

SECOND REGULAR SESSION

HOUSE BILL NO. 2368

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROORDA (Sponsor), PAGE, DARROUGH, HARRIS (23),
BRUNS AND DONNELLY (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

5455L.01I

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to enhanced penalties for intoxication-related offenses, with penalty provisions.

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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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] **an intoxication-related traffic homicide**; 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] **an intoxication-related traffic homicide**; assault in the second degree under
20 subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement
21 officer in the second degree under subdivision (4) of 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] **an intoxication-related traffic homicide**; assault in the
27 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a
28 law enforcement officer in the second degree under subdivision (4) of subsection 1 of section
29 565.082, RSMo;

30 (3) **An "intoxication-related traffic homicide" is involuntary manslaughter under**
31 **subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the second**
32 **degree under section 565.021, RSMo, where the underlying felony is an intoxication-related**
33 **traffic offense, or a homicide from another state where the underlying conduct would have**
34 **constituted an intoxication-related traffic homicide under Missouri law had the conduct**
35 **occurred in this state;**

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

45 [(4)] (5) A "persistent offender" is one of the following:

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

48 (b) A person who has pleaded guilty to or has been found guilty of [involuntary
49 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo] **an**
50 **intoxication-related traffic homicide**, assault in the second degree pursuant to subdivision (4)

51 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second
52 degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo; and

53 ~~[(5)]~~ (6) A "prior offender" is a person who has pleaded guilty to or has been found
54 guilty of one intoxication-related traffic offense, where such prior offense occurred within five
55 years of the occurrence of the intoxication-related traffic offense for which the person is charged.

56 2. 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 prior offender shall be guilty of a class A
58 misdemeanor.

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

62 4. 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 an aggravated offender shall be guilty of a
64 class C felony.

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

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

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

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

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

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

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

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

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

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

99 12. Nothing in this section shall prevent the use of presentence investigations or
100 commitments.

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

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

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

108 16. Evidence of prior convictions shall be heard and determined by the trial court out of
109 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
110 be limited to evidence of convictions, **pleas of guilty, or findings of guilty** received by a search
111 of the records of the Missouri uniform law enforcement system maintained by the Missouri state
112 highway patrol. After hearing the evidence, the court shall enter its findings thereon. A
113 conviction [of] **or a plea of guilty or a finding of guilty followed by a suspended imposition**
114 **of sentence, suspended execution of sentence, probation or parole or any combination**
115 **thereof for** a violation of a municipal or county ordinance in a county or municipal court for
116 [driving while intoxicated] **an intoxication-related traffic offense** or a conviction or a plea of
117 guilty or a finding of guilty followed by a suspended imposition of sentence, suspended
118 execution of sentence, probation or parole or any combination thereof **for an intoxication-**
119 **related traffic offense** in a state court shall be treated as a prior conviction.

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