

FIRST REGULAR SESSION

HOUSE BILL NO. 336

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LIPKE.

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0964L.01I

AN ACT

To repeal sections 577.021 and 577.023, RSMo, and to enact in lieu thereof three new sections relating to the crime of driving with a controlled substance in a person's body, with penalty provisions.

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

Section A. Sections 577.021 and 577.023, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 577.021, 577.022, and 577.023, to read as follows:

577.021. 1. Any state, county or municipal law enforcement officer who has the power of arrest for violations of section 577.010 [or] , 577.012, **or 577.022** and who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a chemical test to any person suspected of operating a motor vehicle in violation of section 577.010 [or] , 577.012, **or 577.022**.

2. Any state, county, or municipal law enforcement officer who has the power of arrest for violations of section 577.010 [or] , 577.012, **or 577.022** and who is certified under chapter 590, RSMo, shall make all reasonable efforts to administer a chemical test to any person suspected of driving a motor vehicle involved in a collision which resulted in a fatality or serious physical injury as defined in section 565.002, RSMo.

3. A test administered pursuant to this section shall be admissible as evidence of probable cause to arrest and as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The provisions of sections 577.019 and 577.020 shall not apply to a test administered prior to arrest pursuant to this section.

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.

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15 The provisions changing chapter 577 are severable from this legislation. The general assembly
16 would have enacted the remainder of this legislation without the changes made to chapter 577,
17 and the remainder of the legislation is not essentially and inseparably connected with or
18 dependent upon the changes to chapter 577.

**577.022. 1. A person commits the crime of driving with a controlled substance in
2 a person's body if such person operates a motor vehicle with any detectable quantity of a
3 controlled substance or its metabolite.**

**4 2. Any detectable quantity may be shown by chemical analysis of the person's
5 blood, breath, saliva, or urine. For purposes of determining the alcohol content of a
6 person's blood under this section, the test shall be conducted in accordance with the
7 provisions of sections 577.020 to 577.041.**

**8 3. It shall be an affirmative defense to the crime of driving with a controlled
9 substance in a person's body if the person accused of having a detectable quantity of a
10 controlled substance in such person's body has a valid prescription from a licensed
11 physician, dentist, or other health care professional with prescriptive authority for the
12 controlled substance that was detected.**

**13 4. For purposes of this section, "controlled substance" means a drug, substance,
14 or immediate precursor in schedules I to V listed in sections 195.005 to 195.425, RSMo.**

**15 5. Any person who violates this section is guilty of a class B misdemeanor. Any
16 second or subsequent violations shall be subject to the provisions of section 577.023.**

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

2 (1) An "aggravated offender" is a person who:

**3 (a) Has pleaded guilty to or has been found guilty of three or more intoxication-related
4 traffic offenses; or**

**5 (b) Has pleaded guilty to or has been found guilty of one or more intoxication-related
6 traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision
7 (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section
8 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; or assault
9 in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault
10 of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of
11 section 565.082, RSMo;**

12 (2) A "chronic offender" is:

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

15 (b) A person who has pleaded guilty to or has been found guilty of, on two or more
16 separate occasions, any combination of the following: involuntary manslaughter under
17 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree
18 under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic
19 offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060,
20 RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of
21 subsection 1 of section 565.082, RSMo; or

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in
25 the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-
26 related traffic offense; assault in the second degree under subdivision (4) of subsection 1 of
27 section 565.060, RSMo; or assault of a law enforcement officer in the second degree under
28 subdivision (4) of subsection 1 of section 565.082, RSMo;

29 (3) An "intoxication-related traffic offense" is driving while intoxicated, driving with
30 excessive blood alcohol content, **driving with a controlled substance in a person's body**
31 **under section 577.022**, involuntary manslaughter pursuant to subdivision (2) or (3) of
32 subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021,
33 RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the
34 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of
35 a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of
36 section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state
37 law or a county or municipal ordinance, where the defendant was represented by or waived the
38 right to an attorney in writing;

39 (4) A "persistent offender" is one of the following:

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

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

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

50 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
51 [or] , 577.012, **or 577.022** 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 577.010
54 [or] , 577.012, **or 577.022** 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 section 577.010
57 [or section] , 577.012, **or 577.022** who is alleged and proved to be an aggravated offender shall
58 be guilty of a class C felony.

59 5. Any person who pleads guilty to or is found guilty of a violation of section 577.010
60 [or section] , 577.012, **or 577.022** who is alleged and proved to be a chronic offender shall be
61 guilty of a class B felony.

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

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

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

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

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

86 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
87 the jury outside of its hearing.

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

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

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

93 12. Nothing in this section shall prevent the use of presentence investigations or
94 commitments.

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

97 14. The pleas or findings of guilty shall be prior to the date of commission of the present
98 offense.

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

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

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