

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 972

93RD GENERAL ASSEMBLY

Reported from the Special Committee on General Laws April 14, 2005 with recommendation that House Committee Substitute for House Bill No. 972 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 19, 2005 with recommendation that House Committee Substitute for House Bill No. 972 Do Pass with no time limit for debate.

Taken up for Perfection April 28, 2005. House Committee Substitute for House Bill No. 972 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

2161L.04P

AN ACT

To repeal sections 577.001 and 577.023, RSMo, and to enact in lieu thereof three new sections relating to intoxication-related traffic offenses, with penalty provisions.

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

Section A. Sections 577.001 and 577.023, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 565.022, 577.001, and 577.023, to read as
3 follows:

565.022. 1. A person commits the crime of aggravated vehicular manslaughter if
2 **he or she, while in an intoxicated condition, operates a motor vehicle in this state, and when**
3 **so operating with criminal negligence:**

4 **(1) Causes the death of any person not a passenger in the vehicle operated by the**
5 **defendant; or**

6 **(2) Causes the death of two or more persons; or**

7 **(3) Causes the death of a person less than fifteen years of age; or**

8 **(4) Causes the death of any person while the defendant's blood alcohol is greater**
9 **than or equal to two-tenths percent of alcohol by weight in the defendant's blood.**

10 **2. Aggravated vehicular manslaughter is a class B felony.**

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.

577.001. 1. **As used in this chapter, the term "court" means any circuit, associate circuit, or municipal court, including traffic court, but not any juvenile court or drug court.**

2. As used in this chapter, the term "drive", "driving", "operates" or "operating" means physically driving or operating a motor vehicle.

[2.] 3. As used in this chapter, a person is in an "intoxicated condition" when he is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.

[3.] 4. As used in this chapter, the term "law enforcement officer" or "arresting officer" includes the definition of law enforcement officer in subdivision (17) of section 556.061, RSMo, and military policemen conducting traffic enforcement operations on a federal military installation under military jurisdiction in the state of Missouri.

[4.] 5. As used in this chapter, "substance abuse traffic offender program" means a program certified by the division of alcohol and drug abuse of the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of an alcohol or drug related traffic offense. Successful completion of such a program includes participation in any education or rehabilitation program required to meet the needs identified in the assessment screening. The assignment recommendations based upon such assessment shall be subject to judicial review as provided in subsection 7 of section 577.041.

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

(1) **An "aggravated offender" is a person who has pleaded to or been found guilty of three or more intoxication-related traffic offenses or a person who has pleaded to or has been found guilty of involuntary manslaughter under subdivision (2) of subsection 1 of section 565.024, RSMo; felony murder or murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related offense; aggravated vehicular manslaughter under section 565.022, RSMo; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; and in addition, one other intoxication-related traffic offense;**

(2) A "chronic offender" is:

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

(b) **A person who has pleaded guilty to or been found guilty of, on two or more separate occasions, involuntary manslaughter under subdivision (2) of subsection 1 of section 565.024, RSMo, aggravated vehicular manslaughter under section 565.022, RSMo, assault second degree under subdivision (4) of subsection 1 of section 565.060, RSMo, or**

18 **assault of a law enforcement officer in the second degree under subdivision (4) of**
19 **subsection 1 of section 565.082, RSMo;**

20 **(c) A person who has pleaded guilty to or been found guilty of involuntary**
21 **manslaughter under subdivision (2) of subsection 1 of section 565.024, RSMo, aggravated**
22 **vehicular manslaughter under section 565.022, RSMo, assault second degree under**
23 **subdivision (4) of subsection 1 of section 565.060, RSMo, or assault of a law enforcement**
24 **officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo,**
25 **and in addition, two or more intoxication-related traffic offenses;**

26 **(3) An "intoxication-related traffic offense" is driving while intoxicated, driving with**
27 **excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of**
28 **subsection 1 of section 565.024, RSMo, felony murder or murder in the second degree under**
29 **section 565.021, RSMo, where the underlying felony is an intoxication-related offense,**
30 **assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060,**
31 **RSMo, aggravated vehicular manslaughter under section 565.022,** assault of a law
32 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section
33 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or
34 a county or municipal ordinance, where the judge in such case was an attorney and the defendant
35 was represented by or waived the right to an attorney in writing;

36 **[(2)] (4) A "persistent offender" is one of the following:**

37 **(a) A person who has pleaded guilty to or has been found guilty of two or more**
38 **intoxication-related traffic offenses[, where such two or more offenses occurred within ten years**
39 **of the occurrence of the intoxication-related traffic offense for which the person is charged];**

40 **(b) A person who has pleaded guilty to or has been found guilty of involuntary**
41 **manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree**
42 **pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law**
43 **enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section**
44 **565.082, RSMo; and**

45 **[(3)] (5) A "prior offender" is a person who has pleaded guilty to or has been found**
46 **guilty of one intoxication-related traffic offense[, where such prior offense occurred within five**
47 **years of the occurrence of the intoxication-related traffic offense for which the person is**
48 **charged].**

49 **2. Any person who pleads guilty to or is found guilty of a violation of section 577.010**
50 **or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A**
51 **misdemeanor.**

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

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

58 5. **Any person who pleads guilty to or is found guilty of violation of section 577.010**
59 **or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a**
60 **class B felony.**

61 6. No court shall suspend the imposition of sentence as to a prior or persistent offender
62 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,
63 section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for
64 parole or probation until he has served a minimum of five days imprisonment, unless as a
65 condition of such parole or probation such person performs at least thirty days of community
66 service under the supervision of the court in those jurisdictions which have a recognized program
67 for community service. No persistent offender shall be eligible for parole or probation until he
68 or she has served a minimum of ten days imprisonment, unless as a condition of such parole or
69 probation such person performs at least sixty days of community service under the supervision
70 of the court. **No aggravated offender shall be eligible for parole or probation until he or she**
71 **has served a minimum of sixty days imprisonment. No chronic offender shall be eligible**
72 **for parole or probation until he or she has served a minimum of two years imprisonment.**

73 [5.] 7. The court shall find the defendant to be a prior offender [or], persistent offender,
74 **aggravated offender, or chronic offender** if:

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

78 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
79 beyond a reasonable doubt the defendant is a prior offender [or], persistent offender, **aggravated**
80 **offender, or chronic offender**; and

81 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
82 by the court that the defendant is a prior offender [or], persistent offender, **aggravated offender,**
83 **or chronic offender.**

84 [6.] 8. In a jury trial, the facts shall be pleaded, established and found prior to submission
85 to the jury outside of its hearing.

86 [7.] 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
87 findings of such facts to a later time, but prior to sentencing.

88 [8.] 10. The defendant shall be accorded full rights of confrontation and
89 cross-examination, with the opportunity to present evidence, at such hearings.

90 [9.] 11. The defendant may waive proof of the facts alleged.

91 [10.] 12. Nothing in this section shall prevent the use of presentence investigations or
92 commitments.

93 [11.] 13. At the sentencing hearing both the state and the defendant shall be permitted
94 to present additional information bearing on the issue of sentence.

95 [12.] 14. The pleas or findings of guilty shall be prior to the date of commission of the
96 present offense.

97 [13.] 15. The court shall not instruct the jury as to the range of punishment or allow the
98 jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases
99 of prior offenders [or], persistent offenders, **aggravated offenders, or chronic offenders.**

100 [14.] 16. Evidence of prior convictions shall be heard and determined by the trial court
101 out of the hearing of the jury prior to the submission of the case to the jury, and shall include but
102 not be limited to evidence of convictions received by a search of the records of the Missouri
103 uniform law enforcement system maintained by the Missouri state highway patrol. After hearing
104 the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal
105 or county ordinance in a county or municipal court for driving while intoxicated or a conviction
106 or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence,
107 suspended execution of sentence, probation or parole or any combination thereof in a state court
108 shall be treated as a prior conviction.