

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 93
95TH GENERAL ASSEMBLY

0397L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 577.023, 577.029, 578.255, and 578.265, RSMo, and to enact in lieu thereof five new sections relating to intoxication, with penalty provisions.

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

Section A. Sections 577.023, 577.029, 578.255, and 578.265, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 227.295, 577.023, 577.032,
3 578.255, and 578.265, to read as follows:

**227.295. 1. The department of transportation shall establish and administer a
2 drunk driving risk reduction awareness program. The provisions of this section shall be
3 known as "David's Law". The signs shall be placed upon the state highways in accordance
4 with this section, placement guidelines adopted by the department, and any applicable
5 federal limitations or conditions on highway signage, including location and spacing.**

**6 2. The department shall adopt, by rules and regulations, program guidelines for
7 the application for and placement of signs authorized by this section, including, but not
8 limited to, the sign application and qualification process, the procedure for the dedication
9 of signs, and procedures for the replacement or restoration of any signs that are damaged
10 or stolen. The department shall also establish by rule, application procedures and methods
11 for proving eligibility for the program.**

**12 3. Any person may apply to the department of transportation to sponsor a drunk
13 driving victim memorial sign in memory of an immediate family member who died as a
14 result of a motor vehicle accident caused by a person who was shown to have been
15 operating a motor vehicle in violation of section 577.010 or 577.012, RSMo, or was
16 committing an intoxication-related traffic offense at the time of the accident. Upon the**

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.

17 request of an immediate family member of the deceased victim involved in a drunk driving
18 accident, the department shall place a sign in accordance with this section. A person who
19 is not a member of the immediate family may also submit a request to have a sign placed
20 under this section if that person also submits the written consent of an immediate family
21 member. The department shall charge the sponsoring party a fee to cover the
22 department's cost in designing, constructing, placing, and maintaining that sign, and the
23 department's costs in administering this section. Signs erected under this section shall
24 remain in place for a period of ten years. After the expiration of the ten-year period, the
25 department shall remove the sign unless the sponsoring party remits to the department of
26 transportation a ten-year renewable fee to cover maintenance costs associated with the
27 sign.

28 4. The signs shall feature the words "Drunk Driving Victim!", the initials of the
29 victim, the month and year in which the victim of the drunk driving accident was killed,
30 and the phrase "Who's Next?". The overall design of the sign, including size, color, and
31 lettering, shall conform to the guidelines and regulations established by the department.
32 The signs shall be placed near the scene of the accident.

33 5. As used in this section, the term "immediate family member" shall mean spouse,
34 child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or
35 stepfather.

36 6. The department shall adopt rules and regulations to implement and administer
37 the provisions of this section. Any rule or portion of a rule, as that term is defined in
38 section 536.010, RSMo, that is created under the authority delegated in this section shall
39 become effective only if it complies with and is subject to all of the provisions of chapter
40 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
41 RSMo, are nonseverable and if any of the powers vested with the general assembly
42 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
43 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
44 authority and any rule proposed or adopted after August 28, 2009, shall be invalid and
45 void.

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
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", means automatically testing breath, blood,**
30 **or 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. Continuous alcohol monitoring is an electronic monitoring service as provided**
33 **in subsection 3 of section 217.690, RSMo;**

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

43 [(4)] (5) A "persistent offender" is one of the following:

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

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

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

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

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

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

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

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

80 **parole or probation, for any person who pleads guilty to or is found guilty of an**
81 **intoxication-related traffic offense, requiring the offender to abstain from consuming or**
82 **using alcohol or any products containing alcohol as demonstrated by continuous alcohol**
83 **monitoring or by verifiable breath alcohol testing performed a minimum of four times per**
84 **day as scheduled by the court for such duration as determined by the court but not less**
85 **than ninety days. The court may, in addition to imposing any other fine, costs, or**
86 **assessments provided by law, require the offender to bear any costs associated with**
87 **continuous alcohol monitoring or verifiable breath alcohol testing.**

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

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

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

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

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

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

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

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

106 12. Nothing in this section shall prevent the use of presentence investigations or
107 commitments.

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

110 14. The pleas or findings of guilt shall be prior to the date of commission of the present
111 offense.

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

115 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
116 intoxication-related traffic offense shall be heard and determined by the trial court out of the
117 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
118 limited to evidence of convictions received by a search of the records of the Missouri uniform
119 law enforcement system maintained by the Missouri state highway patrol. After hearing the
120 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
121 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
122 probation or parole or any combination thereof in any intoxication-related traffic offense in a
123 state, county, or municipal court, or any combination thereof, shall be treated as a prior plea of
124 guilty or finding of guilt for purposes of this section.

577.032. A licensed physician, registered nurse, or trained medical technician,
2 **acting at the request and direction of the law enforcement officer, shall withdraw blood for**
3 **the purpose of determining the alcohol content of the blood, unless such medical personnel,**
4 **in his or her good faith medical judgment, believes such procedure would endanger the life**
5 **or health of the person in custody. Blood may be withdrawn only by such medical**
6 **personnel, but such restriction shall not apply to the taking of a breath test, a saliva**
7 **specimen, or a urine specimen. In withdrawing blood for the purpose of determining the**
8 **alcohol content thereof, only a previously unused and sterile needle and sterile vessel shall**
9 **be utilized and the withdrawal shall otherwise be in strict accord with accepted medical**
10 **practices. Upon the request of the person who is tested, full information concerning the**
11 **test taken at the direction of the law enforcement officer shall be made available to him or**
12 **her.**

 578.255. 1. As used in this section "alcohol beverage vaporizer" means any device
2 which, by means of heat, a vibrating element, or any method, is capable of producing a
3 breathable mixture containing one or more alcoholic beverages to be dispensed for
4 inhalation into the lungs via the nose or mouth or both.

 2. No person shall intentionally or willfully induce the symptoms of intoxication, elation,
6 euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or
7 dulling of the senses or nervous system, distortion of audio, visual or mental processes by the
8 use or abuse of any [solvent, particularly toluol.] of the following substances:

- 9 (1) Solvents, particularly toluol;
- 10 (2) Ethyl alcohol;
- 11 (3) Amyl nitrite and its iso-analogues;
- 12 (4) Butyl nitrite and its iso-analogues;
- 13 (5) Cyclohexyl nitrite and its iso-analogues;
- 14 (6) Ethyl nitrite and its iso-analogues;

15 **(7) Pentyl nitrite and its iso-analogues; and**

16 **(8) Propyl nitrite and its iso-analogues.**

17 **3. This section shall not apply to substances that have been approved by the United**
18 **States Food and Drug Administration as therapeutic drug products or are contained in**
19 **approved over-the-counter drug products or administered lawfully pursuant to the order**
20 **of an authorized medical practitioner.**

21 [2.] **4. No person shall intentionally possess any solvent, particularly toluol, amyl nitrite,**
22 **butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite, and propyl nitrite and their iso-**
23 **analogues for the purpose of using it in the manner prohibited by section 578.250 and this**
24 **section.**

25 **5. No person shall possess or use an alcoholic beverage vaporizer.**

26 **6. Nothing in this section shall be construed to prohibit the legal consumption of**
27 **intoxicating liquor, as defined by section 311.020, RSMo, or nonintoxicating beer, as**
28 **defined by section 312.010, RSMo.**

 578.265. 1. No person shall knowingly and intentionally sell or otherwise transfer
2 possession of any solvent, particularly toluol, **amyl nitrite, butyl nitrite, cyclohexyl nitrite,**
3 **ethyl nitrite, pentyl nitrite, and propyl nitrite and their iso-analogues** to any person for the
4 purpose of causing a condition of, or inducing symptoms of, intoxication, elation, euphoria,
5 dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of
6 senses or nervous system, or for the purpose of, in any manner, changing, distorting, or
7 disturbing the audio, visual, or mental processes.

8 2. No person who owns or operates any business which receives over fifty percent of its
9 gross annual income from the sale of alcoholic beverages or beer shall sell or offer for sale
10 toluol, **amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite, and propyl**
11 **nitrite and their iso-analogues,** or any toxic glue.

12 **3. No person who owns or operates any business which operates as a venue for live**
13 **entertainment performance or receives over fifty percent of its gross annual income from**
14 **the sale of recorded video entertainment shall sell or offer for sale toluol, amyl nitrite, butyl**
15 **nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite, propyl nitrite or their iso-analogues.**

16 **4. Any person who violates the provisions of subsection 1 or 2 of this section is guilty**
17 **of a class C felony.**

 [577.029. A licensed physician, registered nurse, or trained medical
2 technician at the place of his employment, acting at the request and direction of
3 the law enforcement officer, shall withdraw blood for the purpose of determining
4 the alcohol content of the blood, unless such medical personnel, in his good faith
5 medical judgment, believes such procedure would endanger the life or health of
6 the person in custody. Blood may be withdrawn only by such medical personnel,

7 but such restriction shall not apply to the taking of a breath test, a saliva
8 specimen, or a urine specimen. In withdrawing blood for the purpose of
9 determining the alcohol content thereof, only a previously unused and sterile
10 needle and sterile vessel shall be utilized and the withdrawal shall otherwise be
11 in strict accord with accepted medical practices. Upon the request of the person
12 who is tested, full information concerning the test taken at the direction of the
13 law enforcement officer shall be made available to him.]

✓