

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 972
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, May 10, 2005, with recommendation that the Senate Committee Substitute do pass.

2161S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeals sections 311.310, 565.024, 568.050, and 577.023, RSMo, and to enact in lieu thereof four new sections relating to alcohol related offenses, with penalty provisions.

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

Section A. Sections 311.310, 565.024, 568.050, and 577.023, RSMo, are repealed

2 and four new sections enacted in lieu thereof, to be known as sections 311.310, 565.024,
3 568.050, and 577.023, to read as follows:

311.310. 1. Any licensee under this chapter, or his employee, who shall sell,
2 vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever
3 to any person under the age of twenty-one years, or to any person intoxicated or
4 appearing to be in a state of intoxication, or to a habitual drunkard, and any person
5 whomsoever except his parent or guardian who shall procure for, sell, give away or
6 otherwise supply intoxicating liquor to any person under the age of twenty-one years, or
7 to any intoxicated person or any person appearing to be in a state of intoxication, or to
8 a habitual drunkard, shall be deemed guilty of a misdemeanor, except that this section
9 shall not apply to the supplying of intoxicating liquor to a person under the age of
10 twenty-one years for medical purposes only, or to the administering of such intoxicating
11 liquor to any person by a duly licensed physician. No person shall be denied a license
12 or renewal of a license issued under this chapter solely due to a conviction for unlawful
13 sale or supply to a minor when serving in the capacity as an employee of a licensed
14 establishment.

15 **2. Any owner, occupant, or other person or legal entity with a lawful**
16 **right to the use and enjoyment of any property is prohibited from knowingly**

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

17 **allowing a person under the age of twenty-one to drink or possess**
18 **intoxicating liquor or knowingly failing to stop a person under the age of**
19 **twenty-one from drinking or possessing intoxicating liquor on such property,**
20 **unless such person allowing the person under the age of twenty-one to drink**
21 **or possess intoxicating liquor is his or her parent or guardian. A person who**
22 **violates the provisions of this subsection is guilty of a class A misdemeanor.**

23 **3. Any owner, occupant, or other person or legal entity with a lawful**
24 **right to the use and enjoyment of any property is prohibited from recklessly**
25 **allowing a person under the age of twenty-one to drink or possess**
26 **intoxicating liquor or recklessly failing to stop a person under the age of**
27 **twenty-one from drinking or possessing intoxicating liquor on such property,**
28 **unless such person allowing the person under the age of twenty-one to drink**
29 **or possess intoxicating liquor is his or her parent or guardian. A person who**
30 **violates the provisions of this subsection is guilty of a class B misdemeanor.**

565.024. 1. A person commits the crime of involuntary manslaughter in the first
2 degree if he:

3 (1) Recklessly causes the death of another person; or

4 (2) While in an intoxicated condition operates a motor vehicle in this state and,
5 when so operating, acts with criminal negligence to cause the death of any person.

6 **2. Except as provided in subsections 3 and 4 of this section, involuntary**
7 **manslaughter in the first degree is a class [C] B felony.**

8 **3. A person commits the crime of involuntary manslaughter in the first**
9 **degree if he or she, while in an intoxicated condition operates a motor vehicle**
10 **in this state, and, when so operating, acts with criminal negligence to:**

11 (1) Cause the death of any person not a passenger in the vehicle
12 operated by the defendant, including the death of an individual that results
13 from the defendant's vehicle leaving a highway, as defined by section 301.010,
14 RSMo, or the highway's right-of-way; or

15 (2) Cause the death of two or more persons; or

16 (3) Cause the death of any person while he or she has a blood alcohol
17 content of at least eighteen-hundredths but less than twenty-four-hundredths
18 of one percent by weight of alcohol in such person's blood; or

19 (4) Cause the death of any person while he or she has a blood alcohol
20 content of at least twenty-four-hundredths of one percent by weight of alcohol
21 in such person's blood.

22 **4. Involuntary manslaughter in the first degree under subdivisions (1),**
23 **(2), or (3) of subsection 3 of this section is a class B felony. Involuntary**

24 **manslaughter in the first degree under subdivision (4) of subsection 3 of this**
25 **section is a class A felony. For any violation of subsection 3 of this section,**
26 **the minimum prison term which the defendant must serve shall be eighty-five**
27 **percent of his or her sentence.**

28 **5.** A person commits the crime of involuntary manslaughter in the second degree
29 if he acts with criminal negligence to cause the death of any person.

30 **[4.] 6.** Involuntary manslaughter in the second degree is a class D felony.

 568.050. 1. A person commits the crime of endangering the welfare of a child in
2 the second degree if:

3 (1) He **or she** with criminal negligence acts in a manner that creates a
4 substantial risk to the life, body or health of a child less than seventeen years old; or

5 (2) He **or she** knowingly encourages, aids or causes a child less than seventeen
6 years old to engage in any conduct which causes or tends to cause the child to come
7 within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision

8 (3) of subsection 1 of section 211.031, RSMo; or

9 (3) Being a parent, guardian or other person legally charged with the care or
10 custody of a child less than seventeen years old, he **or she** recklessly fails or refuses to
11 exercise reasonable diligence in the care or control of such child to prevent him from
12 coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or
13 paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of
14 section 211.031, RSMo; or

15 (4) He **or she** knowingly encourages, aids or causes a child less than seventeen
16 years of age to enter into any room, building or other structure which is a public
17 nuisance as defined in section 195.130, RSMo; **or**

18 **(5) The person operates a vehicle in violation of sections 565.024, RSMo,**
19 **565.060, RSMo, 577.010, RSMo, or 577.012, RSMo, while a child less than**
20 **seventeen years of age is present in the vehicle.**

21 2. Nothing in this section shall be construed to mean the welfare of a child is
22 endangered for the sole reason that he **or she** is being provided nonmedical remedial
23 treatment recognized and permitted under the laws of this state.

24 3. Endangering the welfare of a child in the second degree is a class A
25 misdemeanor unless the offense is committed as part of a ritual or ceremony, in which
26 case the crime is a class D felony.

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

3 (1) An **"aggravated offender"** is a person who has pleaded to or been

4 found guilty of three or more intoxication-related traffic offenses or a person
5 who has pleaded to or has been found guilty of involuntary manslaughter
6 under subdivision (2) of subsection 1 or subsections 3 and 4 of section 565.024,
7 RSMo, assault in the second degree under subdivision (4) of subsection 1 of
8 section 565.060, RSMo, assault of a law enforcement officer in the second
9 degree under subdivision (3) of subsection 1 of section 565.082, RSMo, and in
10 addition, one other intoxicated-related traffic offense;

11 (2) A "chronic offender" is:

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

14 (b) A person who has pleaded guilty to or been found guilty of, on two
15 or more separate occasions, involuntary manslaughter under subdivision (2)
16 of subsection 1 or subsections 3 and 4 of section 565.024, RSMo, assault in the
17 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo,
18 assault of a law enforcement officer in the second degree under subdivision
19 (3) of subsection 1 of section 565.082, RSMo;

20 (c) A person who has pleaded guilty to or been found guilty of
21 involuntary manslaughter under subdivision (2) of subsection 1 or subsections
22 3 and 4 of section 565.024, RSMo, assault in the second degree under
23 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
24 enforcement officer in the second degree under subdivision (3) of subsection
25 1 of section 565.082, RSMo, and in addition, two or more intoxication-related
26 traffic offenses;

27 (3) An "intoxication-related traffic offense" is driving while intoxicated, driving
28 with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision
29 (2) of subsection 1 or subsections 3 and 4 of section 565.024, RSMo, assault in the
30 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo,
31 assault of a law enforcement officer in the second degree pursuant to subdivision (3) of
32 subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs
33 in violation of state law or a county or municipal ordinance, where the judge in such case
34 was an attorney and the defendant was represented by or waived the right to an attorney
35 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
39 ten years of the occurrence of the intoxication-related traffic offense for which the person

40 is charged];

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

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

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

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

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

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

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

76 **a minimum of two years imprisonment.**

77 [5.] 7. The **state, county, or municipal** court shall find the defendant to be
78 a prior offender [or], persistent offender, **aggravated offender, or chronic offender**
79 if:

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

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

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

89 [6.] 8. In a jury trial, the facts shall be pleaded, established and found prior to
90 submission to the jury outside of its hearing.

91 [7.] 9. In a trial without a jury or upon a plea of guilty, the court may defer the
92 proof in findings of such facts to a later time, but prior to sentencing.

93 [8.] 10. The defendant shall be accorded full rights of confrontation and
94 cross-examination, with the opportunity to present evidence, at such hearings.

95 [9.] 11. The defendant may waive proof of the facts alleged.

96 [10.] 12. Nothing in this section shall prevent the use of presentence
97 investigations or commitments.

98 [11.] 13. At the sentencing hearing both the state, **county, or municipality**
99 and the defendant shall be permitted to present additional information bearing on the
100 issue of sentence.

101 [12.] 14. The pleas or findings of guilty shall be prior to the date of commission
102 of the present offense.

103 [13.] 15. The court shall not instruct the jury as to the range of punishment or
104 allow the jury, upon a finding of guilty, to assess and declare the punishment as part of
105 its verdict in cases of prior offenders [or], persistent offenders, **aggravated offenders,**
106 **or chronic offenders.**

107 [14.] 16. Evidence of prior convictions shall be heard and determined by the trial
108 court out of the hearing of the jury prior to the submission of the case to the jury, and
109 shall include but not be limited to evidence of convictions received by a search of the
110 records of the Missouri uniform law enforcement system maintained by the Missouri
111 state highway patrol. After hearing the evidence, the court shall enter its findings

112 thereon. A conviction of a violation of a municipal or county ordinance in a county or
113 municipal court for driving while intoxicated or a conviction or a plea of guilty or a
114 finding of guilty followed by a suspended imposition of sentence, suspended execution
115 of sentence, probation or parole or any combination thereof in a state court shall be
116 treated as a prior conviction.

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