant, by an order entered of record and signed by the judge, a stay of execution upon such judgment or portion thereof for a specified period or periods of time[~~, not to exceed six months~~]. The judge may require the defendant to enter into a bond conditioned upon surrender of the defendant in execution upon such judgment on a day to be specified in such order.

37.65 IMPOSITION AND PAYMENT OF FINES, FEES, AND COSTS, AND CONTEMPT PROCEEDINGS [~~INSTALLMENT OR DELAYED PAYMENTS – RESPONSE TO NONPAYMENT~~]

Effective January 1, 2019

➢ *Reorganized the rule. The judge now has to inquire as to a defendant's ability to pay assessed fines, fees or costs. Allows for the judge to extend the time period to pay the fines, fees or costs or in installments. A judge can now impose alternative sanctions when a defendant does not have the ability to pay. A judge may issue show cause for criminal contempt when a defendant fails to pay fine or perform ordered alternative sanctions. If a defendant has previously failed to appear on a summons the court may issue a warrant to appear on the show cause order. Defendant may be incarcerated for nonpayment if the judge makes specific findings. Payment or satisfaction may entitle the defendant to release. Also provides that any amount due may be collected as a civil money judgment.*

(a) *Judicial Inquiry as to Ability to Pay.* When a fine, fee, or cost is assessed, or thereafter any time a fine, fee, or cost is due, if [~~and it appears to the judge that~~] the defendant is unable [~~does not have at that time the present means~~] to pay the amount then due [~~fine~~], the judge shall inquire as to the defendant's ability to pay.

(b) *Defendant Has Ability to Pay But Unable to Pay when Assessed or Due.* If the judge finds the defendant has the ability to pay but is unable to pay the amount when assessed or due, the judge shall order a stay of execution on the payment [~~of the fine~~] and:

(1) Grant the defendant a specified period of time within which to pay the fine in full;[,] or

(2) Provide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate.

[~~(b) The judge may issue an order to show cause, consistent with Rule 36.01(b), for the defendant to appear in court at a future date in the event the fine is not paid in the time specified by the judge. In the event the defendant fails to appear at that future date, the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause.~~]

(c) *Defendant Has No Ability to Pay.* If the judge finds the defendant does not have the ability to pay the amount when assessed or due and is unable to acquire the resources to pay, the judge shall, after consideration of the violation, the defendant's financial circumstances, disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities, impose alternative sanctions that may include, but are not limited to:

(1) Waiver or suspension of imposition of any fine, fee, or cost or of the amount previously assessed and due;

(2) Imposition of a lower amount of any fine, fee, or cost or reduction of the amount previously assessed and due;

(3) Community service in lieu of any fine, fee, or cost; or

(4) Court-approved programs, e.g., driver skills, education, job skills, mental health or drug treatment in lieu of any fine, fee, or cost.

(d) *Show Cause Order Requirements.* When [~~If~~] a defendant defaults in the payment of the fine, fee, or cost or fails to perform an ordered alternative sanction [~~any installment thereof~~], the judge may issue an order to show cause for criminal contempt consistent with the due process requirements of Rule 36.01(b) on the motion of the prosecuting attorney or on the judge's own motion. The order to show cause for criminal contempt shall include:

(1) The hearing date, time and location;

(2) The total amount claimed past due or alternative sanction ordered but not performed;

(3) Notice to the defendant that:

(i) If the show cause order was issued for failure to pay, the judge shall evaluate the defendant's ability to pay at the hearing and the defendant should bring any documentation or information the judge should consider in determining ability to pay;

(ii) If the defendant is unable to pay the defendant can request a payment alternative, including, but not limited to, community service and/or a reduction of the amount due;

(iii) The defendant may have the right to have counsel appointed if indigent; and

(iv) Incarceration for failure to pay may result only if alternative measures are not adequate to meet the state's interest in punishment and deterrence or the judge finds the defendant had the ability to pay and willfully failed to do so [~~why the defendant should not be held in contempt of court~~].

(e) *Summons.* The court [~~judge~~] shall issue a summons for the defendant's appearance on the order to show cause unless the defendant has previously failed [~~was ordered~~] to appear at a prior court date in the case[~~future date as provided in Rule 37.65(b). If the defendant fails to appear on the summons, the court may then issue a warrant to secure the defendant's appearance for a hearing on the order to show cause~~]. The summons shall have the order to show cause attached and may be served by the clerk mailing it to the defendant's last known address by first class mail. In the event the defendant has previously failed to appear or fails to appear on the summons, the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause. Defendant is entitled to be conditionally released as provided in these rules.

(f) *Incarceration after Hearing and Written Findings.* A judge may not incarcerate the defendant for nonpayment of a fine, fee, or cost unless the judge holds a hearing, with adequate notice to the defendant, and makes one of the following written findings:

(1) The failure to pay was not due to an inability to pay but was willful or due to a failure to make bona fide efforts to pay; or

(2) The failure to pay was not the fault of the defendant and alternatives to imprisonment are not adequate in the circumstances of the case to meet the state's interest in punishment and deterrence.

(g)[(d)] *Contempt Order, Punishment.* If following the show cause hearing the judge makes written find[s]ings:

(1) that the defendant was given adequate notice of the hearing as required by this rule,

(2) that the defendant had the opportunity to be represented by counsel and a reasonable time to prepare a defense,

(3) that the defendant had a meaningful opportunity to present evidence and argument at the hearing, and

(4) setting out the essential facts constituting the contempt, the judge may impose punishment for failure to pay, including imprisonment [intentionally refused to obey the sentence of the court or to have made a good faith effort to obtain the necessary funds for payment, the judge may confine the defendant] for a term not to exceed [thirty] 30 days when findings are made as required by (f) of this rule [for contempt of court]. The judge may provide in the order that payment or satisfaction of the amount due at any time will entitle the defendant to release from imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the amount due. If the judge finds [that] the defendant's failure to comply with [pay the fine is excusable, the judge shall enter] **an order** for an alternative sanction was willful, the judge may impose punishment for criminal contempt as authorized by law[allowing the defendant additional time for payment, or may modify the method of payment or waive the collection of all or part of any unpaid portion of the fine].

(h)[(e)] *Collection of Amount Due Following Failure to Pay.* Upon default in the payment of an amount due [fine] or any installment thereof, the amount due [fine] may be collected by any means authorized by law for the enforcement of money judgments.

37.65 IMPOSITION AND PAYMENT OF FINES, FEES, AND COSTS, AND CONTEMPT PROCEEDINGS

Effective January 1, 2019 – Correction

(a) *Judicial Inquiry as to Ability to Pay.* When a fine, fee, or cost is assessed, or thereafter any time a fine, fee, or cost is due, if the defendant states the defendant is unable to pay the amount then due, the judge shall inquire as to the defendant's ability to pay.

(b) *Defendant Has Ability to Pay But Unable to Pay When Assessed or Due.* If the judge finds the defendant has the ability to pay but is unable to pay the amount when assessed or due, the judge shall order a stay of execution on the payment and:

(1) Grant the defendant a specified period of time within which to pay the fine in full; or

(2) Provide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate.

(c) *Defendant Has No Ability to Pay.* If the judge finds the defendant does not have the ability to pay the amount when assessed or due and is unable to acquire the resources to pay, the judge shall, after consideration of the violation, the defendant's financial circumstances, disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities, impose alternative sanctions that may include, but are not limited to:

(1) Waiver or suspension of imposition of any fine, fee, or cost or of the amount previously assessed and due;

(2) Imposition of a lower amount of any fine, fee, or cost or reduction of the amount previously assessed and due;

(3) Community service in lieu of any fine, fee, or cost; or

(4) Court-approved programs, e.g., driver skills, education, job skills, mental health or drug treatment in lieu of any fine, fee, or cost.

(d) *Show Cause Order Requirements.* When a defendant defaults in the payment of the fine, fee, or cost or fails to perform an ordered alternative sanction, the judge may issue an order to show cause for criminal contempt consistent with the due process requirements of Rule 36.01(b) on the motion of the prosecuting attorney or on the judge's own motion. The order to show cause for criminal contempt shall include:

(1) The hearing date, time and location;

(2) The total amount claimed past due or alternative sanction ordered but not performed;

(3) Notice to the defendant that:

(i) If the show cause order was issued for failure to pay, the judge shall evaluate the defendant's ability to pay at the hearing and the defendant should bring any documentation or information the judge should consider in determining ability to pay;

(ii) If the defendant is unable to pay the defendant can request a payment alternative, including, but not limited to, community service and/or a reduction of the amount due;

(iii) The defendant may have the right to have counsel appointed if indigent; and

(iv) Incarceration for failure to pay may result only if alternative measures are not adequate to meet the ~~[state's]~~ **municipality's or county's** interest in punishment and deterrence or the judge finds the defendant had the ability to pay and willfully failed to do so.

(e) *Summons **or Arrest Warrant**.* The court shall issue a summons for the defendant's appearance on the order to show cause unless the defendant has previously failed to appear at a prior court date in the case. The summons shall have the order to show cause attached and may be served by the clerk mailing it to the defendant's last known address by first class mail. In the event the defendant has previously failed to appear or fails to appear on the summons, the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause. **Upon arrest, d**~~[D]~~efendant is entitled to be conditionally released as provided in these rules.

(f) *Incarceration after Hearing and Written Findings.* A judge may not incarcerate the defendant for nonpayment of a fine, fee, or cost unless the judge holds a hearing, with adequate notice to the defendant, and makes one of the following written findings:

(1) The failure to pay was not due to an inability to pay but was willful or due to a failure to make bona fide efforts to pay; or

(2) The failure to pay was not the fault of the defendant and alternatives to ~~[imprisonment]~~ **incarceration** are not adequate in the circumstances of the case to meet the ~~[state's]~~ **municipality's or county's** interest in punishment and deterrence.

(g) *Contempt Order, Punishment.* If following the show cause hearing the judge makes written findings:

(1) that the defendant was given adequate notice of the hearing as required by this rule,

(2) that the defendant had the opportunity to be represented by counsel and a reasonable time to prepare a defense,

(3) that the defendant had a meaningful opportunity to present evidence and argument at the hearing, and

(4) setting out the essential facts constituting the contempt, the judge may impose punishment for failure to pay, including [~~imprisonment~~] incarceration for a term not to exceed 30 days when findings are made as required by (f) of this rule. The judge may provide in the order that payment or satisfaction of the amount due at any time will entitle the defendant to release from [~~imprisonment~~] incarceration or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the amount due. If the judge finds the defendant's failure to comply with an order for an alternative sanction was willful, the judge may impose punishment for criminal contempt as authorized by law.

(h) *Collection of Amount Due Following Failure to Pay.* Upon default in the payment of an amount due or any installment thereof, the amount due may be collected by any means authorized by law for the enforcement of money judgments.

37.66 SENTENCE OF [~~IMPRISONMENT~~] INCARCERATION – TRANSCRIPT TO CORRECTIONS OFFICIAL

Effective January 1, 2019 - Correction

When a defendant is sentenced to [~~imprisonment~~] incarceration, the clerk shall deliver to the corrections official a certified copy of the judgment and sentence, specifying credit for time served, and the corrections official shall confine the defendant in a detention facility or deliver the defendant as specified in the order.

37.71 TRIAL DE NOVO – RIGHT – TIME

Effective January 1, 2019

➢ *Allows TDN if costs paid after SIS.*

(b) An application for trial de novo shall not be granted after the defendant satisfies any part of the penalty and costs of the judgment, unless costs were paid after imposition of sentence was originally suspended.

37.73 TRIAL DE NOVO – TRANSMITTAL OF RECORD

Effective January 1, 2019

➢ *Municipal clerk has 15 days after TDN application received to transmit TDN case record to division hearing the TDN.*

When an application for trial de novo is filed, the clerk shall transmit the duly certified record to the clerk of the division designated to hear ordinance violations de novo within 15 days of receipt. The failure of the clerk to transmit the record shall not affect the defendant's trial de novo.

Court Operating Rules (Rules 1-29)

1.00 JUDICIAL RECORDS: DEFINITION

Effective July 1, 2019

- *New definition of judicial records.*

As used in this Court Operating Rule 1, "Judicial Records," means any document, information, data or other item created, collected, or received, and maintained by any court and any division thereof, including any associated administrative support entity, regardless of physical form or storage medium used.

1.01 MISSOURI COURT AUTOMATION COMMITTEE: DEFINITION
Effective July 1, 2019

The Missouri court automation committee, established by section 476.055, RSMo, has decision-making authority for all aspects of statewide court automation. This includes policy, technical, financial and other aspects of statewide court automation [as funded by the legislatively approved automation fee].

1.03 STATEWIDE COURT AUTOMATION [CENTRAL SITES] SYSTEM AND COMMUNICATIONS LINK[S]
Effective July 1, 2019

The office of state courts administrator [will] shall operate the statewide court automation [central computer sites] system. The court automation [central sites will] system shall serve as the communications link for judicial records among all courts [sites] and with all regional, [and] statewide, and national non-court systems [and national systems].

1.05 [UNIFORM CRIMINAL] MISSOURI CHARGE CODES
Effective July 1, 2019

All courts shall use the [A] uniform set of [criminal] charge codes adopted by the state judicial records committee [shall be utilized on a statewide basis by all courts]. A specific charge code [is to] shall be assigned by the filing party to each charge [made against an individual] when filed.

1.06 UNIFORM COURT ACTION CODES
Effective July 1, 2019

All courts shall use, in every case filed or juvenile referral made, the [A] **uniform set of court action codes adopted by the state judicial records committee in compliance with statewide court automation policies**[shall be utilized on a statewide basis by all courts. A specific set of action codes is to be assigned to each case filed or juvenile referral made].

1.07 ATTORNEY IDENTIFICATION
Effective July 1, 2019

The statewide court automation system[s] shall utilize a uniform attorney identification number consistent with the number currently utilized by the clerk of this Court. [The use of the code is subject to the restrictions stated in this Court Operating Rule 2.]

1.08 [DATA PROCESSING] INFORMATION TECHNOLOGY PROPOSALS INVOLVING JUDICIAL RECORDS
Effective July 1, 2019

➢ *Sets out the process for local technology projects review.*

Courts [that wish] proposing to undertake [data processing] information technology projects [must meet the standards adopted by the state] involving judicial records [committee and the Missouri court automation committee or] shall submit a plan for approval [by] to the state judicial records committee[. If the proposed project does not conform to the statewide court automation standards,] and the Missouri court automation committee [must review the plan for technical compatibility prior to review by the state judicial records committee]. The plan shall demonstrate compliance with applicable statutes, court rules, and guidelines.

1.09 DEVELOPMENTAL PROJECTS

Effective July 1, 2019

Courts are encouraged to seek federal and other funds for developmental projects. If these entail [~~data processing~~] information technology projects involving judicial records, they [~~must~~] shall adhere to Court Operating Rule 1.08.

1.10 CONTROL OF THE STATEWIDE COURT AUTOMAT[~~ED~~]ION SYSTEM[~~S~~]

Effective July 1, 2019

- *MCA and SJRC are responsible for maintenance and control of the courts computer equipment and statewide automation system that maintains judicial records. Adds that in the event of a threat to the court automation system appropriate action may be taken.*

[~~Data processing for the courts~~] Judicial records in digital or electronic format shall be [~~handled~~] maintained on computer equipment managed and controlled solely by the court[s] unless otherwise approved by the Missouri court automation committee and state judicial records committee. [~~In exceptional instances where extreme care has been taken to assure the welfare of the courts, explicit approval may be obtained from this Court, upon recommendation of the Missouri court automation committee, to use facilities not totally managed and controlled by the courts.~~]

Any court automation system, including any pilot project, shall be implemented, operated and maintained in accordance with strict standards for the physical and information security, integrity, and privacy of judicial records in all courts.

To protect the [~~confidentiality~~] security, integrity, privacy, and availability of [~~the information~~] judicial records and the [~~hardware and software systems that handle it~~] court automation system, all users and systems connected to the networks supported by the office of state courts administrator must conform to the Missouri court automation committee approved guidelines [~~provided by that office~~] and standards.

The state courts administrator, upon notice to the appropriate chief or presiding judge, [~~maintains the~~] is authori[~~ty~~]zed to:

(a) restrict or revoke the privileges of any user at any time for just cause;

(b) inspect, copy, remove, or alter any data, program, or other resource that may undermine security; and

(c) take any steps necessary to manage and protect its computer system[s].

In the event of an emergency threat to the court automation system, appropriate action may be taken immediately, and the required notice shall be given as soon as reasonably practicable.

The office of state courts administrator may withhold service or support to any user, court, or division [~~negligently~~] breaching the Missouri court automation committee approved guidelines [~~for networks and systems supported by the office of state courts administrator~~] and standards. Minor infractions may be reported to the appropriate appointing authority, and major infractions may result in suspension or revocation of privileges and/or support.

For the purposes of this Court Operating Rule 1.10, "minor infractions" are those actions that are contrary to the [~~guidelines provided by the office of state courts administrator~~] Missouri court automation committee approved guidelines and standards, and that cause no significant loss of operational functionality, data integrity or data security. "Major infractions" are those actions that cause a loss of operational functionality, data integrity, or data security that

is significant and/or extended in duration or whose impact extends beyond the local court. [Public access to records shall be controlled as specified in Court Operating Rule 2.]

4.01 UNIFORM RECORD KEEPING SYSTEM

Effective July 1, 2019

- *Designates the statewide court automation system as the uniform record keeping system for Missouri courts. Courts not already using the statewide case management system will migrate to the statewide court automation system as it becomes available to that court. Courts can continue entering, maintaining, and archiving records on their current system until the statewide system is available to their court.*

[There shall be a] The Missouri statewide court automation system is the uniform record keeping system [in] for the [C]circuit [C]courts and is [that shall be] mandatory [for] as to the form, style, and maintenance of records dealing with civil, criminal, juvenile, probate, mental health, family court, traffic and municipal cases.

Any division of the circuit court may use its existing manual or automated system, and any upgrades approved by the state judicial records committee, until such time as the statewide court automation system is available for implementation in that division.

Nothing in this COR 4.01 prohibits a division of the circuit court from entering, maintaining, or archiving records on cases filed before the available implementation date of the statewide court automation system for that division in the same manual or automated system as used in such division on the day before such implementation date, provided that the system was in compliance with all applicable court operating rules at that time and is thereafter maintained and operated in accordance with such rules.

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	**Case Number:**
	Offense Cycle No. (OCN):
State of Missouri vs.	
Defendant's Name:	

(Date File Stamp)

Initial Appearance / Arraignment

This matter comes before the court on _____ (date) for initial appearance after defendant was jailed on a warrant.

- ☐ Defendant appeared within 48 hours of his/her arrest ☐ via video.
- ☐ Defendant did not appear within 48 hours of his/her arrest because ☐ arrested out of jurisdiction and/or ☐ _____.
- ☐ Defendant is read the Complaint/Information/Indictment and advised pursuant the right to retain counsel, right to remain silent, that any statement made may be used against him/her and the right to apply for Public Defender.
- ☐ Defendant enters plea of not guilty.
- ☐ Defendant referred to Public Defender for representation.
- ☐ Defendant was advised of bond rights under Supreme Court Rule 33.06 and allowed to address the court. Defendant stated: _____
  _____
  _____.

After consideration of the arguments made at initial appearance, the court:

- ☐ **Amends** the bond as follows: _____
  _____.
- ☐ Reminds defendant that violation of any of the conditions will result in rearrest and sets the matter for _____ on _____ (date) at _____ (time).
- ☐ **Denies** the request for bond change and sets the matter for BOND HEARING within seven working days of the initial appearance and directs the prosecuting attorney to notify any victims if victim notification is required.

BOND HEARING is set for _____ (date) at _____ (time).

_____
Judge

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	**Case Number:**
	Offense Cycle No. (OCN):
State of Missouri vs.	
Defendant's Name:	

(Date File Stamp)

Bond Hearing Following Initial Appearance

This matter comes before the court on _____ (date) for a bond hearing

☐ As noticed by defendant or his/her counsel or prosecuting attorney.

☐ As set by the court within seven days of initial appearance under Supreme Court Rule 33.05.

☐ As required by Supreme Court Rule but not heard within seven days of initial appearance.

If not heard within seven days of a denial of change in bond at initial appearance, the reason for the delay was ☐ no notice to victim and/or ☐ _____.

☐ No hearing was held. The parties agreed to a change in bond in separate memo approved by the court.

☐ Hearing was held. ☐ State appeared by Prosecuting Attorney _____.

☐ Defendant appears ☐ in person ☐ by video ☐ appearance waived by counsel _____.

The Rules of Evidence are inapplicable under Supreme Court Rule 33.07. The court considered the following factors and made the following findings regarding those factors:

1. Ability to pay:
   _____
   _____.
2. Likelihood defendant will appear:
   _____
   _____.
3. Safety of crime victims and witnesses:
   _____
   _____.
4. Nature and circumstances of the offense and the weight of evidence against defendant:
   _____
   _____.
5. Defendant's family ties:
   _____
   _____.
6. Employment:
   _____
   _____.
7. Character:
   _____
   _____.
8. Mental condition:
   _____
   _____.

9. Length of residence in community:

_____
_____.

10. Record of convictions:

_____
_____.

11. Record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court:

_____
_____.

12. Whether on probation, parole, or release pending trial or appeal at the time of the offense was committed:

_____
_____.

After consideration of the evidence presented on the above factors, the court

☐ **Amends** the bond as follows: _____

_____

with the following special conditions

- ☐ Place in the custody of _____ who has agreed to supervise him/her and assure appearance.
- ☐ Restriction on travel: _____.
- ☐ Report regularly as follows: _____.
- ☐ Electronic monitoring or regular drug testing by _____.
- ☐ Require defendant to actively seek employment, maintain employment or commence an education program.
- ☐ Not possess a firearm.
- ☐ Comply with the following curfew: _____.
- ☐ Not possess alcohol or any controlled substance without a valid prescription.
- ☐ Undergo medical, psychological or psychiatric treatment as follows:

  _____.
- ☐ Be placed on house arrest with the following exceptions ☐ travel to and from court, doctor's office, and attorney's office and _____.
- ☐ Work release if approved by the sheriff.

The court finds that the above listed conditions are *the least restrictive* for the facts of this case.

☐ **Denies** any change in the bond, finding that the clear and convincing evidence is that the current conditions are the **least restrictive to secure appearance and safety**.

☐ Under Supreme Court Rule 33.01(d) the court finds that **NO BOND** and conditions will secure the safety of the community because _____.

Accordingly, the court sets this matter for

☐ **Preliminary hearing on _____ (date) at _____ (time).**

☐ **Trial on _____ (date) with pretrial set _____ (date) at _____ (time).**

- ☐ The trial is set within 120 days of the arraignment or change of venue or written request for speedy trial whichever is later.
- ☐ The defendant's written request was filed on _____ (date).
- ☐ The defendant has NOT filed a written request for speedy trial.

So Ordered:

_____ Date

_____ Judge

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	**Case Number:**
	Offense Cycle No. (OCN):
State of Missouri vs.	
Defendant's Name:	

(Date File Stamp)

Bond Hearing Following Initial Appearance

This matter comes before the court on _____ (date) for a bond hearing

☐ As noticed by defendant or his/her counsel or prosecuting attorney.

☐ As set by the court within seven days of initial appearance under Supreme Court Rule 33.05.

☐ As required by Supreme Court Rule but not heard within seven days of initial appearance.

If not heard within seven days of a denial of change in bond at initial appearance, the reason for the delay was ☐ no notice to victim and/or ☐ _____.

☐ No hearing was held. The parties agreed to a change in bond in separate memo approved by the court.

☐ Hearing was held. ☐ State appeared by Prosecuting Attorney _____.

☐ Defendant appears ☐ in person ☐ by video ☐ appearance waived by counsel _____.

The Rules of Evidence are inapplicable under Supreme Court Rule 33.07. The court considered the following factors and made the following findings regarding those factors:

1. Ability to pay:
   _____
   _____.
2. Likelihood defendant will appear:
   _____
   _____.
3. Safety of crime victims and witnesses:
   _____
   _____.
4. Nature and circumstances of the offense and the weight of evidence against defendant:
   _____
   _____.
5. Defendant's family ties:
   _____
   _____.
6. Employment:
   _____
   _____.
7. Character:
   _____
   _____.
8. Mental condition:
   _____
   _____.

9. Length of residence in community:

_____
_____.

10. Record of convictions:

_____
_____.

11. Record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court:

_____
_____.

12. Whether on probation, parole, or release pending trial or appeal at the time of the offense was committed:

_____
_____.

After consideration of the evidence presented on the above factors, the court

☐ **Amends** the bond as follows: _____

_____

with the following special conditions

- ☐ Place in the custody of _____ who has agreed to supervise him/her and assure appearance.
- ☐ Restriction on travel: _____.
- ☐ Report regularly as follows: _____.
- ☐ Electronic monitoring or regular drug testing by _____.
- ☐ Require defendant to actively seek employment, maintain employment or commence an education program.
- ☐ Not possess a firearm.
- ☐ Comply with the following curfew: _____.
- ☐ Not possess alcohol or any controlled substance without a valid prescription.
- ☐ Undergo medical, psychological or psychiatric treatment as follows:

  _____.
- ☐ Be placed on house arrest with the following exceptions ☐ travel to and from court, doctor's office, and attorney's office and _____.
- ☐ Work release if approved by the sheriff.

The court finds that the above listed conditions are *the least restrictive* for the facts of this case.

☐ **Denies** any change in the bond, finding that the clear and convincing evidence is that the current conditions are the **least restrictive to secure appearance and safety**.

☐ Under Supreme Court Rule 33.01(d) the court finds that **NO BOND** and conditions will secure the safety of the community because _____.

Accordingly, the court sets this matter for

☐ **Preliminary hearing on _____ (date) at _____ (time).**

☐ **Trial on _____ (date) with pretrial set _____ (date) at _____ (time).**

- ☐ The trial is set within 120 days of the arraignment or change of venue or written request for speedy trial whichever is later.
- ☐ The defendant's written request was filed on _____ (date).
- ☐ The defendant has NOT filed a written request for speedy trial.

So Ordered:

_____ Date

_____ Judge

Ordering a Defendant to be Fingerprinted

- Municipal courts are required to order a defendant to report to a law enforcement agency for fingerprinting and photographing if fingerprints have not yet been obtained, in pending cases involving charges of:
  - Assault/Destruction of Property/Trespass
  - Possession of marijuana and/or paraphernalia
  - DWS/DWR/Leaving the scene of an accident
  - DWI (drugs or alcohol)
  - Stealing/Fraud/Odometer Fraud
  - Resisting arrest
  - And various other miscellaneous charges
  - Review http://www.courts.mo.gov/file.jsp?id=97021 for a comprehensive list

1

COLLECTING FINES AND COSTS

- SEE RULE 37.65:
- If the Defendant claims they cannot pay, there MUST be a judicial inquiry into the ABILITY to pay.
- Payment plans are permitted
- If unable to pay, consider waiver of any fine, fee or cost. Impose a lower amount or reduce the existing amount to a lesser amount.
- Community service in lieu of payment (but cannot charge any fee for community service)

But they still didn't pay….

- RULE 37.65 -You may issue an Order to Show Cause (see Rule 36.01(b)) on your own motion if the prosecutor doesn't request one.
- Order SHALL include – hearing date, time and location
- Total amount claimed past due or sanction ordered but not performed
- Notify defendant if issued for failure to pay, the judge SHALL evaluate ability to pay and defendant should bring documentation or information the judge should consider in the evaluation.
- That defendant may request a payment alternative
- MAY have right to counsel if indigent
- Incarceration may result only under certain circumstances

And they didn't show up....

- If they don't appear on the Show Cause, you may issue a summons (first class mail to last known address) – UNLESS they have previously failed to appear for a prior court date, in which case you my issue a warrant.
- When arrested, defendant is entitled to be conditionally released.
- CANNOT INCARCERATE unless you make WRITTEN FINDINGS failure to pay was willful or failed to make bona fide effort to pay – OR
- Failure to pay wasn't defendant's fault, but alternatives are not adequate to meet municipality's interest in punishment and deterrence (not recommended)

What must I write?

- (1) that the defendant was given adequate notice of the hearing as required by this rule,
- (2) that the defendant had the opportunity to be represented by counsel and a reasonable time to prepare a defense,
- (3) that the defendant had a meaningful opportunity to present evidence and argument at the hearing
- (4) setting out the essential facts constituting the contempt, the judge may impose punishment for failure to pay, including incarceration for a term not to exceed 30 days when findings are made as required by (f) of this rule .
- BEST PRACTICE – READ RULE 37.65 AS YOU ARE MAKING YOUR WRITTEN FINDINGS