

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for House Bill Nos. 1695, 1742 and 1674, Page 12, Section 577.010, by removing all of said section and inserting in lieu thereof the following:

“577.010. 1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class A misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two years.”; and

Further amend said Page, Section 577.012 by removing all of said section and inserting in lieu thereof the following:

“577.012. 1. A person commits the crime of "driving with excessive blood alcohol content" if such person operates a motor vehicle in this state with eight-hundredths of one percent or more by weight of alcohol in such person's blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041.

3. For the first offense, driving with excessive blood alcohol content is a class B misdemeanor, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class A misdemeanor.”; and

Further amend said bill, Page 16, Section 577.023 by removing all of said section and inserting in lieu thereof the following:

“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

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination 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; 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; or

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

(3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal alcohol concentration levels and tampering attempts at least once every hour, regardless of the location of the person who is being monitored, and regularly transmitting the data. Continuous alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of section 217.690, RSMo;

(4) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to 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, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance;

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

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

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

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

2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class D felony.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class C felony.

4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class B felony.

5. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony, unless the offense occurred while a passenger under the age of sixteen was in the vehicle, in which case such offense is a class A felony.

6. No state, county, or municipal court shall suspend the imposition of sentence as to a

1 prior offender, persistent offender, aggravated offender, or chronic offender under this section nor
2 sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to
3 the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he
4 or she has served a minimum of five days imprisonment, unless as a condition of such parole or
5 probation such person performs at least thirty days of community service under the supervision of
6 the court in those jurisdictions which have a recognized program for community service. No
7 persistent offender shall be eligible for parole or probation until he or she has served a minimum
8 of ten days imprisonment, unless as a condition of such parole or probation such person performs
9 at least sixty days of community service under the supervision of the court. No aggravated
10 offender shall be eligible for parole or probation until he or she has served a minimum of sixty
11 days imprisonment. No chronic offender shall be eligible for parole or probation until he or she
12 has served a minimum of two years imprisonment. In addition to any other terms or conditions of
13 probation, the court shall consider, as a condition of probation for any person who pleads guilty to
14 or is found guilty of an intoxication-related traffic offense, requiring the offender to abstain from
15 consuming or using alcohol or any products containing alcohol as demonstrated by continuous
16 alcohol monitoring or by verifiable breath alcohol testing performed a minimum of four times per
17 day as scheduled by the court for such duration as determined by the court, but not less than ninety
18 days. The court may, in addition to imposing any other fine, costs, or assessments provided by
19 law, require the offender to bear any costs associated with continuous alcohol monitoring or
20 verifiable breath alcohol testing.

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

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

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

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

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

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

10. The defendant shall be accorded full rights of confrontation and cross-examination,

1 with the opportunity to present evidence, at such hearings.

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

3 12. Nothing in this section shall prevent the use of presentence investigations or
4 commitments.

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

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

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

12 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
13 intoxication-related traffic offense shall be heard and determined by the trial court out of the
14 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
15 limited to evidence of convictions received by a search of the records of the Missouri uniform law
16 enforcement system maintained by the Missouri state highway patrol. After hearing the evidence,
17 the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed by
18 incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
19 probation or parole or any combination thereof in any intoxication-related traffic offense in a
20 state, county or municipal court or any combination thereof, shall be treated as a prior plea of
21 guilty or finding of guilt for purposes of this section.”; and

22
23 Further amend said bill by amending the title, enacting clause, and intersectional references
24 accordingly.
25