

SECOND REGULAR SESSION

HOUSE BILL NO. 1703

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BRUNS (Sponsor), DUSENBERG,
SCHNEIDER AND ROORDA (Co-sponsors).

Read 1st time January 17, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4192L.01I

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to prior or persistent intoxication-related traffic offenders, with a penalty provision.

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

Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows:

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

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

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

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; or 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;

(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; or

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.

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
26 intoxication-related traffic offense; assault in the second degree under subdivision (4) of
27 subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second
28 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

29 (3) **"Continuous alcohol monitoring" is automatically testing breath, blood, or**
30 **transdermal alcohol concentration levels and tamper attempts at least once every hour,**
31 **regardless of the location of the person who is being monitored, and regularly transmitting**
32 **the data;**

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

42 [(4)] (5) A "persistent offender" is one of the following:

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

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

50 [(5)] (6) A "prior offender" is a person who has pleaded guilty to or has been found
51 guilty of one intoxication-related traffic offense, where such prior offense occurred within five
52 years of the occurrence of the intoxication-related traffic offense for which the person is charged.

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

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

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

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

65 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
66 prior offender, persistent offender, aggravated offender, or chronic offender under this section
67 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo,
68 to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until
69 he or she has served a minimum of five days imprisonment, unless as a condition of such parole
70 or probation such person performs at least thirty days of community service under the
71 supervision of the court in those jurisdictions which have a recognized program for community
72 service **and abstains from consuming or using alcohol or any products containing alcohol**
73 **as demonstrated by continuous alcohol monitoring or by verifiable breath alcohol testing**
74 **performed a minimum of four times per day as scheduled by the court, for not less than**
75 **thirty days nor more than ninety days as determined by the court.** No persistent offender
76 shall be eligible for parole or probation until he or she has served a minimum of ten days
77 imprisonment, unless as a condition of such parole or probation such person performs at least
78 sixty days of community service under the supervision of the court **and abstains from**
79 **consuming or using alcohol or any products containing alcohol and demonstrated by**
80 **continuous alcohol monitoring or by verifiable breath alcohol testing performed a**
81 **minimum of four times per day as scheduled by the court, for not less than sixty days nor**
82 **more than one hundred eighty days as determined by the court.** No aggravated offender
83 shall be eligible for parole or probation until he or she has served a minimum of sixty days
84 imprisonment. **However, the court may suspend execution of up to thirty days of this term**
85 **if, as a condition of such parole or probation, such person abstains from consuming or**

86 **using alcohol or any products containing alcohol as demonstrated by continuous alcohol**
87 **monitoring or by verifiable breath alcohol testing performed a minimum of six times per**
88 **day as scheduled by the court, for not less than one hundred and twenty days nor more**
89 **than two hundred and seventy days as determined by the court.** No chronic offender shall
90 be eligible for parole or probation until he or she has served a minimum of two years
91 imprisonment. **However, the court may suspend execution of up to one year of this term if,**
92 **as a condition of such parole or probation, such person abstains from consuming or using**
93 **alcohol or any products containing alcohol as demonstrated by continuous alcohol**
94 **monitoring or by verifiable breath alcohol testing performed a minimum of six times per**
95 **day as scheduled by the court, for not less than one year nor more than two years as**
96 **determined by the court.**

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

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

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

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

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

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

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

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

115 12. Nothing in this section shall prevent the use of presentence investigations or
116 commitments.

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

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

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

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

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